

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

May 10, 2016 at 3:00 p.m.

1. [15-29403-E-13](#) ROBERT BELLUOMINI  
Douglas Jacobs

CONTINUED HEARING RE:  
CONFIRMATION OF PLAN  
12-1-15 [5]

**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.**

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Local Rule 9014-1(f)(3) 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, and creditors on December 10, 2015. By the court's calculation, 75 days' notice was provided.

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

**The court's decision is to deny confirmation of the Chapter 13 Plan.**

May 10, 2016 at 3:00 p.m.

- Page 1 of 51 -

Robert Belluomini ("Debtor") filed the instant Plan on December 1, 2015. Dckt. 5. The Clerk of the Court issued a Notice stating that a hearing on confirmation of the Plan would be conducted on February 23, 2016, at which objections could be presented. As addressed below, that hearing was ultimately continued to May 10, 2016, to allow for resolution of the Motion to Value the secured claim of Banner Bank.

#### **FEBRUARY 23, 2016 HEARING**

The court continued the hearing from February 23, 2016 to 3:00 p.m. on March 1, 2016 to be heard in conjunction with the Motion to Reconsider. Dckt. 34. The court conditionally granted the Motion to Reconsider on March 1, 2016.

#### **MARCH 1, 2016 HEARING**

In light of the Motion to Reconsider being conditionally granted and the Motion to Value Collateral to be reset for hearing if Banner Bank reimburses the Debtor, the Motion to Confirm the Chapter 13 Plan is continued to 3:00 p.m. on May 10, 2016. Dckt. 38.

#### **DISCUSSION**

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

On April 26, 2016, the court granted the Debtor's Motion to Value Collateral of Banner Bank. Dckt. 56. The court valued Banner Bank's secured claim to be \$22,220.67. Order, Dckt. 56.

The Chapter 13 Plan provides for only an \$87.00 a month plan payment for a period of thirty-six months. Plan, Dckt. 5. This results in there being total plan payments of \$3,132.00. As proposed, the Plan fails to provide for the secured claim of Banner Bank (whether by payment or surrender of the collateral for foreclosure).

The Chapter 13 Plan does not comply with the provisions of 11 U.S.C. §§ 1322 and 1325, 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 Chapter 13 Plan filed December 1, 2016 is not confirmed.

2. [15-29404-E-13](#) TAEVONA MONTGOMERY  
RJ-4 Richard Jare

MOTION TO CONFIRM PLAN  
3-22-16 [[69](#)]

**Final Ruling:** No appearance at the May 10, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

Taevona Montgomery ("Debtor") filed the instant Motion to Confirm the Amended Plan on March 22, 2016. Dckt. 69.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 25, 2016. Dckt. 95. The Trustee states that the Debtor has filed a subsequent plan on April 6, 2016, causing the instant Motion to be moot.

#### **AMENDED PLAN FILED ON APRIL 6, 2016**

On April 6, 2016, the Debtor filed a new amended plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for 3:00 p.m. on June 28, 2016. Dckts. 85, 99, 100.

#### **DISCUSSION**

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

The filing of an amended plan is a de facto withdrawal of the amended plan to which the instant Motion was filed.

Upon independent review of the Second Amended Chapter 13 Plan appears to comply with the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1323.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan filed on March 22, 2016 is not confirmed.

3. [16-21105-E-13](#) REX GARDNER  
DPC-1 David Foyil

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
4-12-16 [[13](#)]

**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).**  
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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, on April 12, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**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 \$100.00 delinquent in plan payments. The Debtor has paid \$0.00 into the plan to date.
2. The Debtor's plan relies on Motion to Value the Collateral of Bank of America, N.A.
3. Debtor's plan calls for payment of attorney fees be paid in the Plan in the amount of \$1,800.00, which they may not be entitled

to. The Trustee opposes this provision of the plan, as Debtor and counsel have failed to file rights and responsibilities or file a motion for attorney fees.

#### **DEBTOR'S OPPOSITION**

The Debtor filed an opposition on April 18, 2016. Dckt. 23. The Debtor asserts that on April 15, 2016, the Debtor mailed the March 25, 2016 payment in the amount of one hundred dollars (\$100). On April 15, 2016, the Debtor also states he mailed April 25, 2016 payment in the amount of \$100.00.

The Debtor states that on April 15, 2016, the Debtor filed a Motion to Value Collateral of Bank of America, N.A. which is set for hearing on May 3, 2016.

Lastly, the Debtor filed the Debtor's Rights and Responsibilities of Chapter 13 Debtors and their Attorneys. Dckt. 25.

#### **DISCUSSION**

The Trustee's objections are well-taken.

On May 4, 2016, the court granted the Debtor's Motion to Value Collateral of Bank of America, N.A.

Additionally, the Rights and Responsibilities form was filed on April 18, 2016. Dckt. 25.

While the above order resolves one objection and the filing of the Rights and Responsibilities form resolves the second., no evidence is provided by Debtor that the default has been cured. Rather, Debtor's counsel has merely asserted in argument that the check has been mailed. That argument does not overcome the Trustee's evidence of the default. Declaration, Dckt. 15.

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 the Objection is sustained and Debtor's Chapter 13 Plan filed on February 26, 2016, is not confirmed.

4. [15-21707-E-13](#) JUDITH LAYUGAN  
TLA-4 Thomas Amberg

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF AMBERG HARVEY FOR  
THOMAS L. AMBERG, DEBTOR'S  
ATTORNEY  
4-12-16 [[156](#)]

**Final Ruling: No appearance at the May 10, 2016 hearing is required.**  
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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 12, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion for Allowance of Professional Fees is granted.**

Thomas L. Amberg Jr., the Attorney ("Applicant") for Judith Layugan the Chapter 13 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The instant case was filed on March 3, 2015. Dckt. 1. At the time, Debtor was represented by different counsel. On January 21, 2016, the case was dismissed due to the Debtor's delinquency in plan payments. Dckt. 107.

