

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

May 5, 2015 at 3:00 p.m.

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1. 15-22301-E-13 GAIL/ROBERT STEVENS MOTION TO VALUE COLLATERAL OF
WSS-1 W. Steven Shumway JPMORGAN CHASE BANK, N.A.
3-24-15 [8]

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 24, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Gail and Robert Stevens ("Debtors") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1077 Berkshire Dr., El Dorado Hills, California ("Property"). Debtor seeks to value the Property at a fair market value of \$580,000.00 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 \$630,218.00. Creditor's second deed of trust secures a claim with a balance of approximately \$242,675.00. 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 Gail and Robert Stevens ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a)

is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 1077 Berkshire Dr., El Dorado Hills, California, 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 \$580,000.00 and is encumbered by senior liens securing claims in the amount of \$630,218.00, which exceed the value of the Property which is subject to Creditor's lien.

2. [14-31903-E-13](#) MARK GARCIA MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 3-24-15 [[34](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 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 grant the Motion to Confirm the Amended Plan.

Mark Garcia ("Debtor") filed the instant Motion to Confirm the Amended

Plan on March 24, 2015. Dckt. 34.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 21, 2015. Dckt. 46. The Trustee objects on the following grounds:

1. The Trustee calculates that the Plan will complete in 77 months which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Trustee states that this appears to be due to the miscalculation of unsecured debt. Debtors report having \$141,055.00 in unsecured claims on Schedule F but only provides for \$79,576.00 in unsecured debt in the plan. With a 5% dividend proposed to unsecured claims, the plan exceeds 60 months as the dividend requires no less than \$7,052.75 to be paid to unsecured claims.
2. The Debtors' plan is not the Debtor's best efforts. The Debtor is above median income proposing to pay \$150.00 through March 2015 and \$150.00 per month for 57 months with a guaranteed dividend to 5% to general unsecured. The Debtors are not proposing all disposable income into the plan. The Debtors list an expense of \$1,350 per month for rent or mortgage on Schedule J. However, the Debtors' plan moves the residential mortgage from Class 1 to Class 3 to propose to surrender the property. The Debtors have not filed a change of address and appears that the Debtors are still residing at the property listed on Schedule A. The Trustee states that the Debtors should be required to commit their projected disposable income into the plan until the time he moves. The rent appears to be a projected expense that is not currently necessary and that the plan payment should be increased by \$1,350.00.

DEBTOR'S REPLY

The Debtor filed a reply on April 28, 2015. Dckt. 49. The Debtor replies as follows:

1. The plan payout equates to \$8,700.00 (\$150.00 through March 2015 plus \$150.00 x 57 months). Notice of Timely Filed Claims expired April 22, 2015. The total unsecured claims equals \$13,209.66. The plan calculates at a higher percentage than 5% for 60 months. Here, the total unsecured claims being \$13,209.66 at 5% equals 660.48, plus attorney fees of \$3,500.00, and Trustee Fees at 7% (\$291.00), which equates to a total of \$4,451.00. Since the plan proposes payments to \$8,700.00 and only \$4,451 is required, this plan is feasible and should be confirmed.
2. The Debtor filed a change of address on March 11, 2015. Dckt. 31.

DISCUSSION

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

The Debtor's reply appears to properly address the Trustee's objection. The Debtor has filed a change of address on March 11, 2015 which indicates that the rent expense is, in fact, a necessary expense. Therefore, the Trustee's second objection is overruled.

As to the Trustee's first objection, the deadline to file a proof of claim was April 22, 2015. The court's own calculation shows that the total unsecured claims totals \$13,209.66, which under the terms of the confirmed plan, would only require a dividend of \$660.48. The proposed plan payments would allow for the full payment of the minimum dividend to unsecured creditors. Therefore, the Trustee's first objection is overruled.

Therefore, with not pending objections remaining, 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 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. [10-46406-E-13](#) CORINA GARCIA
PGM-3 Peter Macaluso

CONTINUED MOTION FOR
DISBURSEMENT
3-25-15 [[58](#)]

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

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

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

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

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

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

The Motion for Disbursement is denied.

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

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

On March 4, 2015, the court granted the Debtor's Motion to Use Cash

Collateral which authorized Debtor to use the remaining insurance proceeds of \$8,770.64 to procure a replacement vehicle. Dckt. 55.

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

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

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

APRIL 14, 2015 HEARING

At the hearing the court continued the hearing to 3:00 p.m. on May 5, 2015.

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

DISCUSSION

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

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

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

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

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

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

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

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

At the end of the day, Debtor's Motion is a statement that the Bankruptcy Code and Bankruptcy Rules do not apply, that she will obtain credit, trade vehicles, and do whatever she so desires, and the court, Chapter 13 Trustee, and U.S. Trustee are mere afterthoughts, irrelevant to the process. This is even further evidenced by the Debtor's failure to file any supplemental papers to justify or ease the concerns of court.

Therefore, the Motion is denied.

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

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

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

IT IS ORDERED that the Motion is denied.

4. 10-46406-E-13 CORINA GARCIA
PGM-4 Peter Macaluso

MOTION TO MODIFY PLAN
3-25-15 [[64](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

Corina Garcia ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 25, 2015. Dckt. 64.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 21, 2015. Dckt. 71. The Trustee objects on the following grounds:

1. The Trustee is uncertain on proposed treatment of creditor Pacific Service Credit Union. The proposed plan lists the creditor twice, once as a Class 2 secured purchase money security interest and once as a Class 3 surrender. According to the Trustee's records, the Class 2 portion of the claim (Proof

of Claim 2) has been valued (Dckt. 14) and paid in full in the amount of \$10,000.00. The balance of \$15,547.18 is to be paid as a general unsecured claim.

2. The Trustee is uncertain if the Debtor can afford the proposed plan payments. The Debtor states in his declaration that his roommate finance a 2012 Honda Civic for the Debtor since the Debtor did not have a way to get to work nor transport her children. Dckt. 66. The Debtor also states that her roommate also agreed to assist in paying "\$150.00 per month until [the Debtor is] discharged." The Trustee is concerned the Debtor cannot afford the plan payments.
3. The order confirming plan (Dckt. 14) reflects attorney fees of \$2,500.00 shall be paid through the plan. However, the proposed plan lists attorney fees as \$0.00 to be paid through the Chapter 13 plan.
4. The Debtor has paid ahead \$300.00 under the proposed plan. Under the modified plan, Debtor would need to have paid the Trustee a total of \$15,600.00 through March 2015. The Trustee's records reflect that the Debtor has actually paid a total of \$15,900.00.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objections on April 28, 2015. Dckt. 75. The Debtor responds as follows:

1. The subject vehicle was totaled and therefore the debt is provided for as Class 2 for the amounts already disbursed by the Trustee. The Class 3 classification is for the unsecured, dischargeable balance. The unsecured claim should be paid in accordance with the term of the plan, ie., no less than .98%.
2. Debtor had made the last 54 monthly payments timely and there is no reason she will not be able to continue making payments.
3. A computer error placed "\$0.00" in the attorney fee field. The Debtor's attorney requests that the order confirming clarifies that the attorney was to be paid \$2,500.00 thru the plan.
4. The Debtor remitted \$300.00 to the Trustee after the Motion was prepared and filed. The Debtor's counsel requests that the order confirming correct the total paid thru March 2015 to be \$15,900.00. This additional payment gives the unsecured creditors a few more cents on the dollar.

DISCUSSION

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

Here, while the majority of the Trustee's objections could be cured in the order confirming, the court is also concerned with the Debtor's ability to make plan payments. While the court is cognizant of the fact that the Debtor

has made timely payments to date, the Debtor appears to rely on the support of her roommate, who has not filed a declaration stating, under penalty of perjury, that he will support the Debtor through the remainder of the plan.

The Debtor, in connection with her Motion to Obtain authorization to pay her roommate for 18.8% interest financing for a vehicle, Debtor has demonstrated that she had additional money to fund a plan. She represented to the court that only does she have the money to pay her roommate \$374.00 for the 18.8% financing, but an additional \$325.00 (on top of having purchased a maintenance contract and previously having stated under penalty of perjury that her vehicle expenses for her old car, including maintenance expenses on the old car were only \$300.00 a month).

Here, under the proposed Modified Plan Debtor represents that she can only pay \$150.00 a month to fund her plan. This will generate a promised 00.98% dividend to creditors holding general unsecured claims.

For her current budget, Debtor states she has gross income of \$5,579.16. Exhibit 2, Dckt. 67. However, Debtor is burdened by having to pay \$2,046.80 in income and Social Security taxes. *Id.* This is a tax burden of 37%, which strikes the court as being unusually high.

For her Expenses, Debtor states that she has to pay (\$3,447.85) a month. *Id.*, Exhibit 3. This includes (\$1,000.00) for rent or mortgage, (\$160.00) for gas/electric, (\$228.00) for utilities, (\$325.00) for transportation (increased for her new car), and a new (\$374.49) for the unauthorized credit for her roommate's purchase of a car.

Though Debtor has a roommate who incurs debt to buy a car for Debtor, no income information is provided for the roommate. No contribution for the household expenses is provided for the roommate. It appears that Debtor has been using her income to subsidize her roommate's living expenses during the term of this plan (thereby improperly decreasing the projected disposable income required to fund a chapter 13 plan).

The Debtor has failed to provide the court with credible evidence to support confirmation of the proposed Modified Chapter 13 Plan. Though near the end of the 60 month plan period and aware of the court finding Debtor's attempt to divert money for unauthorized post-petition credit at unreasonable terms, Debtor has continued to try and confirm this Modified Chapter 13 Plan. What has now come to light is that Debtor either has additional undisclosed income from her roommate or Debtor has been secretly subsidizing her roommate's living expenses with monies which should have been paid into the Chapter 13 Plan.

The proposed Modified Chapter 13 Plan fails to comply with the requirements of 11 U.S.C. §§ 1329, 1325, and 1322, and is not confirmed.

The Motion is denied.

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

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

The Motion 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.

5. [13-32506-E-13](#) RICHARD EADDY MOTION TO MODIFY PLAN
RJ-2 Richard Jare 3-31-15 [[35](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 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 grant the Motion to Confirm the Modified Plan.

Richard Eaddy ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 31, 2015. Dckt. 35.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 21, 2015. Dckt. 51. The Trustee objects on the grounds the

Debtors' plan fails liquidation analysis and may not be in good faith. The Debtor is proposing plan payments of \$300.00 for each of the first 17 months, suspending the delinquency and payment for the 18th month, a lump sum payment of \$3,000.00 no later than July 2015, and then paying the monthly sum of \$300.00 for each of the final 18 months of the 36 month plan. The Debtor proposes a 10% dividend to unsecured creditors. Debtor's plan also relies on a the sale of the Debtor's property. Based on the terms of the proposed sale, the Debtor would receive \$25,302.29.