On January 21, 2016, the Debtor filed a Motion to Substitute Applicant in as Debtor's counsel, which was granted. Dckt. 111. Following the granting of substitution, Applicant filed a Motion to Vacate the Dismiss, which was heard and granted. Dckt. 124.

The Applicant is seeking authorization to be compensated a flat fee amount of \$4,000.00, to be paid through the plan.

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

## STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work

in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

*Id.* at 959.

### **"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)."

#### **DISCUSSION**

Applicant seeks to be paid a single sum of \$4,000.00 for its fees incurred for the Client. The court finds that the services completed by the Applicant, including the Motion to Vacate and Motion to Sell, as well as the anticipated services to be rendered, are beneficial to the Debtor and the estate.

First and Final Fees and Costs in the amount of \$4,000.00 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.

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

Fees	\$4,000.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

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

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amber, Jr., Professional Employed by Chapter 13 Debtor

Fees in the amount of \$4,000.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330, as a "Fixed Fee" pursuant to Local Bankruptcy Rule 2016-1(c).

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

5. 16-21607-E-13 NICOLE HARRISON  
MMM-1 Mohammad Mokkaaram

MOTION TO VALUE COLLATERAL OF  
TOYOTA MOTOR CREDIT CORP  
4-22-16 [[18](#)]

**Tentative Ruling:** The Motion to Value secured claim 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).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 22, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value secured claim of Toyota Motor Credit Corp. ("Creditor") is granted and the secured claim is determined to have a value of \$11,941.00.**

The Motion filed by Nicole Gonzalez Harrison ("Debtor") to value the secured claim of Toyota Motor Credit Corp. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Toyota Corolla Sedan ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$11,941.00 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 August 1, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,623.00. 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 \$11,941.00. 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 Nicole Gonzalez Harrison ("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 Toyota Motor Credit Corp. ("Creditor") secured by an asset described as 2013 Toyota Corolla Sedan ("Vehicle") is determined to be a secured claim in the amount of \$11,941.00, 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 \$11,941.00 and is encumbered by liens securing claims which exceed the value of the asset.

6. [16-22214-E-13](#) LYDIA RAMIREZ  
JAA-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF  
PLAN BY CHAMPION MORTGAGE  
COMPANY  
4-19-16 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on April 19, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

Champion Mortgage Company dba Nationstar Mortgage, LLC (the "Creditor"), opposes confirmation of the Plan on the basis that the plan fails to provide for the Creditor's full pre-petition arrears. The Creditor asserts a pre-petition arrearage of \$20,523.49 where the plan only proposes \$19,232.00.

**DEBTOR'S OPPOSITION**

The Debtor filed an opposition to the instant Objection on May 3, 2016. Dckt. 24. The Debtor asserts that the Creditor has not provided evidence to support the assertions in the Objection nor has the Creditor filed a Proof of

Claim. The Debtor does state that she does recognize that if the Creditor is correct, the Debtor will need to modify the plan. However, the Debtor reasserts that currently, though, there is no evidence to support the claims of the Creditor.

**DISCUSSION**

The Debtor is correct that the Creditor has failed to provide properly authenticated evidence to support the allegations made in the Objection. However, the Creditor does not provide the declaration authenticating or providing foundation for any of the allegations.

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

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

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

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FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.  
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Additionally, Creditor's "Objection" is not, as stated, built on a firm foundation. As clearly provided in the Chapter 13 Plan, once the proof of claim is filed, then it is the amount stated in the Proof of Claim which controls the amount that has to be paid (absent an objection to claim and order of the court). Chapter 13 Plan, ¶ 2.04; Dckt. 5. Here, even if there was evidence of the amount of the larger arrearage, the difference is \$1,300.49 - which over the sixty months of the plan is \$21.67 a month in greater arrearage payment to Creditor. FN.2.

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FN.2. Two Objections to Confirmation have been filed by two creditors, represented by the same counsel, asserting the same objection. This Creditor

and then Deutsche Bank National Trust Company, Trustee. Objections, Dckts. 17 and 26. On a "Withdrawal" of the Objection to Confirmation was filed. Dckt. 30. The "Withdrawal;" which in reality is an attempted unilateral dismissal before a responsive pleading is filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(I) and Fed. R. Bankr. P. 7041, 9014; does not identify which objection is to be dismissed and who the creditor is seeking to dismiss the objection.

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However, Creditor's objection has caused the court to re-read the proposed Plan and treatment terms. The asserted claim is for alleged advances made prior to the commencement of the bankruptcy case for property taxes by the holder of a reverse mortgage. The Plan lists the Champion Mortgage Claim in the amount of \$19,232.00 to be paid over the sixty months of the Plan with a monthly dividend of \$99.50. It also lists Sacramento County having a secured tax claim in the amount of \$3,170.31, which is to be paid at 18% interest, with monthly payments of \$203.00. Plan, ¶ 209(d)(A).

Using the Microsoft Excel Loan Amortization Program, the court computes the proposed payment of these two secured claims as follows:

Sacramento County Secured Tax Claim	\$3,170.31	18% Interest \$302.00 Monthly Payment
	<p>With a \$320.00 a month payment, this secured claim, with 18% interest, will be paid in eleven months.</p> <p>To pay the \$3,170.31 claim with 18% interest over sixty months, the monthly payment would be \$80.51.</p>	
Champion Mortgage Secured Claim (Advances Lien)	\$19,232.00	1% Interest \$99.50 Monthly Payment
	<p>With a monthly payment of \$99.50 and a 1% interest rate, with a \$99.50 a month payment, it would take 17.5 years to pay this claim. Well in excess of the 60 month maximum plan term.</p> <p>To pay the \$19,232 claim with 1% interest over sixty months, the monthly payment would need to be \$328.75 a month.</p>	

The Additional Provisions of the Plan provide for a different treatment for the Champion Mortgage Claim as stated for the Class 2 claims above. The stated Class 2 claim treatment does not note or cross reference there being additional, and different treatment provisions for the claim.

The payments on the Champion Mortgage claim are to increase to \$302.50 in the nineteenth month of the plan, and then to \$439.50 in the twenty-third month of the plan. The court computes the total plan payments to be made for

the Champion Mortgage claim to be as follows:

Champion Mortgage Secured Claim Payments	
18 Months of Payments @ 99.50 Each	\$1,791.00
4 Months of Payments @ \$302.50 Each	\$1,210.00
38 Months of Payments @ \$439.50 Each	\$16,701.00
60 Months Total Payments	\$19,702.00
Total Payments Per Excel Loan Amortization Program	\$19,724.82

While it appears that there is a small shortfall for the arrearage as stated by Debtor, it does not appear significant enough to deny confirmation. Even if the arrearage is slightly higher, it does not appear to be so high that the plan, as proposed, could not be fixed post-confirmation. (Though there could be a question as to whether the need to modify the plan, if the current payments cannot quite get there, was unforeseeable.)

Therefore, with the Creditor's objection being overruled and upon independent review, 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 Champion Mortgage Company dba Nationstar Mortgage, LLC, 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 April 7, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. 15-29616-E-13 KRISTIN CRISTE  
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE AUTO FINANCE  
4-6-16 [[21](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 34 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value secured claim of Capital One Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of \$21,398.00.**

The Motion filed by Kristin Criste ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Altima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,425.00 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 June 6, 2014, which is less than 910 days prior to filing of the petition.

Debtor is requesting that the loan held by Creditor be determined to be

secured in the amount of \$21,398.00 and that the optional service contract in the amount of \$2,495.00 be determined to be an unsecured claim.

The Creditor filed a Proof of Claim No. 8 on March 16, 2016, claiming a secured claim in the amount of \$24,043.12. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 8 shows that the total amount financed by the Debtor was \$22,617.61. There was an optional service contract of <-\$2,495.00>. Essentially, the total amount financed is two separate loans: (1) for the optional service contract and (2) the new financing for the Vehicle.

Out of the total amount financed, the optional service contract is 11% of the amount financed and the remaining 89% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 8, \$2,495.00 of the amount financed is to the optional service contract. The remaining \$21,398.00 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant is only seeking to value the portion of the financing that was for the service contract, not the actual purchase of the Vehicle.

#### **CREDITOR'S OPPOSITION**

The Creditor filed an opposition on April 26, 2016. Dckt. 39. The Creditor asserts that, pursuant to the hanging paragraph of 11 U.S.C. § 1325(a)(9), the Debtor incurred the PMSI securing the debt within the 910-days. The contract provided, in addition to the funding necessary for the Debtor's purchase of the Vehicle, the funds necessary for the Debtor's purchase transaction relating to the Vehicle. The Creditor argues that should Debtor request to cancel service contract, Creditor will amend its claim to credit the balance of the unearned premium on the cancelled service contract.

#### **DISCUSSION**

In the 9th Circuit, negative equity is not considered a part of the price for the new vehicle, and is thus not included in the purchase money security interest. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S. Ct. 108 (2011). Debtor may value this portion of the secured claim which relates to the negative equity financed in addition to the purchase price.

The definition of a "purchase money security interest is determined by state law. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S. Ct. 108 (2011). Cal. Comm. Code § 9103 "does not provide a precise definition of a purchase money security interest, but rather a string of connected definitions." *In re Penrod*, 611 F.3d at 1161; Cal. Comm. Code § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

"'Purchase money collateral' means goods or software that secures a purchase money obligation." Cal. Comm. Code § 9103(a)(1)." 'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Cal. Comm. Code § 9103(a)(2).

*In re Penrod*, 611 F.3d at 1161.

The California Commercial Code defines the term "good" to be,

"(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (I) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction."

Ca. Com. Code § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

Here, Debtor purchased a vehicle (a thing) and obtained additional credit to finance the service contract. The court organizes the various purchases and obligations as follows:

Purchase of Used Nissan Altima	Source Document - Retail Installment Sale Contract. Proof of Claim No. 8	
Purchase Price of Vehicle (Cash Price Day of Sale)	\$18,988.00	Price of Collateral
Document Processing	\$80.00	Documentation as part of purchase of vehicle
Theft Deterrent Device (Optional)	\$199.00	

Emissions Testing Charge	\$50.00	
Sales Tax	\$1,545.36	Though This is Not a Tax Which the Purchaser is Obligated to Pay, but a Tax Which the Seller is Obligated to Pay, the Court includes it as part of the actual necessary cost in buying the vehicle. FN.1.
Electric Vehicle Registration	\$29.00	Cost with above purchase price.
Vehicle License	\$123.00	Estimated cost with above purchase price.
Registration	\$100.00	Estimated cost with above purchase.
Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$21,114.36	

-----  
 FN.1. As discussed by the California Court of Appeal in *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (1977), the state sales tax is not a tax on the sale, but an excise tax imposed upon the retailer for the "privilege of conducting a retail business...." See Cal. Rev. & Tax. Code § 6051 (stating that tax is imposed on retailer). A retailer is allowed to add the sales tax to the sales price under specified circumstances (which is the common practice in California). Cal. Civ. Code § 1656.1.  
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In addition to the credit extended for the purchase of the vehicle, the Creditor extended further creditor to purchase or finance these additional items:

Item	Source Document - Retail Installment Sale Contract. Proof of Claim No. 8	
Service Contract Protective	\$2,495.00	This is a form of optional "insurance," in which the insurer is obligated to provide payments during a specified period for repairs required to the vehicle.

Total obligation incurred not as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$2,495.00	
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As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money financial and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations which would be so protected.

The Debtor does not attempt to value the optional insurance coverage but rather just the negative net equity.