The Trustee notes that the Debtor filed a Motion to Avoid the Lien of CACH LLC on the subject property, which the court granted. The Trustee says that it was granted based on the value from the schedules of \$155,000.00. The Trustee states that seven days later, the Debtor filed an exhibit to the Motion to Sell an Estimated Settlement Statement showing a sale price of \$215,000.00. Dckt. 43.

The Trustee alleges that the Debtor has additional money to contribute into the plan, since the proceeds from the sale would not be exempt except in the amount of \$698.00. The proceeds may also be subject to the lien of CACH, LLC, which was avoided but subject to the provisions to 11 U.S.C. § 349.

DISCUSSION

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

On April 30, 2015, the court issued an order grating the Debtor's Motion to Sell. Dckt. 64. The court ordered the following:

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. From the sales proceeds, \$8,211.44 shall be paid from escrow to the Chapter 13 Trustee, which monies shall be disbursed through the Chapter 13 Plan in this case.

5. In addition, \$8,000.00 of the sales proceeds shall be paid from escrow directly to the Chapter 13 Trustee from escrow. 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. Debtor's exemptions shall also attach to the \$8,000.00 in proceeds. The Chapter 13 Trustee shall hold the \$8,000.00 in sales proceeds pending further order of the court.

6. After payment of the secured claims, costs of sale and other amounts authorized pursuant to this order, and the \$8,211.44 and \$8,000.00 disbursements to the Chapter 13 Trustee, all additional amounts may be disbursed from escrow to the Debtor.

Dckt. 64.

The order granting the Motion to Sell provides retains any interest CACH, LLC may have in any of the proceeds of the sale pending the completion of the plan. In light of the court granting the Motion to Sell and ordering certain funds to be disbursed to the Trustee for disbursement pursuant to the plan, the Trustee's objections are overruled.

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 31, 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.

6. [15-20506-E-13](#) DENISE BATTS
CAH-2 C. Anthony Hughes

MOTION TO CONFIRM PLAN
3-23-15 [[29](#)]

Final Ruling: No appearance at the May 5, 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 23, 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). 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 23, 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.

7. [11-31509-E-13](#) DAVID/ELYSE COX MOTION TO MODIFY PLAN
JDM-2 David Maxey 3-24-15 [[40](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

David and Elyse Cox ("Debtors") filed the instant Motion to Confirm the Modified Plan on March 24, 2015. Dckt. 40.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 21, 2015. Dckt. 47. The Trustee objects on the grounds that the Debtors have not explained the circumstances surrounding the Debtors no longer operating their business. Debtor David Cox states in his declaration that the reduced plan payments in the modified plan is due to the Debtor no longer running the business. The Trustee states that he is unaware of the disposition of any business assets, what happened to the business, whether it was sold or transferred, and the terms of the transaction. The Trustee argues that if there is any income from the sale that it should be considered the non-exempt equity of the business and paid in for the benefit of unsecured claims under 11 U.S.C. § 1325(a)(4).

DEBTORS' RESPONSE

The Debtors filed a reply on April 23, 2015. Dckt. 50. The Debtors state that the Debtor simply retired and ceased operation of the business. Debtor David Cox had a hip operation on October 2014 followed by shoulder surgery and was unable to continue his profession. The Debtor states that there was no sale of the business and all the assets of the business, namely the computer, printer, Kubota tractor, bending brakes, roller, slitter, Pittsburg machine, and business inventory, are scheduled and fully exempt.

DISCUSSION

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

On March 20, 2015, the Debtors filed a supplemental Schedule I and J, showing that both Debtors are currently unemployed. The sole income of the Debtors is from Social Security and retirement income, which brings the Debtors' monthly income to \$3,831.00. Dckt. 38. A review of the Debtors' Schedule C shows that the Debtors have fully exempt all of the business assets pursuant to California Code of Civil Procedure § 703.140(b)(1). In light of the fact that the Debtors have ceased the business due to the Debtor's medical procedures and that the business assets have not been sold and are fully exempt, the Trustee's objection is overruled.

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 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming

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

8. [14-32313-E-13](#) SALVADOR/ANGELINA LEON MOTION TO VALUE COLLATERAL OF
TOG-3 Thomas Gillis NAVY FEDERAL CREDIT UNION
4-6-15 [[63](#)]

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 6, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Navy Federal Credit Union ("Creditor") is granted and the secured claim is determined to have a value of \$8,189.00.

The Motion filed by Salvador and Angelina Leon ("Debtor") to value the secured claim of Navy Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 BMW 3 Series ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,189.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in April 18, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$20,000.00.

FN.1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$8,189.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

FN.1. The court notes that the Debtor failed to state the date the loan was entered into and instead merely states in his declaration that it was more than 910 days prior to filing. In the future, the court will not mine through the claims register to "fill-in-the-blanks" for the Debtor.

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 Salvador and Angelina Leon ("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 Navy Federal Credit Union ("Creditor") secured by an asset described as 2008 BMW 3 Series ("Vehicle") is determined to be a secured claim in the amount of \$8,189.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,189.00 and is encumbered by liens securing claims which exceed the value of the asset.

9. [11-26716-E-13](#) ROLANDO/NYMPHA ZAPANTA MOTION TO PAY
WW-6 Mark Wolf 4-14-15 [[68](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Distribute Insurance Proceeds 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 Distribute Insurance Proceeds is granted.

Rolando and Nympha Zapanta ("Debtors") filed the instant Motion to Distribute on April 14, 2015. Dckt. 68. The Debtors seek an order directing CSAA, Debtors' insurance carrier, to pay the proceeds of Debtors' claim relating to an automobile accident involving Debtors' 2007 Cadillac CTS ("Vehicle") to be paid to the Chapter 13 Trustee and further directing the Chapter 13 Trustee to distribute such portion of those proceeds to Capital One ("Creditor") as is necessary to satisfy Capital One's secured claim and further directing the Trustee to pay the remaining proceeds to Debtors.

The Debtors state that Creditor had a purchase money lien on the Vehicle.

Debtors' plan provided that Creditor would be paid the full amount of its claim with interest at 6% as a class 2 claimant.

On March 24, 2015, the Vehicle was in an accident. The Vehicle was insured by CSAA Insurance Exchange. The Debtors state that CSAA has declared the Vehicle a total loss and intends to pay \$8,928.06. The Debtors have requested to retain the Vehicle and to repair it instead of purchasing a new one. The Debtors claim to have received repair quotes ranging from \$4,195.63 to \$5,748.93. The Debtors state the CSAA indicated that if the Debtors retain the Vehicle, CSAA will reduce the amount paid to the Debtors by the deductible (\$500.00) and the salvage value (\$1,688.79) which nets to \$6,749.27.

The Debtors state that the approximate balance due to Creditor is \$1,899.60.

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

DISCUSSION

After a review of the confirmed plan, the Motion, and the status of the case, the court finds that the proposed treatment of the insurance proceeds in the best interest of the Debtors, creditors, and the estate.

The Debtors, rather than seeking a new vehicle and financing, wish to repair the Vehicle. Debtor Rolando Zapanta indicates in his declaration that this is his wife's main vehicle for transportation. Dckt. 70. A review of the attached repair estimates shows that the estimated repair costs will range from approximately \$4,000 to \$6,000.00. Dckt. 72.

The proposed disbursement of the insurance proceeds to the Trustee for payment first to the Creditor and the remaining to be paid to the Debtor to cover the cost of repairs is reasonable and in the best interest of the estate, especially in light of the fact that the Debtors are in the last year of the plan.

Therefore, the court authorizes CSAA Insurance Exchange to disburse the insurance proceeds to the Chapter 13 Trustee. The Chapter 13 Trustee is authorized to pay the remaining balance of the Creditor's class 2 claim in full. The Chapter 13 Trustee is further authorized to disburse the remaining insurance proceeds to the Debtors to be used for the repair of the Vehicle.

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

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

The Motion for Disbursement filed by Rolando and Nynpha Zapanta ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that CSAA Insurance Exchange is authorized to disburse the insurance proceeds to the Chapter 13 Trustee.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to use the insurance proceeds to pay the remaining balance of Capitol One's Class 2 claim secured by the 2007 Cadillac CTS ("Vehicle") in full.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to disburse the remaining insurance proceeds, after payment of Capital One's Class 2 claim, to the Debtors for them to apply to the repairs of the Vehicle.

10. 14-21316-E-13 SHAWN JACKSON MOTION TO INCUR DEBT
PLC-2 Peter Cianchetta 4-1-15 [36]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied.

The motion seeks permission to purchase a 2010 Chrysler 300 Limited, which the total purchase price is \$19,299.18, with \$1,000.00 down payment and \$18,299.18 financed, with monthly payments of \$399.00.

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

The Debtor owns a 2007 Toyota Avalon Limited Sedan which the Debtor states on Schedule B is in "Ave Condition." The Debtor does not allege in the Motion nor his Declaration that the 2007 Toyota Avalon is not working. All the Debtor alleges is that the purchase of the Vehicle is "necessary to my financial well-being because [the Debtor] must have reliable transportation in order to work. . .My current auto is in poor condition, and therefore [he] need[s] a reliable vehicle. Dckt. 38.

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge – 15.95%. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase a \$20,000.00 car when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase the car he or she wants, irrespective of the unreasonableness of a 15.95% interest rate.

Recently, on Amended Schedule J Debtor has demonstrated that he has no ability to make the payments for purchasing this vehicle with the 15.95% financing. Dckt. 23 at 6-7. Without the proposed car payment, Debtor has only \$150.43 of "Monthly Net Income." The court takes such statement under penalty of perjury in Amended Schedule J by Debtor seriously. To do otherwise would be to treat it as a "made up number" just to minimize the otherwise required payment through a chapter 13 plan. (This court has addressed such misstatements previously as "liar declarations" in which financial information is manufactured to generate a desired result, not to provide accurate information.)

Debtor's financial conditions appears to be even more dire, and the unreasonable burden of the request \$20,000.00 purchase with 15.95% financing, is that the information in Amended Schedule J appears suspect. This includes Debtor having a food and housekeeping expense of only \$250.00 month, medical and dental expenses of only \$20.00 a month, and \$0.00 entertainment expenses

a month. These "numbers" appear facially invalid.

Therefore, because the Debtor has failed to explain the reasonableness of the proposed sale and the basis for the court approving the 15.95% financing, the motion is denied. Further, Debtor has not shown that such post-petition credit can be repaid through this bankruptcy case, and Debtor's prior statements under penalty of perjury demonstrate that this financing would be an undue burden on Debtor.