Therefore, based on the foregoing, creditor's secured claim is determined to be in the amount of \$21,398.00. See 11 U.S.C. § 506(a). The remaining \$5,754.81 is determined to be a general unsecured claim arising from the negative equity from the trade-in. 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 Michael Walker ("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 Capital One Auto Finance ("Creditor") secured by an asset described as 2014 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of \$21,398.00. This is the amount of the secured claim which pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a) [the unnumbered paragraph following § 1325(a)(9)], and the balance of the claim, \$2,645.12, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$14,425.00 and is encumbered by liens securing claims which exceed the value of the asset.

8. [11-32021-E-13](#) RAYMOND LITTLE  
PGM-6 Peter Macaluso

OBJECTION TO NOTICE OF MORTGAGE  
PAYMENT CHANGE AND/OR MOTION  
FOR COMPENSATION FOR PETER G.  
MACALUSO, DEBTOR'S ATTORNEY  
3-21-16 [[106](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Objection is continued to 3:00 p.m. on June 7, 2016.**

Raymond Little ("Debtor") filed the instant Objection to Notice of Mortgage Payment Change Filed on October 9, 2015 and Request for Attorney Fees on March 21, 2016. Dckt. 106.

The Debtor asserts that the Notice of Mortgage Payment Change filed on October 9, 2015 by Residential Credit Solutions, Inc. ("Creditor") provides no evident reason for the increase in payment.

The grounds, as stated in the Objection, are summarized as follows:

- a. There is no evident reason for a change in the mortgage payment.
- b. The Notice of Mortgage Payment Change states that the payment is increased from \$1,522.89 to \$1,833.60.
- c. The Notice of Mortgage Payment Change only reports a \$2.40 change in the escrow payment amount and does not assert any change in the interest rate.
- d. Debtor's confirmed plan provides for monthly payments on the claim in the amount of \$1,517.47. (Class 1 current mortgage payment of \$1,517.47 and arrearage payment of \$382.00.)
- e. Debtor asserts the right to recover contractual legal fees of \$525.00 as the prevailing party. (The Motion does not identify a specific contractual provision providing for legal fees, but the court notes that in such institutional loan documents, such attorneys' fees provisions are found both in the note and deed of trust.)

Objection, Dckt. 106. Debtor's counsel provides his declaration in support of the request for attorneys's fees, as well as an hourly billing record. Dckts. 108 and 109., respectively.

#### **REVIEW OF MORTGAGE PAYMENT CHANGE AT ISSUE**

Though the Trustee provides a history of the claim and mortgage payment changes, the court begins with the specific Notice at issue. The Notice of Mortgage Payment Change was filed on October 9, 2015. October 9, 2015 Docket Entry. The Notice is signed by an attorney at the Law Offices of Wright, Finlay & Zak, LLP, as the agent for "Creditor, Residential Credit et. al."

On page 1 of the Notice, it clearly states that beginning December 1, 2015, the new principal, interest and escrow payment will be \$1,833.60. In part 1 of the Notice, Creditor affirmatively states that

due to an escrow account payment adjustment from \$196.70 to \$194.24 (1/12th of annual anticipated disbursements of \$2,330.88) which represents a \$2.46 decrease.

The Notice of Mortgage Payment Change indicates in Part 2: Mortgage Payment Adjustment that there is no change in the debtor's principal and interest payment based on an adjusted to the interest rate in the Debtor's variable rate not.

The Notice of Mortgage Payment Change indicates in Part 3: Other Payment Change that there is no other change in the Debtor's mortgage payment for any other reason.

A review of the Initial Escrow Account Disclosure Statement attached to the Notice shows that the "PRINCIPAL & INTEREST" is \$1,639.36. In Part 1 of the Notice part, showing the change in the escrow payment, it states that there is a change, with the payment reduced by (\$2.46).

The Notice, in Parts 1 and 3 state that there is no change to the principal and interest payment, and there is no other change to the payment amounts. These statements are all made under penalty of perjury.

#### **TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response to the Objection on April 1, 2016. Dckt. 111. The Trustee provides the payment history concerning the loan as well as the assignments of claim throughout the case, discussed *infra*.

In sum, and after reviewing the history of the instant claim, that the Notice of Mortgage Payment Change filed by Creditor on October 8, 2015 does not provide any explanation for the increased principal and interest payment when the only change in the Notice is a reduction in escrow.

The Trustee states that in February, 2016, with a transfer of claim having been filed, and there being no objection to the Notice of Mortgage Payment Change, the Trustee adjusted the mortgage payment pursuant to the Notice of Mortgage Payment Change from \$1,522.89 to \$1,833.60 effective December 2015 and notified the Debtor and Debtor's counsel.

On March 21, 2016, Debtor's Objection to the Notice of Mortgage Payment Change was filed and the Trustee reduced Debtor's mortgage payment back to \$1,522.89 pending resolution and notified Debtor's counsel.

The Trustee's records reflect the Debtor is current in mortgage payments with the total disbursed to date of \$89,659.43. The Trustee's records reflect \$18,288.39 has disbursed in mortgage arrears and are paid in full.

#### **CLAIM HISTORY**

GMAC Mortgage, LLC filed Proof of Claim No. 8 on July 5, 2011. The Proof of Claim asserted a secured claim for \$356,645.30 with \$18,288.39 in arrears. Proof of Claim No. 8 is signed by another attorney with a different law firm, as the agent for creditor GMAC Mortgage, LLC.

The Attachment to the Proof of Claim indicates that the \$18,288.39 in arrears is comprised of 8 pre-petition mortgage payments from October 1, 2010 to May 1, 2011 in the amount of \$2,004.89 (\$1,326.19 principal and interest, \$678.70 escrow), property inspection fees, late charges, collection costs, late charges, and a \$1,681.42 escrow shortage. The Attachment also identifies Debtor's mortgage payment effective June 1, 2011 to be \$1,482.79 (**\$1,326.19 principal and interest**, \$156.60 escrow).