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

11. [14-31916](#)-E-13 RUPERT/JOSEFINA ARENAS MOTION TO APPROVE LOAN
JMC-3 Joseph Canning MODIFICATION
3-25-15 [[54](#)]

Final Ruling: No appearance at the May 5, 2015 hearing is required.

The Debtors having filed a Withdrawal of the Motion to Approve Loan Modification, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Approve Loan Modification was dismissed without prejudice, and the matter is removed from the calendar.**

12. [14-27118](#)-E-13 MELVYN/RITA LIBMAN
SJS-1

MOTION FOR AN ORDER TO SHOW
CAUSE FOR VIOLATION OF THE
CONFIRMATION ORDER
4-6-15 [[58](#)]

APPEARANCE OF SCOTT SAGARIA, ATTORNEY FOR DEBTOR REQUIRED FOR MAY 5, 2015 HEARING

TELEPHONIC APPEARANCE PERMITTED

Tentative Ruling: The Motion for an Order to Show Cause for Violation of the Confirmation Order 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 April 6, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for an Order to Show Cause for Violation of the Confirmation Order is denied without prejudice.</p>
--

Melvyn and Rita Libman ("Debtors") filed the instant Motion for an Order to Show Cause for Violation of the Confirmation Order on April 6, 2015. Dckt. 58.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The Motion is, and will be, made upon the grounds that Citibank, N.A. (hereinafter "Creditor") wrongfully attempted to circumvent Debtor's confirmed Chapter 13 plan by sending collection notices to Debtor for payment of the entire pre-petition debt.
- B. This motion is based upon the notice, this motion, the memorandum or points and authorities, the Declaration of Melvin Martin Libman, Scott M. Johnson, on the papers and records on file herein, and on such other oral and documentary evidence as may be presented at the hearing on motion.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the court should refer to the other filed documents to determine the grounds for relief. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of

Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

**SEEKING RELIEF IN THE FORM OF CONTEMPT NECESSITATES CLEAR,
PRECISE PLEADING**

If the present Motion was a "complaint," it would be promptly be "bounced" on a Rule 12(b) motion. The pleading standards required by the Supreme Court in Rule 7(b) of the Federal Rules of Civil Procedure and Rules 7007 and 9013 of the Federal Rules of Bankruptcy Procedure require that the motion itself state with particularity the grounds upon which the moving party is basis the requested relief (which also must be stated with particularity in the motion. This is contrasted with the general "state in short plain terms" (Fed. R. Civ. 8(a) and Fed. R. Bankr. P. 7008) and the requirements to state "with particularity the circumstances constituting fraud or mistake" required by Federal Rule of Civil Procedure 9(b) and Federal Rule of Bankruptcy Procedure 7009.

Here the Motion says nothing. Rather, the "grounds" are stated with particularity in the eight page points and authorities (intermixed with citations, quotations, arguments, conjecture, and speculation), two declarations, and all of the "records on file" in the bankruptcy case and whatever "oral and documentary evidence" which Movant chooses to present at the hearing on the Motion. Essentially, Movant has chosen not to plant his flag and state with particularity the grounds, but draft the court to assemble the grounds from every conceivable document in this case.

It is not for the court to wade through points and authorities, decipher grounds from argument and speculation, dig through all of the other documents, allow Movant to show up at the hearing with additional evidence, and then state Movant's case for him.

Movant states in his declaration that he has received collection letters from the Bank. Declaration, Dckt. 61. Conspicuously absent from the Declaration is a statement that he ever advised his bankruptcy attorney of the communications. Movant's counsel has filed his declaration in support of the Motion. Declaration, Dckt. 60. Conspicuously absent is any testimony that he was never notified of the letters or communications, when they occurred, or that counsel made any attempt to contract the Creditor. Rather, counsel merely states what is on the Docket or that the Bankruptcy Noticing Center advised Creditor that an order was confirmed in this case.

It may be that this is a situation where a debtor properly pleads grounds upon which a creditor may be found in violation of the automatic stay or confirmed plan. Alternatively, it may be a situation where there is no such violation. But it is not for the court to assemble either the debtor's or creditor's case.

FAILURE OF SERVICE

The Motion names Citibank, N.A. as the creditor against whom relief is requested. The Certificate of Service for this Motion does not list Citibank, N.A. being served by certified mail as required by Federal Rule of Bankruptcy Procedure 7004(h). Nor is Citibank, N.A. served at an office at which the court can identify as one in which an officer is reasonably calculated to received the service. Further, the Certificate of Service does not state that service was made on an specific officer or to "Officer for Service of Process." Rather, it appears that the pleadings were "dumped" on a post office box, which could be a calculated attempt to avoid sufficient service that would elicit a response.

Therefore, for failing to state with particularity the grounds for relief in the Motion as required by Fed. R. Bankr. P. 9013, the Motion is denied without prejudice

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

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

The Motion for an Order to Show Cause for Violation of the Confirmation Order filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

13. [14-22527-E-13](#) MARK/PATRICIA HARLAND MOTION TO CONFIRM PLAN
JMC-4 Joseph M. Canning 3-18-15 [[80](#)]

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

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

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

The Motion to Dismiss 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.

14. [11-41634-E-13](#) EXCELL/JACQUELINE MOTION FOR COMPENSATION FOR
PGM-9 ROBINSON PETER G. MACALUSO, DEBTORS'
Peter Macaluso ATTORNEY
4-6-15 [[155](#)]

Final Ruling: No appearance at the May 5, 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 April 6, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the

defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Excell and Jacqueline Robinson, the Chapter 13 debtors ("Client"), makes Request for the Allowance of Additional Attorney Fees and Expenses in this case.

The period for which the fees are requested is for the period April 2, 2014 through March 4, 2015. Applicant requests fees in the amount of \$1,100.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 10, 2015.

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 preparing and filing a Motion to Sell. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

- "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless

a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

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

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

presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Sell: Applicant spent 5.5 post-confirmation hours which were unanticipated and necessary in this category. Applicant assisted Client with preparing the Motion to Sell, acquiring necessary documentation, reviewing the opposition from the Trustee, and appearing at the hearing.

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	5.5	\$200.00	\$1,100.00
Total Fees For Period of Application			\$1,100.00

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. Furthermore, the court finds that the 5.50 hours spent on the Motion to Sell were substantial and unanticipated in light of the difficulties in acquiring the necessary documentation which took nearly a year to complete and responding to the Trustee's objection. Therefore, the Request for Additional Fees in the amount of \$1,100.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

15. [14-22134-E-13](#) CHERYLE MCNEAL
WSS-2 W. Steven Shumway

MOTION TO MODIFY PLAN
3-30-15 [[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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Cheryle McNeal ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 30, 2015. Dckt. 62.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on April 20, 2015. Dckt. 68. The Trustee objects on the grounds that the proposed plan payments are unclear. Section 6 of the proposed plan states a plan payment of \$1,584.00 total paid in through March 30, 2015 (month 12), then \$1,310.00 for 47 months beginning May 25, 2015. Through March 30, 2015, Debtor has paid a total of \$1,584.00, and an additional \$176.00 in April 2015 for a total paid to the trustee of \$1,760.00. Debtor's proposed plan payment does not account for the April payment nor does it propose a payment be made in April. The Trustee would have no object if this was corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the proposed plan has a discrepancy as to the April payment. However, this being a mere scrivener's error, the oversight can be corrected in the order confirming. Therefore, the Debtor shall, in the order confirming, correctly state that a total of \$1,760.00 total paid in through April 30, 2015 then \$1,410.00 for 47 months beginning May 25, 2015.

Therefore, following the clarification in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the plan payments to be a total of \$1,760.00 paid through April 30, 2015 and then monthly payments of \$1,410.00 for 47 months beginning May 25, 2015, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [14-31139-E-13](#) KAMELA BROWN
GDG-4 Gary Gruele

MOTION TO CONFIRM PLAN
3-16-15 [[76](#)]

Final Ruling: No appearance at the May 5, 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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2015. By the court's calculation, 48 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 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the

A review of the Trustee's Report from the continued Meeting of Creditors shows that the Debtor and Co-Debtor did not appear. Trustee's May 1, 2015 Docket Entry First Meeting Report.

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.

18.	15-21040-E-13	ANDREW LUMPKINS Timothy Walsh	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-26-15 [17]
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Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 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 -----
-----.

The court's decision is to overrule the Objection.

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

1. The Trustee claims the Debtor has failed to provide the Trustee with the required business documents 7 days before the date of

the meeting of creditors including: Questionnaire, tax returns, profit and loss statements, bank account statements, proof of license and insurance or written statement that no such documentation exists. This is required pursuant to 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. P. 4002(b)(3).

2. Trustee argues that the Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Furthermore, Trustee asserts that the Debtor failed to report \$300.00 cash on hand and business equipment with a value of \$5,034.00. Therefore, the Trustee believes he will not be able to determine if the plan will satisfy the liquidation analysis.

APRIL 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015 to allow the Debtor to file the documents required by the Trustee. Dckt. 21.

DEBTORS' STATEMENT

On April 23, 2015, the Debtor filed a statement regarding income tax filing requirements in which the Debtor states that his income tax preparer informed him that he was not required to file a tax return for 2012. Dckt. 23.

TRUSTEE'S WITHDRAWAL

On April 27, 2015, the Trustee filed a Notice of Withdrawal, stating that the Debtor has provided the requested documentation and filed an amended Schedules B and C which resolved the Trustee's objection.

DISCUSSION

The Chapter 13 Trustee having filed a "Withdrawal of Objection" for the pending Objection and no other objections pending, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 11, 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.

19. 15-21641-E-13 GANESH RAJAPPAN
DPC-1 Jeremy Heebner

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-8-15 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is \$1,079 delinquent in plan payments. The Debtor has paid \$0.00 into the plan.
2. The Debtor failed to appear at the First Meeting of Creditors on April 2, 2015. The Meeting has been continued to April 30,

2015.

3. The Debtor lists an expense of \$2,000.00 on Schedule J for support, however the Debtor has failed to provide a Domestic Support Obligation Checklist to the Trustee.
4. The Debtor has failed to complete Form 22C-1 as the Debtor appears to be over the median income. The Debtor lists a year to date income of \$60,000.00 on Statement of Financial Affairs yet lists an income of \$0.00 on Form 22C-1.
5. The Debtor has failed to provide an attachment to Schedule I showing the gross income and expenses from the business listed as Two Mo Corp on the Statement of Financial Affairs, question 18

The Trustee's objections are well-taken.

First, the court notes that on April 17, 2015, the Debtor filed a supplemental Schedule B and Form 22C-1. The supplemental Form 22C-1 does provide for an income from the business in the amount \$31,120.04. Under Form 22C-1, the Debtor has a monthly disposable income of -\$4,158.27.

However, a further review of the Form 22C-1 shows that the Debtor fails to provide a gross income and expenses attachment for the two businesses. Furthermore, the Debtor fails to explain how neither business has any expenses. The Debtor states on Form 22C-1 that "Debtor utilized funds from his business's earnings from outside the past six month at an average of \$6,500.00 per month. While the business's earnings occurred outside the last six months (and the businesses operated negative in the last six months), Debtor believes that income will improve over time." Dckt. 28. However, looking at Form 22C-2, the Debtor lists as if there has been a positive net income in the past six months in both businesses, namely due to the fact that neither apparently have expenses. The court is left questioning how two business have absolutely no expenses. The court does not find that, based on the incomplete information provided for by the Debtor and the failure to explain how there are no expenses in either business, the information provided is the Debtor's true financial reality. Therefore, the court sustains the Trustee's third, fourth, and fifth objection.

The Debtor has not provided any evidence that they are current under the plan. The delinquency of the Debtor is evidence of the Debtor's inability to comply with the proposed plan as required by 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by David Cusick, the Chapter 13 Trustee having been presented to the

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

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

20. [12-28547-E-13](#) RUBEN GUTIERREZ AND CONTINUED MOTION TO APPROVE
PGM-7 GRACIELA GUITIERREZ LOAN MODIFICATION
Peter Macaluso 1-8-15 [[99](#)]

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2015. By the court's calculation, 33 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 hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on June 9, 2015. Debtor shall file a status report of the ongoing discovery in connection with this contested matter on or before June 2, 2015.

The Motion to Approve Loan Modification filed by Ruben and Graciela Gutierrez ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's

mortgage payment to \$2,896.40 a month. The terms of the modification are as follow:

1. The modified principal balance of the Note will include all amount and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges), less any amount paid to the Creditor but not previously credited to the Debtor's loan.
2. The Principal Balance will be \$431,239.77.
3. \$34,429.77 of the new Principal Balance shall be deferred and now interest or monthly payments will be made on this amount.
4. The new Principal Balance, less the deferred principal balance, shall be referred to as the "Interest Bearing Principal Balance" and this amount is \$396,900.00.
5. Interest rate of 4.625% will begin to accrue on the new Principal Balance as of December 1, 2014.
6. The maturity date will be July 1, 2037.

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

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on January 26, 2015. Dckt. 105. The Trustee states that he is uncertain of which loan this modification applies to. The loan modification document (Dckt. 102) filed in support of, names Ocwen Loan Servicing, LLC. According to the Trustee's records, the first deed of trust is being held by creditor Deutsche Bank National Trust Company, as Trustee, whom filed proof of claim No. 9-1 on June 28, 2012. The Trustee believes loan modification to be reasonable and does not oppose to the loan modification otherwise.

DEBTOR'S REPLY

The Debtor filed a reply on February 3, 2015. Dckt. 111. The Debtor states that:

1. The Proof of Claim reflects that GMAC, LLC is where the notices and payments should be sent, which was filed by Pite Duncan, LLP.
2. The phone number listed on the Proof of Claim forwards the line to a second phone number belonging to Ocwen Loan Servicing, LLC., which is the granted to the Trial Loan Modification, and whom is listed as the "Servicer" of the loan. In this case, Ocwen purports to have the authority to modify the loan pursuant to the servicing agreement. The Debtor requests that Ocwen be ordered to provide the servicing agreement to insure the authority to modify the loan as provided in the modification agreement.

FEBRUARY 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to give the Debtor the opportunity to contact Ocwen Loan Servicing, LLC to get the necessary documentation and evidence showing that Ocwen Loan Servicing, LLC has the authority to enter into a loan modification.

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015 to give the Debtor the opportunity to contact Ocwen Loan Servicing, LLC to get the necessary documentation and evidence showing that Ocwen Loan Servicing, LLC has the authority to enter into a loan modification. Dckt. 117

DISCUSSION

No supplemental pleadings have been filed since the court continued the hearing in connection with the hearing.

A review of the Motion, the loan modification, and the Proof of Claim raises the same concerns for the court as noted in the Trustee's response. The court cannot tell whether Ocwen Loan Servicing, LLC has the authority as either the holder or the servicer of the loan to enter into modifications.

As the court has repeatedly said, the court will not issue "maybe effective" orders in which debtors rely on, only to learn later that the true holder of a loan was not a party to the motion. Here, the Debtor admits to not knowing whether Ocwen Loan Servicing, LLC does, in fact, have the authority to enter into any sort of loan modification agreement.

If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a modification, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a modification would be an unhappy day not only for the Debtor, but her counsel as well - most likely leaving the Debtor unable to pay under the modification.

The Debtor does not provide any evidence that they have attempted to actually acquire documentation as to whether Ocwen Loan Servicing, LLC has the authority to enter into a loan modification. All the Debtor states in the reply is that they made a phone call to the listed number on the Proof of Claim. Instead, the Debtor request that the court do the "leg-work" for the Debtor and order Ocwen Loan Servicing, LLC to turn over the requested documentation. The court does not provide such associate attorney and paralegal services to parties.

The court notes that on March 31, 2015, the court granted the Debtor's Motion for Examination and For Production of Documents of Ocwen Loan Servicing, LLC. Dckt. 120. Debtor did not serve discovery until April 20, 2015, three weeks after the court granted the Debtor's Motion. Dckt. 121.

In light of the pending Rule 2004 Examination, the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on June 9, 2015. Debtor shall file a status report of the ongoing discovery in connection with this contested matter on or before June 2, 2015.

21. [14-30249-E-13](#) JOHN/JESSIE HEINRICHS
MAC-1 Marc Caraska

MOTION TO CONFIRM PLAN
3-18-15 [[42](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2015. By the court's calculation, 48 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.

John and Jessie Heinrichs ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 18, 2015. Dckt. 42.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 17, 2015. The Trustee objects on the following grounds:

1. It appears that the Debtors cannot make the payments required

under 11 U.S.C. § 1325(a)(6). The Debtors' Plan proposes to increase the plan payments from \$322.40 to \$438.14 in month 13 without any explanation on how the Debtors can afford the increase. The projected monthly income on Schedule J is \$338.54. The Debtors' amended Schedule I states that Debtor John Heinrichs owns a business. In the original Schedule I, the Debtors' net income from the business was \$2,936.00. However, on the amended Schedule I, the Debtors changed the income to \$2,083.33 under gross wages on line 2.

2. The Plan is not the Debtors' best effort. The Debtors are under the median income and propose plan payments of \$322.40 for 12 months then \$438.14 for 48 months with a 0\$ dividend to unsecured creditors. The following changes were made on the Debtors' amended Schedule J without any explanation:

<u>Expense</u>	<u>Original Schedule J</u>	<u>Amended Schedule J</u>	<u>Difference</u>
Property Insurance	\$91.00	\$214.00	\$123.00
Home maintenance	\$185.00	\$225.00	\$40.00
Food and Housekeeping	\$560.00	\$655.00	\$95.00
Personal Care Products	\$78.00	\$138.00	\$60.00
Medical and Dental Expenses	\$177.00	\$245.00	\$68.00
Transportation	\$300.00	\$455.00	\$155.00
Health Insurance	\$0.00	\$714.60	\$714.60
Vehicle Insurance	\$125.00	\$214.00	\$89.00
<u>TOTAL</u>			<u>\$1,344.60</u>

3. Debtors' plan does not properly provide for the secured claim of the Internal Revenue Service in the amount of \$11,747.58. Proof of Claim No. 1-1. The Debtors provided for the secured claim in Class 5 of the plan.

DISCUSSION

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

The Trustee's objections are well-taken. The crux of the Trustee's first two objections is the Debtors' failure to explain how they will be able to complete plan payments when they do not explain how they can afford the step up payments and why there was \$1,344.60 increase in expenses. The court agrees with the Trustee. A review of the proposed plan and the supplemental schedules

show that the Debtors' net monthly disposable income is \$338.54. The Debtors do not indicate that they expect any increase in income to justify the step up. Furthermore, the court cannot discern why the Debtors have increased their expenses by nearly \$1,400.00 without any explanation. The Debtors have not provided evidence or justification for these increases. Combined, the court is left questioning whether the plan is actually feasible and if the supplemental schedules are, in fact, a true depiction of the Debtors' financial reality. The Debtors do not appear to be able to comply with the plan as required by 11 U.S.C. § 1325(a)(6).

As to the Trustee's third objection, the Internal Revenue Service filed a claim on October 28, 2014. Proof of Claim No. 1-1. The Internal Revenue Service lists a secured claim in the amount of \$11,747.58. However, the Debtors do not provide for this secured claim in Class 1. Instead, the Debtors improperly lists the entire Internal Revenue Service claim as a Class 5 priority unsecured claim. 11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

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

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

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

Here, the Debtor provides for the secured claim, just improperly. Therefore, the plan is not confirmable.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed. FN.1.

FN.1. In reviewing the Debtor's declaration in support of confirmation, the court notes an issue which counsel may want to address in his declaration form. It states,

"10. As explained to us by our attorney, we do not own any asset that has a value greater than the exemptions available to us and, therefore, our unsecured creditors would have received nothing under a Chapter 7 bankruptcy."

Declaration ¶ 10, Dckt. 45. This appears to state that (1) Debtor has no personal knowledge of their assets and liabilities, (2) Debtor cannot testify that they meet the "best interests of creditors test," and (3) their attorney desires to waive the attorney client privilege and testify in this case. If

a debtor cannot testify as to their assets and liabilities, based upon the information they have provided under penalty of perjury in the schedules, the claims stated under penalty of perjury, and the claims filed, then someone else has to provide such testimony. Merely recycling hearsay statements from their attorney is not sufficient.

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.

22. [14-30249-E-13](#) JOHN/JESSIE HEINRICHS
DPC-2 Mark Caraska

CONTINUED MOTION TO DISMISS
CASE
2-17-15 [[38](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 17, 2015. Dckt. 38.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 13, 2015. Dckt. 37.

DEBTORS' OPPOSITION

The Debtor filed an opposition to the instant Motion on March 18, 2015. The Debtor states that they have filed an amended plan and motion to confirm the amended plan, which is set for hearing on March 5, 2014. Dckt. 42 & 44.

TRUSTEE'S SUPPLEMENT

On March 26, 2015, the Trustee filed a supplement to his Motion. Dckt. 53. The Trustee states that the newly filed plan and Motion to Confirm does not

relieve the Trustee's objections to confirmation, namely the failure for the plan to provide for the Internal Revenue Service's secured claim, the Debtors cannot make plan payments, and the Debtors' failure to explain an increase in expenses.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015 to be heard in conjunction with the Debtors' Motion to Confirm. Dckt. 56.