GMAC Mortgage, LLC filed a Notice of Mortgage Payment Change on March 6, 2012 due to an escrow account payment adjustment from \$266.01 (\$156.60 escrow plus \$109.41 Surplus/Shortage) to \$191.28 (147.35 escrow plus \$43.93 Surplus/Shortage). Based on this Notice, Debtor's mortgage payment effective May 1, 2012 was \$1,517.47 (**\$1,326.19 principal and interest** plus escrow) and the Trustee adjusted Debtor's mortgage payment accordingly.

GMAC Mortgage, LLC filed a Notice of Mortgage Payment Change on February 27, 2013 due to an escrow account payment adjustment from \$282.81 to \$246.49 (\$161.84 escrow plus \$84.65 Surplus/Shortage). Based on this Notice,

Debtor's mortgage payment effective May 1, 2013 was \$1,572.68 (**\$1,326.19 principal and interest** plus escrow) and the Trustee adjusted Debtor's mortgage payment accordingly.

A Transfer of Claim Other than for Security was filed on April 8, 2013 by Kristi M. Wells, Transferee/Transferee's Agent, identifying GMAC Mortgage LLC as the Transferor and Ocwen Loan Servicing, LLC as the Transferee.

Ocwen Loan Servicing LLC filed a Notice of Mortgage Payment Change on July 25, 2013 due to an escrow account payment adjustment from \$246.69 to \$196.70 (\$161.84 escrow plus \$34.86 Surplus/Shortage). Based on this Notice, Debtor's mortgage payment effective October 1, 2013 was \$1,522.89 (**\$1,326.19 principal and interest** plus escrow) and the Trustee adjusted Debtor's mortgage payment accordingly.

#### **APPLICABLE LAW**

Federal Rule of Bankruptcy Procedure 3002.1(e) sets the procedure to object to any post-petition fee, expense, or charge asserted to be part of the cure of any default for a claim in the bankruptcy case.

A notice of payment change filed under Fed. R. Bankr. P. 3002.1 does not enjoy a prima facie presumption of validation because it is not a proof of claim. *In re Taylor*, 2013 Bankr. LEXIS 1189 (Bankr. ND. Miss. Mar. 27, 2013).

#### **DISCUSSION**

The court concurs with the Debtor that the Creditor did not properly provide evidence or justification as to why the mortgage payment has increased, when the only indication on the Notice is a reduction in escrow payment.

As highlighted supra and emphasized by the Trustee, the Creditor's Notice of Mortgage Payment Change states that the principal and interest is \$1,639.36. However, this is the first time the principal and interest has been anything but \$1,326.19. The only changes to the payment has been alterations in the escrow amount, nothing to do with the principal or interest.

Further, this Notice of Payment Change states under penalty of perjury that the only change is the (\$2.46) reduction in the escrow amount. This increase of more than \$300.00 in the monthly principal and interest payment appears from nowhere.

The Creditor is not afforded the same *prima facie* validity that a Proof of Claim is afforded. Rather, the Creditor must provide evidence and grounds for increases in payment, whether it be escrow or otherwise.

Here, the Creditor only indicate a decrease in escrow payment - not increased.

Therefore, the Objection is sustained and the monthly mortgage payment shall be \$1,520.43 (\$1,326.19 principal and interest plus \$194.24 escrow).

#### **AWARD OF ATTORNEYS' FEES**

In the Motion, Debtor asks to recover attorneys' fees for having to

file this objection to the unsupported increase in the purported principal and interest payment. The Deed of Trust, ¶ 8, and the Note upon which the claim is based, ¶ 6(E), are attorney's fees provisions. Proof of Claim No. 8, attachments. California Civil Code § 1717 makes such provisions reciprocal, to the extent that they are not drafted as such.

The \$525.00 in fees is reasonable for filing the objection, and appear not to include the fee for the hearing. Possibly this is because counsel presumed that the Creditor and the counsel that filed the Notice of Mortgage Payment Change, when being notified of the error, would promptly either correct it or so confirm for Debtor's counsel so that no hearing would be required.

The court, having to continue the hearing, does not now determine the final amount of attorneys' fees, in light of further proceedings being required.

#### **CONTINUED HEARING**

In reviewing the Certificate of Service, the court notes that the present Objection has been served on Creditor in the following manner:

- A. Residential Credit Solns., Inc.  
P.O. Box 163889  
Fort Worth, Tx 76161
  
- B. Residential Credit Solutions, Inc.  
C/O Nichole L. Glowin, Esq.  
4665 MacArthur Court, Suite 280  
Newport Beach, CA 92660

Cert. of Service, Dckt. 110.

It is clear that Ms. Glowin, who signed the Notice of Mortgage Payment Change misstating the amount of the principal and interest payment, have notice of the error and the defect in the Notice. Though having been served, Ms. Glowin and her law firm failed to respond to the inaccurate statement made under penalty of perjury.

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

A review of the California Secretary of State's records easily available on-line discloses the following information for Residential Credit Solutions, Inc.:

Entity Name: RESIDENTIAL CREDIT SOLUTIONS, INC.  
Entity Number: C2966788  
Date Filed: 01/31/2007  
Status: ACTIVE  
Jurisdiction: DELAWARE  
Entity Address: 4708 MERCANTILE DRIVE  
Entity City, State, Zip: FORT WORTH TX 76137  
Agent for Service of Process: CORPORATION SERVICE COMPANY WHICH WILL  
DO BUSINESS IN CALIFORNIA AS  
CSC - LAWYERS INCORPORATING SERVICE  
Agent Address: 2710 GATEWAY OAKS DR STE 150N  
Agent City, State, Zip: SACRAMENTO CA 95833

[http://kepler.sos.ca.gov/.](http://kepler.sos.ca.gov/)

Nothing indicates that Ms. Glowin or her law firm are agents for service of process for Residential Credit Solutions, Inc. A motion must be served in the same manner as a complaint. Fed. R. Bankr. P. 9014(b), 7004. For a corporation, which service may be made by First Class Mail, it must be served to the attention of an officer or authorized agent for service of process. Fed. R. Bankr. P. 7004(b)(3). It does not appear that such service has been accomplished.

Therefore, to avoid any potential dispute as to the effectiveness of the court's order and any award of attorneys' fees, the court continues the hearing. Such continuance would not have been necessary if counsel for Creditor, upon receiving notice of the erroneous statement under penalty of perjury, would have responded to the Motion when counsel was served.

The court continues the hearing to 3:00 p.m. on June 7, 2016. Debtor shall on or before June 12, 2016, serve the pleadings and notice of continued hearing on Residential Credit Solutions, Inc. in a manner consistent with Federal Rule of Bankruptcy Procedure 7004.

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

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

The Objection to Notice of Mortgage Payment Change filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection is continued to 3:00 p.m. on June 7, 2016. Written oppositions shall be filed and served on or before May 27, 2016, and replies, if any, on or before June 2, 2016.

9. [15-25422-E-13](#) HAROLD/KIMBERLY BROWN MOTION TO CONFIRM PLAN  
BRO-3 Yasha Rahimzadeh 3-18-16 [[93](#)]

**Final Ruling:** No appearance at the May 10, 2016 hearing is required.  
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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 18, 2016. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

10. [16-22530-E-13](#) **MARCIA CLARK** **MOTION TO EXTEND AUTOMATIC STAY**  
**BLG-1** **Paul Bains** **4-26-16 [8]**

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

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

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

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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 26, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

Marcia Clark ("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. 14-30130) was dismissed on September 14,

2015, after Debtor was delinquent in plan payments. See Order, Bankr. E.D. Cal. No. 14-30130, Dckt. 30, September 14, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor states that she was unable to cure the delinquency because both the Debtor and her spouse were out of work and not bringing in sufficient funds to make the payment. However, the Debtor states that both her and her spouse are employed and will be able to make monthly payments.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C.

§ 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

11. [12-21733](#)-E-13 SHARAN SINGH  
AVN-9 Anh Nguyen

MOTION TO MODIFY PLAN  
3-25-16 [[105](#)]

**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.**

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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, 2016. By the court's calculation, 46 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.**

Sharan Lata Singh ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 25, 2016. Dckt. 105.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 26, 2016. Dckt. 112. The Trustee opposes confirmation on the following grounds:

1. The proposed plan payments do not include \$2,856.40 insurance proceeds received and disbursed to creditor Santander Consumer USA on Proof of Claim No. 10.
2. The Debtor's plan does not authorize payments made by the Trustee to Santander Consumer USA, which total \$12,592.14 including interest. The creditor was scheduled for \$11,482.35 in the Debtor's confirmed plan as a Class 2, Purchase Money Security Interest creditor to be paid \$267.00 per month and 6% interest. The vehicle was totaled in an accident.

The Trustee does not oppose including language in the order confirming that the plan payments are as stated in the additional provisions plus \$2,856.40 insurance proceeds. The Trustee also requests the payment made to creditor Santander Consumer USA in the amount of \$12,592.14 be authorized in the order confirming.

#### **DISCUSSION**

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

The Trustee's objections are well-taken. The plan does not provide for the authorization of the payments made by the Trustee to Santander Consumer USA based on its Proof of Claim No.10 and the insurance proceeds.

Additionally, similar to the Trustee, the court concurs that these omissions in the plan can be added to the order confirming, since they are authorizing prior payments made by the Trustee. The order confirming shall provide the addition language:

The plan payments are as stated in the Additional Provisions plus \$2,856.40 insurance proceeds. Payments made to creditor Santander Consumer USA in the amount of \$12,592.14 by the Trustee are authorized.

The modified Plan, after the language is added to the order confirming, 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 25, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following language,

The plan payments are as stated in the

Additional Provisions plus \$2,856.40 insurance proceeds. Payments made to creditor Santander Consumer USA in the amount of \$12,592.14 by the Trustee are authorized,

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.

12. [16-20734-E-13](#) EUGENE SPENCER  
MAS-1 Mohammad Mokkaam

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DISARIE  
RANESSA SPENCER  
3-28-16 [[26](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2016. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

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

Disarie Ranessa Spencer ("Creditor") opposes confirmation of the Plan on the basis that the plan was filed in bad faith and the plan improperly seeks to discharge a non-dischargeable debt.

The Creditor is the former spouse of the Debtor. The Debtor filed a petition for divorce in the Sacramento Superior Court and a decree of dissolution was entered in 2007.

The Creditor asserts that following the dissolution, the Creditor learned that, in connection with a refinance of a house and in defalcation of fiduciary duty under California Family Code, there were in excess of \$100,000.00 refinance proceeds, pension monies, and other community property that had been allegedly hidden and concealed by the Debtor from the Creditor.

Creditor states, upon learning of the above, she reopened the family law case based on the defalcation of fiduciary duty. The Creditor then states that the day before the trial, the Debtor filed the instant bankruptcy.

The Creditor asserts that the Debtor is approximately \$50,000.00 in arrears on child/spousal support. The Creditor alleges that the County of Sacramento Department had been garnishing the Debtor's wages to pay current child support obligations. Prior to the bankruptcy, the Creditor states she had been receiving approximately \$1,310.00 per month of current spousal support from the Debtor.

The Debtor's plan proposes to pay \$200.00 per month into the plan and provides for no priority creditors. The Creditor objects to the plan on the basis that it fails to provide for the Creditor's priority domestic support obligation. The Creditor states that the plan does not provide for the current or back child/spousal support.

Further, the Creditor asserts that the \$200.00 a month will not be enough to pay off the Creditor's priority claim. The Creditor argues that the Debtor is attempting to discharge the domestic support obligations.

Lastly, the Creditor asserts that the plan was not filed in good faith.