DISCUSSION

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 13, 2015. While the Debtors have filed a new proposed plan and Motion to Confirm, the court denied confirmation based on the fact that the Debtors did not resolve the Trustee's prior objections. It appears that the new proposed plan and motion were just a means to satisfy the requirement to file an amended plan but did not try to correct the errors of the Debtors' prior attempts. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

23. [14-28953-E-13](#) JOHN/MARY ANDERSON
DAO-2 Dale Orthner

MOTION TO CONFIRM PLAN
3-23-15 [[47](#)]

Final Ruling: No appearance at the May 5, 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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 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). 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 23, 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

30, 2015.

3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return.
4. The plan does not appear to be the Debtor's Best effort. The Debtor is under the median income and proposes plan payments of \$309.00 for 60 months with a 19.63% to unsecured creditors, which totals \$686.00. The Debtor's projected disposable income listed on Schedule J reflects \$401.00 and the Debtor is only proposing plan payments of \$309.00 per month. The Debtor states that his cleaning business is expanding but the Debtor has failed to provide this income on Schedule I. The Debtor lists the on-going mortgage payment to Quality Mortgage Services in Class 1 of the plan at \$1,193.00 per month, however the Debtor also lists a mortgage or rent expense of \$972.00 on Schedule J.
5. The Debtor's plan provides for Quality Mortgage Services First Deed of Trust in both Class 1 to be paid by the Trustee on a monthly basis and to pay the arrears of \$16,000.00 and the Debtor has listed the same debt in Class 2 to be paid a monthly dividend of \$275.86. The plan payment of \$309.00 is insufficient to pay the Class 1 on-going mortgage payment of \$1,193.00.
6. The Debtor and Debtor's attorney did not sign or date the plan.
7. The Debtor fails to list an expense on Schedule J for income taxes.

DISCUSSION

The Trustee's objections are well-taken.

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These are grounds to deny confirmation.

Furthermore, the Debtor has failed to start plan payments and is delinquent. This is evidence of the Debtor's inability to comply with the terms of the plan, required by 11 U.S.C. § 1325(a)(6).

The Debtor's Schedule J, filed February 19, 2015, lists a \$816.00 monthly net income, while the Plan provides for a \$1,795.00 monthly payment. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to deny confirmation.

A review of the proposed plan shows that the Debtor is proposing to pay

Quality Mortgage Services as both a Class 1 and Class 2 claimant. The proposed \$309.00 monthly payments for the balance of the plan term are insufficient to pay the Trustee's fee, administrative fees, the Class 1 monthly contract installment, the Class 1 dividend, and the Class 2 dividends. Thus, the plan may not be confirmed.

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.

25. [15-21261-E-13](#) RICHARD BRANTLEY
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-8-15 [[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*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return.
2. The Debtor has failed to provide the Trustee with his payment advices received for the 60 days prior to filing.

3. The Debtor is \$1,795.00 delinquent in plan payments. The Debtor has paid \$0.00 into the plan.
4. It appears that the Debtor cannot make the payments. The Debtor's monthly disposable income on Schedule J reflects \$816.00 while the proposed plan payments are \$1,795.00 per month.
5. The Debtor's plan proposes to pay 10% interest to Class 1 mortgage arrears to Nationstar Mortgage. The interest rate provision is blank which means that 10% is the default interest rate. However, the Trustee states that the creditor may not be entitled to interest under 11 U.S.C. § 1325(e), unless the note provides for interest on late payments or applicable law requires it.
6. It appears that the Plan fails the Chapter 7 liquidation analysis because the Debtor has available non-exempt assets including a 1978 AMG and equity in real property.

DISCUSSION

The Trustee's objections are well-taken.

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These are grounds to deny confirmation.

Furthermore, the Debtor has failed to start plan payments and is delinquent. This is evidence of the Debtor's inability to comply with the terms of the plan, required by 11 U.S.C. § 1325(a)(6).

The Debtor's Schedule J, filed February 19, 2015, lists a \$816.00 monthly net income, while the Plan provides for a \$1,795.00 monthly payment. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's fifth objection, the Debtor does not provide any evidence to support that Nationstar Mortgage is entitled to interest payments. This appears to be an improper treatment of a claim at the expense of other claimants, which is grounds to deny confirmation.

Lastly, a review of the Debtor's schedules and exemptions show that there are assets that are not exempt which could be used to pay creditors. There is non-exempt equity in the real property and the AMG. The Debtor's plan proposes to pay a 15% dividend to unsecured creditors which totals \$5,931.00. However, it appears that the Debtor has upwards of \$20,100.00 in non-exempt equity that could apply to the payment of creditors, causing the Debtor to fail the Chapter 7 liquidation analysis. Therefore, the plan cannot be confirmed. See 11 U.S.C. § 1325(a)(4).

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

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

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

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

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

26. [15-21163](#)-E-13 GIANNE/RUBY-ROSE APURADO MOTION TO EXTEND TIME
NBL-1 Julius Engel 4-21-15 [[18](#)]

Tentative Ruling: The Motion to Extend Deadline to File Objection to Plan Confirmation 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's Attorney and Chapter 13 Trustee on April 21, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File Objection to Plan Confirmation 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 Deadline to File Objection to Plan Confirmation is granted.

Marriot Ownership Resorts, Inc. ("Creditor") filed the instant Motion to Extend Deadline to File Objection to Plan Confirmation on April 21, 2015. Dckt. 18.

Creditor states that Gianne Apurado and Ruby-Rose Apurado ("debtors") failed to include Creditor in the service list for the case which resulted in Creditor not receiving notice of its commencement. The Creditor states that it filed a Proof of Claim No. 5-1 on April 10, 2015. However, the deadline to object to confirmation of plan was set for April 9, 2015. Dckt. 13. The Creditor states that it seeks an order extending the deadline to object to the plan based on the Debtors' valuation of the Creditor's collateral.

APPLICABLE LAW

In relevant part, Fed. R. Bankr. P. 9006 states:

(b) Enlargement

(1) In general

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) Enlargement not permitted

The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) Enlargement governed by other rules

The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule

1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

The Supreme Court in *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), established a four-part balancing test for determining whether excusable neglect exists under Federal Rule of Bankruptcy Procedure 9006(b): (1) the danger of prejudice to the debtor; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the claimant's conduct was in good faith. See *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1003 (9th Cir.2006); *Forward Progress Mgmt. Real Estate, Inc. v. The Yucca Group, LLC (In re The Yucca Group LLC)*, 2012 WL 2086485 (9th Cir. BAP June 8, 2012); *In re Gordian Med., Inc.*, 499 B.R. 793, 798 (Bankr. C.D. Cal. 2013).

DISCUSSION

Here, the court finds that there was excusable neglect to permit the extension of time to object to plan confirmation.

To the first factor, the court finds that the danger of prejudice to the Debtors is minimal in light of the fact that a plan has yet to be confirmed and the Debtors will have an opportunity at the hearing on any objection to respond.

To the second factor, the proposed extension requested by the Creditor is minimal and is unlikely to have any impact on the judicial proceedings. The Creditor is seeking to have the deadline extended from April 9, 2015 to May 12, 2015, which is approximately a month extension. The Debtors will still be acting under the pending plan and the short extension is unlikely to have any effect, let alone negative effect, on the proceeding.

To the third factor, the reason for the delay is due to the Debtors failure to properly notice the Creditor at an identified address. The Creditor did not have control over the Debtors to ensure that they were listed in the creditor matrix.

Lastly, to the fourth factor, the Movant has acted in good faith as evidenced by their filing of Proof of Claim No. 5-1 and the instant Motion.

Taking into consideration the factors established by the Supreme Court and for good cause, the court grants the Creditor's Motion and extends the time to object to plan confirmation to May 12, 2015.

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 Deadline to File Objection to Plan Confirmation filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the time to file an objection to plan confirmation is set for May 12, 2015.

27. [10-47375-E-13](#) DAN HOWARD MOTION TO BORROW
SS-6 Scott Shumaker 3-30-15 [[94](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

Dan Howard ("Debtor") filed the instant Motion to Retroactively Approve Debtor's 401(k) Loan on March 30, 2015. Dckt. 94.

The Debtor states that on May 14, 2012, Debtor borrowed \$25,000.00 from his 401(k) account due to the Debtor separating from his wife and needing to supplement his income to pay expenses. The funds were spent in the following way: (1) \$15,363.00 directly to Wells Fargo, the holder of the first mortgage to cure the arrears; (2) \$1,785.00 to mechanic for vehicle repairs; (3) \$765.00

for new tires; and (4) \$989 in veterinary bills. The remaining funds were allegedly placed in savings and then used to continue paying the ongoing mortgage payments, which exhausted the remaining funds.

The Debtor states that due to the negative financial impact as a result of the marital separation and the potential foreclosure, the Debtor "panicked" and took out the loan. The Debtor states that the error was an innocent mistake. The Debtor does note that, despite the payroll deduction for the 401(k) loan, the proposed plan filed concurrently with the instant Motion, provides for an increased dividend to unsecured creditors as a result of The approved loan modification with Wells Fargo.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 21, 2015.

DISCUSSION

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

While the emotional trauma reason for the 401(k) loan may appear justifiable, what is troubling for the court, however, is the fact that Debtor took out this loan on May 14, 2012, without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to make such a loan, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

The Debtor does not address in the Motion or in his declaration why, after nearly three years, the Debtor is now just seeking court approval for the 401(k) loan. The Debtor notes in his declaration that the prior attempts to Modify the plan failed, in part, because the Debtor did not receive court approval for the loan. Dckt. 96. However, the Debtor does not explain why there is a three year delay in seeking the approval. The Debtor concentrates on the fact that the Debtor's reasons for incurring the loan is justifiable.

It appears to the court that the only reason the Debtor filed the instant Motion was because the Debtor's prior attempt to modify the plan was thwarted, in part, by the Trustee's objection over the 401(k) expense. The Debtor does not explain if he was not trying to modify the plan, if he would have attempted to still seek the approval of the court for the loan which is required.

Therefore, because the Debtor does not address the reason why it has taken three years for the Debtor to seek the extraordinary relief of the court to retroactively approve the 401(k) loan, the Motion is denied without prejudice.