#### **DEBTOR'S REPLY**

The Debtor filed a reply on April 6, 2016. Dckt. 32. The Debtor asserts that the plan does provide for the ongoing domestic support obligations in the Additional Provisions. The Debtor states that the ongoing child support in the amount of \$856.00 and arrears in the amount of \$454.00 are being deducted each month from the Debtor's pay stubs prior to the filing of the bankruptcy and will continue after the filing. This was done to continue the process established by the Family Law court.

The Debtor states that the family law litigation has not been resolved nor judgment rendered. The Creditor has filed an Adversary Proceeding No. 16-02059, claiming certain debts are non-dischargeable. The Debtor argues that if the Creditor prevails, those debts will be non-dischargeable. The current Chapter 13 plan is not hindered by the various allegations made by the Creditor. The Debtor argues that the fact the bankruptcy was filed the day before the trial does not automatically translate to the plan being proposed in bad faith.

#### **CREDITOR'S RESPONSE**

The Creditor filed a response on April 11, 2016. Dckt. 37.

The Creditor asserts that the reply does not address the Creditor's objections. Namely, the Creditor asserts that the Debtor does not explain why the Creditor's support claim is not provided in Class 5, including the

delinquent child support.

The Creditor argues that the failure to provide the arrearage in Class 5 means that the Debtor is attempting to have discharged the remaining delinquency at the end of the plan. Class 5 requires that the claim be paid in full. Here, while the Debtor does propose to continue the wage garnishment for both ongoing and delinquent payments, the ongoing garnishment would not cure the delinquency by the end of the plan.

Additionally, the Creditor argues that the plan does not provide for the legal interest rate of 10% per annum.

#### **APPLICABLE LAW**

The Bankruptcy Code provides that certain debts and obligations are given priority status. 11 U.S.C. § 507, in relevant part, states:

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the

payment of such claims.

11 U.S.C. § 1325 provides the plan requirements for a court to confirm a plan. Specifically, § 1325(a)(8) provides the following:

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

## DISCUSSION

The Creditor's objections are well-taken.

First, the court overrules the Creditor's objection as it concerns bad faith, based solely on the grounds that the bankruptcy case was filed the day of the state court trial. It is not shocking nor uncommon for a debtor, on the eve of a foreclosure, litigation, etc., to file a bankruptcy in order to utilize the automatic stay. The court does not share the Creditor's apparent outrage at such a suggestion, though the conduct does color the balance of Debtor's arguments.

However, as to the providing for domestic support obligation delinquency, the Creditor is correct that the plan does not properly provide for the priority claim of the Creditor.

The Debtor's proposed plan fails to provide any Class 5 creditors.

The Creditor filed Proof of Claim No. 2 on March 30, 2016. The Creditor states on the Proof of Claim that the \$45,822.81 is entitled priority as a domestic support obligation pursuant to 11 U.S.C. § 507(a)(1).

While the Debtor's plan does state in the Additional Provisions the following,

Child support arrears and ongoing will be deducted directly from the debtors pay stubs,

the plan does not provide for the curing of the arrearage over the 60 month plan.

As the Creditor argues, the Debtor's paycheck is deducted \$445.00 per month for the arrears in child support. That means, over the 60-month life of the plan, the Debtor will only provide for \$27,240.00 of the \$45,822.81 asserted in Proof of Claim No. 2.

Pursuant to 11 U.S.C. § 1325(a)(8), in order for a plan to be confirmed, the Debtor must have "paid all amounts that are required to be paid under a domestic support obligation." Here, the plan does not provide for such.

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

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

holding that:

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

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

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

13. [16-20743-E-13](#) ANNA PETERSON  
RWH-1 Ronald Holland

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY KEVIN  
THOMPSON  
3-31-16 [[37](#)]

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

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

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

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

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

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

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

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

Unfortunately, the Creditor does not provide any declaration or

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

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

**APRIL 26, 2016 HEARING**

The court continued the hearing to allow the Creditor the opportunity to provide a declaration to authenticate the exhibits. Dckt. 55.

**DISCUSSION**

Unfortunately, the Creditor has failed to provide a supplemental declaration to authenticate the exhibits. As such, the court cannot give evidentiary weight to the exhibits. Without evidence, the Objection would be overruled without prejudice.

The Trustee also filed an Objection to Confirmation for the same plan as the Creditor opposes. The court sustained that objection, and denied confirmation of the plan. Dckt. 59.

**Filing of Amended Plan**

On May 4, 2016, Debtor filed a First Amended Plan. Dckt. 64. That constitutes a "dismissal" of the prior plan. Debtor having elected to dismiss the plan which Creditor objected to, the court sustains the 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 the Chapter 13 Plan filed by the Kevin Thompson having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Confirmation is sustained, Debtor having filed an amended plan, and the Chapter 13 Plan filed on February 10, 2016 is not confirmed.

14. [16-20250-E-13](#) INES/ANGELINA MORENO  
DBL-1 Bruce Dwiggin

MOTION TO VALUE COLLATERAL OF  
BANK OF STOCKTON  
4-6-16 [[20](#)]

**Final Ruling: No appearance at the May 10, 2016 hearing is required.**  
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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, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 34 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 Bank of Stockton ("Creditor") is granted and the secured claim is determined to have a value of \$7,398.00.**

The Motion filed by Ines Mareno Jr. and Angelina Renee Moreno ("Debtor") to value the secured claim of Bank of Stockton ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Expedition ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,398.00 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 February 1, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,862.57. 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 \$7,398.00. 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 Ines Mareno Jr. and Angelina Renee Moreno ("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 Bank of Stockton ("Creditor") secured by an asset described as 2008 Ford Expedition ("Vehicle") is determined to be a secured claim in the amount of \$7,398.00, 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 \$7,398.00 and is encumbered by liens securing claims which exceed the value of the asset.