IMPACT ON ESTATE AND PLAN PAYMENTS

The heretofore confirmed plan in this case require Debtor to make the direct monthly payments to Wells Fargo Bank, N.A. Those payments were \$1,707.00 a month. Debtor asserts that \$15,363.00 was paid to Wells Fargo Bank, N.A., plus some additional amounts to the bank to make the ongoing payments. Debtor and his former spouse, who was also a debtor in this case, until her case was split off and converted to one under Chapter 7 on January 23, 2015. Jocelyn Howard Chapter 7 case no. 15-20465. Debtor and Ms. Howard failed to make the required payment on the home. When that money did not go to the creditor, both debtors had an additional \$1,707.00 of projected disposable income each month.

Debtor has diverted at least the payments to Wells Fargo Bank, N.A. which were in default and the ongoing payments, and has instead used approximately \$20,000.00 of monies borrowed from the IRA. If the court were to just approve the borrowing, then the \$20,000.00 taken by the Debtor and his former spouse, and then the \$20,000.00 to be repaid, would be \$40,000.00 diverted.

Before the court approves such borrowing, Debtor must show how the diverted monies which were not paid to Wells Fargo Bank, N.A. are paid back into the estate, and not merely ignored and additional \$20,000.00 taken from the estate for the Debtor to put back into his IRA.

The court expects that the Chapter 13 Trustee and U.S. Trustee will also address the diversion of these monies as may be appropriate in the Jocelyn Howard Chapter 7 case.

The Motion is denied without prejudice.

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Dan Howard ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 30, 2015. Dckt. 98.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 20, 2015. Dckt. 104. The Trustee objects on the following grounds:

- a. Debtor's modified plan proposes to increase the minimum percentage to unsecured creditors from 2% to 5% where the plan estimates the total unsecured at \$119,845.63 and thus the dividend would be \$5,992.29. To date, the Trustee has disbursed

\$8,429.09, which is approximately 7%, so \$2,436.80 has been disbursed over and above the dividend proposed in the modified plan. The Trustee does not oppose the modified plan percentage as a minimum, provided the Debtor is not attempting to limit prior disbursements.

- b. Attorney's fees as proposed in the modified plan are not clear. Under the confirmed plan, \$2,000.00 was paid prior to filing the case with \$1,500.00 paid through the plan. The Trustee has disbursed \$1,500.00. Section 2.06 of the proposed modified plan indicates \$2,000.00 in attorney's fees was paid prior to the filing of this case and refers to additional provisions regarding additional fees to be paid through the plan. The additional provisions do not address attorney's fees, nor does Debtor's Motion nor Declaration. The Trustee has no way of knowing what the proposed additional attorney's fees are or how it will affect the plan. The Trustee believes Section 2.06 should reflect attorney's fees as they are under the confirmed plan, and any language regarding additional fees should be kept in the additional provisions only.
- c. The Trustee is uncertain of the treatment of Franchise Tax Board. Debtors' modified plan no longer provides for Franchise Tax Board as a Class 5 unsecured claim entitled to priority. Under the confirmed plan (Dckt. 8), Franchise Tax Board is provided for as a Class 5 claim for \$1,655.00. Franchise Tax Board filed a claim (Proof of Claim No. 10) on December 29, 2010 for \$1,784.96, of which \$1,653.65 is entitled to priority. The Trustee has paid the priority portion in full. Debtors' proposed modified plan no longer provides for this creditor nor does it authorize payments made by the Trustee to this creditor. The Trustee has previously raised this objection.
- d. Debtors' original Schedule I filed October 10, 2010 (Dckt. 1) budgeted \$130.00 per month for a 401k loan. Debtors' plan payments under the confirmed plan increased in month 39 by \$130.00 from \$341.00 to \$471.00 due to Debtor's 401k being paid off. Debtors' Amended Schedule I budgets \$463.00 in monthly payments on a 401k loan. It would appear Debtors borrowed additional funds from their 401k retirement funds.

Debtors' Motion and Declaration indicate Debtor borrowed \$25,000.00 from his 401k in June 2012 to pay \$14,000.00 in mortgage arrears to Wells Fargo, \$1,700.00 for vehicle repairs, \$700.00 for new tires, with remaining funds placed in savings and used for ongoing mortgage payments where the money disappeared quickly.

Debtor filed a Motion to Retroactively Approve the Loan, which is set for hearing on May 5, 2015.

DISCUSSION

The Trustee's objections are well-taken. The Trustee had previously raised these objections in Debtor's prior Motions to Confirm (Dckt. 58 and 87)

in which the court sustained the objections and denied the motion (Dckt. 63 and 90). A comparison of the prior proposed plan and the instant proposed plan shows that the Debtor did very little to alter the plan to address the concerns of the court and the Trustee.

The attorney's fees provisions still remains convoluted and inconsistent with the Local Bankruptcy Rule for an attorney seeking additional legal fees for necessary and unanticipated legal services in excess of the set fee counsel agreed to accept for the case. The Debtor appears to merely have deleted an additional provision that was in the previously denied modified plan and continues to not properly address the treatment of attorney's fees.

The plan does not provide for or authorize the Trustee's prior disbursement to creditors nor does it even properly state at what month the proposed plan payments are to start. Furthermore, as noted by the Trustee, the Debtor still has attempted to get retroactive authorization for the 401k loan. However, the court has denied the request for retroactive approval because the Debtor does not justify why the Debtor, three years later, is just now seeking approval. Once again, this raises serious concerns as to whether Debtor and Debtor's counsel are prosecuting this case with diligence.

The Debtors and a proposed modification runs afoul of the Debtors' election to just borrow money as they want, to pay bills they could not afford to pay, and then force those breaches of bankruptcy law on the court, creditors and Trustee on the theory, "oops, did I do that." This could well be a manifestation of bad faith in the prosecution of this case would could lead to dismissal (with or without prejudice). FN.1.

FN.1. The court notes that the Debtors are now divorced and that Josie Howard has elected to have her case converted to one under Chapter 7. The court is confident that the Chapter 13 Trustee will transmit to the Chapter 7 Trustee, concerns, if any, relating to Josie Howard's conduct in this case.

It may well be that the Debtor may elect to pay for the unauthorized borrowing from his discretionary expenses in the budget and not force creditors to pay for his breach of bankruptcy law.

This inability to attention on even the basic scale raises serious questions at not only the feasibility and viability of the plan, but whether the proposed plan is even close to the Debtor's best efforts. Filing a nearly identical proposed plan that the court had already denied is concerning to the court and a blatant waste of judicial resources.

Much like the prior proposed plans, 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.

29. [15-20077-E-13](#) CARL/CAROLYN FORE MOTION TO CONFIRM PLAN
TJW-3 Timothy Walsh 3-12-15 [[40](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2015. By the court's calculation, 54 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.

Carl and Carolyn Fore ("Debtors") filed the instant Motion to Confirm the Amended Plan on April 17, 2015. Dckt. 40.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 17, 2015. Dckt. 53. The Trustee objects stating that it appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors' plan proposes to increase plan payments from \$3,785.00 to \$4,050.00 beginning in month 2 through 59. However, the Debtors have failed to indicate how they can increase the plan payments when the monthly projected income listed on Schedule J reflects \$3,785.00.

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 Debtors' Schedule J, filed January 7, 2015, lists a \$3,785.17 monthly net income, while the Plan provides for a step up in plan payments to \$4,050.00 monthly payment beginning month 2 through 59. The Debtors, in neither the Motion nor declaration, explain how they are able to increase the plan payments when their Schedule J reflects only \$3,785.17 in monthly disposable income. Furthermore, the Debtors' Schedule J indicates that they do not expect an increase or decrease in the expenses to justify the step up in plan payments. Dckt. 1, Schedule J, Question 24. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

Debtor had the opportunity, when filing this plan, to proactively address these changes. As attorneys who regularly appear in this court know, the court takes seriously statements made under penalty of perjury. Events can change and parties can adjust budgets in response to changing circumstances. But it cannot be assumed that either the court blindly accepts such changes in testimony applied under penalty of perjury or will assemble for a party a version of the facts the could would assume credible if testimony had been so provided.

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

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

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

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

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

30. [14-30278-E-13](#) GARY SHREVES AND KAREN MOTION TO APPROVE LOAN
WW-6 BAYSINGER- SHREVES MODIFICATION
Mark A. Wolff 4-14-15 [[79](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Gary Shreves and Karen Baysinger-Shreves ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification with the following terms:

1. New Principal Balance: \$250, 397.85.
2. Interest Bearing Balance: \$201,585.80

3. Commitment term: 480 months
4. Monthly payment: \$1,199.99
5. Interest rate: 4.25%
6. Deferred principal balance: \$48,812.05

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

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 15, 2015.

PROOF OF CLAIM

Nationstar Mortgage LLC" has filed a Proof of Claim No. 17. After reviewing the attachments to the Proof of Claim No. 17, the court notes that the Deed of Trust and the Note both list "Countrywide Home Loans, Inc." The Note attached to Proof of Claim No. 17 is endorsed in blank. Though there is not an affirmative statement that Creditor is in physical possession of the Note (Creditor exercising the rights of a holder under the Commercial Code), the court accepts the filing of the Proof of Claim as Creditor's certification thereof.

DISCUSSION

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The Debtors state that the loan modification allows them to retain the residence and the payment amount to the Creditor is the same as projected on the Debtors' Schedule J.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by Gary Shreves and Karen Baysinger-Shreves 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 court authorizes Gary Shreves and Karen Baysinger-Shreves ("Debtor") to amend the terms of the loan with Nationstar Mortgage LLC, which is secured by the real property commonly known as 6642 Badger Court, Sacramento, California, on such terms as stated in the Modification Correspondence filed as Exhibit G in support of the Motion,

Dckt. 82.

31. [14-30278-E-13](#) GARY SHREVES AND KAREN CONTINUED MOTION TO CONFIRM
WW-5 BAYSINGER- SHREVES PLAN
Mark Wolff 3-10-15 [[46](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 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.

Gary Shreves and Karen Baysinger-Shreves ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 10, 2015. Dkct. 46.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 27, 2015. Dckt. 65. The Trustee objects on the following grounds:

1. Plan exceeds 60 months. The Plan will complete in 100 months as opposed to 60 months proposed. Debtor is proposing Plan payments of \$1,013.50 for 2 months, then \$460.00 for 58 months, totaling

\$28,707.00. However, it will take longer than 60 months to pay the claims listed in the plan based on the proposed plan payments due in part to the Internal Revenue Service claim being substantially higher than the \$2,000.00 listed by Debtor in the proposed plan under Class 5.

2. The Plan proposes that Nationstar Mortgage, LLC be charged from a Class 1 creditor to Class 4 due to a pending loan modification. The additional Provisions of the Plan state "see December 8, 2014 correspondence from Nationstar Mortgage, LLC regarding proposed modification of loan." The Trustee is not aware of such a letter from Nationstar Mortgage, LLC.
3. Debtor's Plan in Class 1 states that "Trustee shall cease making payments effective January 18, 2015- 1 payment made is authorized." This amended Plan was not filed until March 10, 2015 and the Trustee has made 2 mortgage payments to Nationstar Mortgage, LLC (totaling \$2,280.84).
4. Debtor is \$459.40 delinquent in Plan payments to the Trustee to date and the next scheduled payment for \$460.00 is due on April 25, 2015.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objection on April 14, 2015. Dckt. 77. The Debtors reply as follows:

1. The Debtors have filed all tax returns required to be filed. The Internal Revenue Service's original claim was based on estimated taxes owing. The Debtors state that they expect the Internal Revenue Service filing an amended claim prior to the scheduled hearing.
2. The Debtors have filed a Motion to Approve the Loan Modification with Nationstar Mortgage, LLC.
3. Debtors wish to authorize the payments made by the Trustee to Nationstar Mortgage, LLC in the order approving the plan.
4. The Debtors have sent the missing monthly payment to the Trustee on April 10, 2015. The Debtors state that they missed the payments due to Debtor Karen Baysinger-Shreves missing a few days of work due to illness.

APRIL 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015 to be heard in conjunction with the Motion to Approve the Loan Modification. Dckt. 86.

DISCUSSION

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

On May 5, 2015, the court granted the Debtors' Motion to Approve Loan Modification with Nationstar Mortgage, LLC. Therefore, because the court approved the loan modification, the Trustee's objection is overruled.

However, a review of the claims register shows that the Internal Revenue Service amended their Proof of Claim No. 5 on April 10, 2015, listing a claim amount of \$10,557.75. The plan only lists the Internal Revenue Service having a claim amount of \$2,000.00 in Class 5. The Debtors' plan does not properly provide for the full amount of the Internal Revenue Service's claim and, therefore, the plan cannot be confirmed.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors on April 21, 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.

Mattie Muldrow ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28197) was dismissed on November 24, 2014, after Debtor failed to file a motion to confirm prior to October 28, 2014 pursuant to court order. See Order, Bankr. E.D. Cal. No. 14-28197, Dckt. 31, November 24, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor's prior counsel was ineffective and did not comply with the court's order in the previous case.

The Debtor notes that the Debtor had a Chapter 13 case which was filed on March 10, 2014 (Case No. 14-22430) which was dismissed on March 24, 2014 for failure to file the remaining schedules and chapter 13 plan. The Debtor states the reason for this failure was also due to ineffective counsel.

The Debtor states that the instant case was filed in good faith and that the Debtor has retained new counsel who she is confident will provide competent representation.

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.

33. [13-33583-E-13](#) SUE MARIANO CONTINUED MOTION TO MODIFY PLAN
CJJ-4 Charnel James 2-17-15 [[114](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

Sue Mariano ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 17, 2015. Dckt. 114.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trainer, filed an objection to the instant

Motion on March 30, 2015. Dckt. 122. The Trustee objects on the following grounds:

1. The Debtor is delinquent \$1,681.50 under the terms of the proposed modified plan. The Trustee stated that Debtor is still delinquent in the payments.
2. Debtor has not filed the Supplemental Schedules I and J in support of the proposed increase in plan payments from \$1,137.00 to \$1,220.56. Debtor's prior Schedules I and J (Dckt. 94 and 95) indicate Debtor's monthly net income is \$1,650.86, but the Debtor proposes only to pay \$1,220.56.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015. Dckt. 126.

DISCUSSION

Since the hearing, no supplemental pleadings have been filed.

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

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

As to the Trustee's second objection, a review of the Debtor's current Schedule I and J shows that the Debtor has a net monthly income of \$1,650.86. Dckt. 95. The Debtor does not provide explanation in the Motion nor her declaration why the proposed plan payments are approximately \$410.00 less than the net disposable income on Schedule J. The Debtor has not filed Supplemental Schedules I and J to reflect changes in income or expenses.

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

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

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

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

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

34. [13-33583-E-13](#) SUE MARIANO
DPC-1 Charnel James

CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
1-16-15 [[110](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 16, 2015. By the court's calculation, 22 days' notice was provided.

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to grant the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, served a Notice of Default and Application to Dismiss on December 19, 2014 pursuant to Local Bankr. R. 3015-1(g). Dckt 110.

Trustee argues that the Debtor has failed to make all payments due under the plan. As of January 15, 2015, payments are delinquent in the amount of \$2,455.75. An additional payment of \$1,137.00 will become due on January 25, 2015.

On February 17, 2015, the Debtor filed a Notice of Hearing and Opposition to the Notice, setting a hearing for 3:00 p.m. on March 10, 2015. Dckt. 112. The Debtor states that the Debtor was out of work for an unexpected medical condition. However, Debtor states that she is back to work and is currently proposing to amend her Plan to put her current, and to repay the arrears by increasing her monthly payment by \$83.56.

MARCH 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Confirm. Dckt. 121.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 5, 2015 to be heard in conjunction with the continued Motion to Confirm. Dckt. 127.

APPLICABLE LAW

Local Bankr. R. 3015-1(g) provides the following:

(g) Dismissal Due to Plan Payment Defaults.

- (1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.
- (2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.
- (3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either
 - (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or
 - (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.
- (4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter

13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

- (5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to either LBR 9014-1(f)(1) or (f)(2).

DISCUSSION

On May 5, 2015, the court denied the Debtor's Motion to Confirm because the Debtor remains delinquent in plan payments under the proposed plan and has not provided supplemental Schedules to properly reflect the Debtor's financial reality to properly determine the feasibility of the plan.

The Debtor remains \$1,681.50 delinquent in plan payments under the proposed plan. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because of the proposed modified plan has been denied confirmation and the Debtor remains \$1,681.50 delinquent, the Motion to Dismiss is granted and the case is dismissed.

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

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

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is dismissed.

35. [14-23385-E-13](#) MICHELE WILLIAMS
PGM-4 Peter Macalsuo

MOTION TO MODIFY PLAN
3-30-15 [[78](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Michele Williams ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 20, 2015. Dckt. 78.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 20, 2015. Dckt. 84. The Trustee objects on the following grounds:

1. The Debtor proposes in Section 6.03 as adequate protection payment of \$1,698.01 per month to Wells Fargo Bank which is to be applied first

to the post-petition interest accruing on the claim and then principal, or as specified in the loan modification

- a. The Debtor's supplemental Schedule J nor Section 6.03 of the proposed plan make any provisions for property taxes or insurance. If the Debtor intends the adequate protection payment to include escrow, \$1,164.07 is available for interest and principal payment.
 - b. The Creditor filed Proof of Claim No. 7-1 listing a secured claim for \$403,795.48 at a 2.675% variable interest rate. While the Plan proposes a payment of \$1,698.01 as an adequate protection payment, the Debtor provides no evidence as to why this is proper. The Trustee argues that the burden of proof is on the Debtor and believes that the mortgage payment should be approximately 31% of gross income which would be \$2,132.90 based on the Debtor's gross income.
2. The Debtor does not provide any explanation of changes in income or expense. The Debtor reports monthly income of \$5,883.89 (Dckt. 81) as compared to the previously reported \$5,477.44 (Dckt. 66). The Debtor's monthly expenses have increased from \$2,945.61 at the time of filing to \$3,474.01. The Debtor's declaration discloses that the Debtor has an unemployed son who lives with her and a daughter who is in college. In addition, the Declaration reports the son's daughter resides with them half the time and that her mother lives with her the other half. The proposed plan includes in Class 2 a 2006 Land Rover Range Rover with a monthly dividend of \$250.00, which the Debtor state is for the use of her mother. The Trustee raised a similar issue on a prior Motion to Confirm.

DEBTOR'S REPLY

The Debtor filed a reply on April 28, 2015. Dckt. 87. The Debtor requests a continuance to allow the Debtor the opportunity to file supplemental papers and pay stubs to support the plan.

DISCUSSION

The court notes that this is not the Debtor's first (or second or third) pending bankruptcy case since 2009. Debtor filed, in pro se, a Chapter 13 case on September 23, 2009, which was dismissed on November 10, 2009. 09-40428. Debtor then filed, in pro se, a Chapter 7 case on February 12, 2010. 10-2333. In that case she received her discharge on July 30, 2010.

Debtor commenced a Chapter 13 case, in pro se, on September 9, 2011. 11-41829. On November 28, 2011, Debtor's counsel in this case substituted in and represented Debtor in the 2011 case. Debtor confirmed a plan in the 2011 case. 11-41829; Order filed January 31, 2012, Dckt. 61. By February 2012, one month later, Debtor filed a motion to modify the confirmed plan. *Id.*; Dckt. 72. Confirmation of the modified plan was denied.

A second modified plan was confirmed by the court on June 25, 2012. *Id.*; Order, Dckt. 100. By September 2012, the Chapter 13 Trustee filed a notice of default in plan payments by Debtor. *Id.*; Dckt. 102. This begat the Debtor

filing a third modified plan and motion to confirm on October 12, 2012. *Id.*; Dckts. 108, 104. The court confirmed the Debtor's third modified plan on December 20, 2012. *Id.*; Order, Dckt. 113.

In August 2013, the Chapter 13 Trustee filed a notice of default in plan payments for June and July 2013. *Id.*; Dckt. 114. The Debtor responded, filing a fourth modified plan and motion to confirm. *Id.*; Dckts. 116, 117. The court confirmed the Fourth Modified Plan by order filed on November 1, 2013. *Id.*; Dckt. 129. By January 2014, the Chapter 13 Trustee had filed another notice of default, identifying defaults for three months. *Id.*; Dckt. 130. The case was then dismissed by order filed on March 24, 2014.

Debtor commenced the current case on April 1, 2014 (just seven days after dismissal of the prior Chapter 13 case in which there were multiple plan payment defaults and modified plans). The court confirmed the Debtor's Chapter 13 Plan in this case by order filed on June 18, 2014. Dckt. 56. In December 2014 the Chapter 13 filed a Notice of Default in this case in plan payments. Dckt. 61. The confirmed Plan required Debtor to make payments of \$2,895.00 a month for forty-two months, and then the payments stepping up to \$2,985.00 and then to \$3,065.00 a month. The Debtor had defaulted in the November and December 2014 payments. (The court notes from the Trustee's report of payment in the Notice, that the Debtor consistently ran one month in arrears with her plan payments.)

In seeking the various modifications, the Debtor has some routine and some extraordinary emergencies which have arisen. Each of these has derailed the Debtor in performing what she had promised. While the court is sympathetic to consumers dealing with everyday real life struggles, the Debtor and her counsel have demonstrated that the Debtor is not a credible witness with respect to her finances. It appears that Debtor and her counsel create whatever plan is the Debtor's dream, not one based on financial reality.