15. [15-29454-E-13](#) MICHAEL/KAYLENE YANDEL AMENDED MOTION TO CONFIRM PLAN  
SJS-3 Matthew DeCaminada 4-4-16 [60]

**Final Ruling:** No appearance at the May 10, 2016 hearing is required.  
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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 29, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 29, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

16. [15-20360-E-13](#) JILL COLLINS MOTION TO MODIFY PLAN  
VJS-1 Vanessa Sundin 3-24-16 [[29](#)]

**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.**

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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, 2016. By the court's calculation, 47 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.**

Jill Collins ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 24, 2016. Dckt. 29.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 26, 2016. Dckt. 38. The Trustee opposes confirmation on the following grounds:

1. The Debtor is \$94.09 delinquent under the proposed plan.
2. The Trustee questions the reported reduced income of non-filing spouse. The Declaration indicates that the Debtor and non-filing spouse lost income due to the Debtor closing the storefront for her business. According to Schedule I, Debtor lists the non-filing spouse's gross income as \$8,188.00. However, the amended Schedule I reflects the non-filing spouse gross income of \$7,250.62, a reduction of \$837.38 that Debtor not only failed to explain but also failed to provide the Trustee and the court with proof of such reduction.

#### **DEBTOR'S RESPONSE**

The Debtor filed a response to the Trustee's opposition on May 2, 2106. Dckt. 40. The Debtor responds first by stating that the Debtor mailed a cashier's check to the Trustee on May 2, 2016 in the amount of \$94.09.

Next, the Debtor restates that Debtor's non-filing spouse's income has been reduced from \$8,188.00 to \$7,250.62 since Debtor's bankruptcy was initiated and Debtor's and Debtor's non-filing spouse's joint income has been reduced by \$6,974.38. The Debtor states that the Sundin Law Office provided the Trustee with evidence of this reduction in income in the form of Debtor's non-filing spouse's W-2 for 2015 and pay stubs for 2016 on March 25, 2016 and May 2, 2016.

#### **DISCUSSION**

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

Unfortunately, the Debtor has failed to provide authenticated and admissible evidence as to the curing of the arrearage. See Local Bankr. R. 9014-1(d). The Debtor does not provide a declaration stating under the penalty of perjury that the Debtor mailed the cashier's check nor did the Debtor provide an authenticated copy of the cashier's check. While the court is not suggesting that the Debtor is falsely stating she mailed the cashier's check, the court does require properly authenticated and admitted statements and exhibits to support the Debtor's assertion. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, the court concurs that the Debtor does not provide sufficient information or justification as to why the Debtor's non-filing spouse's income dropped. While the Debtor in the declaration does provide generalized reasons, such as her storefront closing, the Debtor does not provide any evidence as to why the Debtor's non-filing spouse's income was reduced. The Debtor in the response states that the Debtor's attorney emailed the Trustee supplemental information. However, the court does not have any of that evidence or declarations providing the justification for the reduction. Without that information, the court cannot determine if the Debtor has provided all necessary and accurate financial statements which in turn makes it impossible for the court to determine the viability and feasibility of the proposed plan.

The court also notes that while Debtor purports to have suffered a loss

of gross income from \$14,335.00 (Schedule I, Dckt. 10) to \$7,350.62 (Supplemental Schedule I, Dckt. 36), Debtor's lifestyle and living expenses have changed very little. On Original Schedule J, excluding the expenses for Debtor's business, with the \$14,335.00 in income, Debtor stated having \$4,693.00 in monthly expenses. Dckt. 10. This included using community assets to pay the non-debtor spouses credit card bills in the amount of \$1,275.00 a month outside of the bankruptcy case.

For Supplemental Schedule J, having suffered a 50% loss of gross income, Debtor still reports having \$4,722.00 in monthly expenses. Debtor has reduced using the community property to pay "only" \$960.00 of the non-debtor's credit card bills a month. Dckt. 36.

In looking at the "reasonable and necessary expenses" listed on Supplemental Schedule J, such numbers do not look reasonable. This raises a serious issue of feasibility based on the changed financial information. For example, these two adult Debtors purport to have only \$300.00 a month in expenses for food and housekeeping supplies. Deducting \$50.00 for housekeeping supplies, that leaves only \$125.00 a month for food per person. Assuming a 30 day month and three meals a day (no snacks or extras), that is only \$1.39 per meal for food.

Debtor also states that for personal care products, Debtor and the non-filing spouse have \$0.00 per month. For clothing, Debtor and non-debtor spouse will spend only \$10.00 a month each for clothing. For medical expenses, Debtor and non-debtor spouse will have only \$17.50 in such out of pocket expenses. For home maintenance and repair, Debtor states the expense is \$0.00 per month. And this non-existent or minimal expenses will be sustained for the five years of the plan.

Such contentions are not credible, and are in the nature of what the court has called "liar declarations." Debtors so desperate to confirm a plan, they make up whatever expense number they need to so as to generate the "correct" bottom line fictitious monthly net income number to fund a plan. Here, the fictitious number is generated to pay Debtor's counsel and make it appear that Debtor can pay \$3,000.00 in delinquent state taxes, while maintaining a mortgage payment which is, before property taxes and insurance, 42% of Debtor's monthly take-home income. See Supplemental Schedules I (Line 12) and J (Line 4). Dckt. 36. When property taxes, insurance, and homeowner's dues, which total \$552.00, are included, the housing expense (for which there are no repair or maintenance expenses provided for on Supplemental Schedule J) balloons to 54% of Debtor's take-home income of \$4,816.36.

Debtor's finances and disclosed information raise more questions than answers provided.

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.



18. [12-30588-E-13](#) DIANE/OSVALDO MALDONADO MOTION TO MODIFY PLAN  
ET-11 Matthew Eason 3-14-16 [[226](#)]

**Final Ruling:** No appearance at the May 10, 2016 hearing is required.  
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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 14, 2016. By the court's calculation, 57 days' notice was provided. 35 days' notice is required.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 14, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed



continued to 3:00 p.m. on May 24, 2016 to be heard in  
conjunction with the Motion to Value.