Debtor's response has been to file an amended plan in this case. Since commencing her Chapter 13 case in 2011, the Debtor has confirmed five plans spanning three years - with the Debtor defaulting on all of them. The current proposed plan promises that the Debtor will make monthly payments going forward of \$2,430.00.00 a month for eleven months, and then stepping up the payments to \$2,525.00 and then to \$2,610.00.

The Trustee's objection concerning the adequate protection payment is well-taken. A review of the proposed plan and the supplemental pleadings show that the Debtor has not explained or provided information as to how the proposed adequate protection payments are sufficient. The Debtor, in her reply, merely requests a continuance to supplement the record. The objection by the Trustee, however, should not have come as a surprise given the fact that the Trustee raised the same exact objection on the Debtor's last attempt to confirm a modified plan. The only difference is that the Debtor has increased the proposed adequate protection payment from \$1,360.00 to \$1,698.01. The Debtor still has not provide any evidence that this amount, however, actually does protect the creditor. The court cannot determine, based on the information provided, if the proposed payments is sufficient.

On Schedule A Debtor lists the her residence having a value of \$316,000.00 and Wells Fargo Bank, N.A. having a secured claim well in excess of that amount. Assuming that the loan was modified to the present value of the

property, with that amount amortized over 30 years at 3% interest, the monthly principal and interest payment would be \$1,332.27. While the Debtor and Trustee discuss the principal and interest payments on the variable interest rate loan that Debtor admits she has to modify, the simple fact is that reducing the debt to the value of the property yields a payment (for a person with a good credit score) unreachable for Debtor.

While the supplemental declaration filed by the Debtor (Dckt. 73) in the prior Motion to Confirm explained the change in circumstances that led to an increase in expenses, including the health of her child and the damage to her home following the earthquake in August 2014, it does not address the feasibility of the Debtor to proceed in the good faith performance of the Chapter 13 Plan nor was it provided for in connection with the instant Motion. Going back to the "explanations" for the extraordinary events which cause defaults under prior plans, this Debtor has testified:

- A. Declaration in Support of Fourth Modified Plan, 11-41-829, Dckt. 119.

"I have had several changes/problems that have arose which now require me to further modify my Chapter 13 Plan. These factors include; I missed payments because of three family incidents that recently occurred - my son was caught in a crossfire and was shot, my mom just went through a medical procedure and my daughter went back to the east coast for college - I have proof of all incidents and I am the "rock" of my family - the only one EVERYBODY depends on and needs. If I can place the missed payments on the end that would be great as I don't want to jeopardize having this case dismissed."

- B. Declaration in Support of Third Modified Plan, 11-41-829, Dckt. 106.

"I have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I have incurred unexpected expenses on the rental property that was originally included in the plan however, I ended up surrendering the property. I incurred unexpected expenses related to getting my daughter off to college on the East Coast."

"I filed for protection under the bankruptcy code because I originally had a rental property and was having trouble with the tenants paying. There was also a death in my immediate family and loss of income from a family member."

- C. Declaration in Support of Second Modified Plan, 11-41-829, Dckt. 91.

" have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I am Surrendering the real property currently in class one located at 8805 Scarlino Court, Vallejo CA."

Using the information from Schedules I and J filed by Debtor in April 2014, the court considers the feasibility of the Debtor performing this modified plan (which following in the footsteps of five prior plans which have failed). While the Debtor reports have good income from a stable employer, the expenses listed on Schedule J are not reasonable as documented by the Debtor's bankruptcy history. Debtor has a child with significant medical issues. Debtor only budgets only \$75.00 a month. Debtor has a son who is unemployed, living at home, and dependant on the Debtor not only for his needs, but his minor daughter. Debtor has not budgeted for that.

Debtor's plan requires her to make payments for two vehicles. One is a 2006 Land Rover, to repay a \$12,000 debt. This vehicle is now 9 years old, and it is likely that the next extraordinary event explaining a default is that there has been a major vehicle expense. The Debtor is also choosing to pay for a 2009 Dodge Charger. While repeatedly defaulting in her Chapter 13 Plan, it is "necessary" for this Debtor to be paying for two cars.

The Debtor has not shown that yet another modification of a Chapter 13 Plan will result in a feasible plan that can be performed. While the Debtor may desire to have a plan, she has shown that she cannot perform the plan. It is concerning to the court that both Debtor and Debtor's counsel have not addressed these concerns as they have been on notice of such inadequacies in the proposed plans for awhile. The Debtor seeks a continuance to provide information that the Debtor should have provided the first time she sought to modify the plan. The court will not grant a continuance.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 57 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.

Scott Olney ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 17, 2015. Dckt. 91.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 17, 2015. Dckt. 91. The Trustee objects on the following grounds:

1. The Debtor is \$408.00 delinquent in plan payments.
2. The Debtor's plan does not properly provide for the secured claim of the Internal Revenue Service in the amount of \$9,416.08. Proof of Claim 3-1. The Debtor improperly provides for the claim in Class 5 of the plan as a priority debt.

DISCUSSION

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

The Trustee's objections are well-taken. As to the Trustee's first objection, the Debtor's failure to be current under the plan is evidence of the Debtor's inability to comply with the terms of the plan, as required by 11 U.S.C. § 1325(a)(6). This is independent ground for denial of confirmation.

As to the Trustee's second objection, it appears that the Trustee is correct that the Debtor is improperly listing the secured claim of the Internal Revenue Service in the plan. A review of the plan shows that the Debtor lists five separate Internal Revenue Service claims in Class 5 of the plan. However, a review of the Internal Revenue Service's Proof of Claim No. 3 lists a secured claim of \$9,416.08.

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

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

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

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

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

Here, the Debtor does provide for the claim of the Internal Revenue Service but does not properly classify the claim. There has not been any orders changing the status of the Internal Revenue Service's secured claim from secured to priority unsecured. The improper treatment of the Internal Revenue Service's secured claim is grounds to deny confirmation.

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.

37. [15-21293-E-13](#) GARY BITTERS
SJS-1 Scott Johnson

MOTION TO VALUE COLLATERAL OF
CARMAX AUTO FINANCE
4-2-15 [[21](#)]

Final Ruling: No appearance at the May 5, 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 April 2, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Carmax Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of \$8,519.00.

The Motion filed by Gary Bitters ("Debtor") to value the secured claim of Carmax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Honda Civic LS ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,519 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,547.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$8,519.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Gary Bitters ("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 Carmax Auto Finance ("Creditor") secured by an asset described as 2008 Honda Civic LS ("Vehicle") is determined to be a secured claim in the amount of \$8,519.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,519.00 and is encumbered by liens securing claims which exceed the value of the asset.

38. [15-22296](#)-E-13 NED/EDNA SMITH MOTION TO VALUE COLLATERAL OF
SDB-1 Scott de Bie SANTANDER CONSUMER USA
4-3-15 [[14](#)]

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 3, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of \$7,911.00.

The Motion filed by Ned and Edna Smith ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Lexus ES300 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,911.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 16, 2008, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,433.15. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,911.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Ned and Edna Smith ("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 Santander Consumer USA ("Creditor") secured by an asset described as 2005 Lexus ES300 ("Vehicle") is determined to be a secured claim in the amount of \$7,911.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,911.00 and is encumbered by liens securing claims which exceed the value of the asset.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on April 28, 2015. By the court's calculation, 7 days' notice was provided.

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

The Objection to Certification of Debtor is sustained.

Earl Baca ("Creditor") filed the instant Objection to the Certification of Debtor under 11 U.S.C. § 362(l). The Creditor is seeking an order terminating the automatic stay of 11 U.S.C. § 362 so the creditor may continue execution of judgment for possession of the real property commonly known as 1850 Blosson Avenue, Unit 207, Fairfield, California.

Curtis Parker ("Debtor") filed a Chapter 13 petition on April 20, 2015. The Creditor states that relief under 11 U.S.C. § 362(l) is proper because the Debtor has not complied with 11 U.S.C. § 362(l) because the Debtor has filed a "skeleton" document with few assets and debts listed. Further, the Creditor alleges that there is no state court remedy that would allow the Debtor to cure

and stay in the property. Creditor asserts that Debtor has already delayed execution by and through Debtor's daughter's rejected claim of possession.

APPLICABLE LAW

11 U.S.C. § 362(b)(22) states:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay-. . .

(22) subject to subsection (1), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

11 U.S.C. § 362(1) states:

(1)(1) Except as otherwise provided in this subsection, subsection (b) (22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

- (3) (A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.
- (B) If the court upholds the objection of the lessor filed under subparagraph (A)--
- (I) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
- (ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.
- (4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--
- (A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
- (B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).
- (5) (A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.
- (B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

- (I) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and
 - (ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.
- (C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.
- (D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

DISCUSSION

A review of the Debtor's petition shows that the Debtor checked the box that states "Landlord has a judgment against the debtor for possession of debtor's residence," listing Creditor as the landlord. Dckt. 10. Furthermore, the Debtor checks all of the other boxes which states that the Debtor has applicable nonbankruptcy law that would permit the Debtor to cure the monetary default, that the Debtor has included with the petition a deposit for the rent that would become due during the 30 days after filing, and that the Debtor served the landlord with the certification.

As permitted by 11 U.S.C. § 362(l), a party may object to the certification. Here, the Creditor has filed such an objection arguing that the Debtor does not have a nonbankruptcy right to cure the default and that the Debtor has not followed the procedures outlined in 11 U.S.C. § 362(l). The Debtor has the burden of proving that Debtor has the legal opportunity to cure the default. The Debtor has failed to do so and has not filed any response to the instant Objection.

Therefore, because the Debtor has not shown that there is applicable nonbankruptcy law where Debtor would be permitted to cure the entire monetary default that gave rise to the judgment of possession after the judgment for possession was entered, the objection is sustained. In sustaining the objection, 11 U.S.C. § 362(b)(22) shall apply immediately and relief from the stay provided under § 362(a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property and the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

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 Certification of Debtor filed by 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 sustained and the provisions of 11 U.S.C. § 362(b)(22) that there is no automatic stay with respect to any acts by Earl Baca, and his agents, attorneys, representatives, and assigns, to enforce a judgment for possession of the real property commonly known as 1850 Blosson Avenue, Unit 207, Fairfield, California, apply immediately, with no further relief from the automatic stay provided under § 362(a)(3) required.

IT IS FURTHER ORDERED that the clerk of the court shall immediately serve upon the Creditor and the Debtor a certified copy of the court's order upholding the Creditor's objection, as provided in 11 U.S.C. § 362(1)(3)(B).