

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**May 24, 2016 at 2:00 P.M.**

---

1. 15-28300-C-13 TERESA GLESSING  
MET-1 Mary Ellen Terranella OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 1  
4-3-16 [37]

**Also #2**

\*\*\*\*

**Final Ruling: No appearance at the May 24, 2016 hearing is required.**

---

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 3, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (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(b) (1)(A) 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 Objection to Proof of Claim Number 1 of Calvary SPV I, LLC is sustained and the claim is disallowed in its entirety.**

Teresa L. Glessing, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Calvary SPV I, LLC ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,648.69. Objector asserts that the documents attached to the proof of claim show that the last payment on the account was made on May 2, 2011, which is more than four years prior to the filing of the petition. Debtor objects to the claim, as the Statute of Limitations for commencing collection actions on debts of this type is four years pursuant to CCCP § 337.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

**The Chapter 13 Trustee filed a statement of nonopposition**

**Discussion**

A statute of limitations constitutes "applicable law under 11 U.S.C. § 502(b)(1). Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Calvary SPV I, LLC, Creditor filed in this case by Teresa L. Glessing, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 1 of Calvary SPV I, LLC is sustained and the claim is disallowed in its entirety.

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan exceeds the maximum time of 60 months - caused by an unsecured claim filed for \$10,183.93 by Cavalry SPV II, LLC.
2. It is uncertain whether the declaration filed by Debtor's partner is sufficient evidence to demonstrate that the partner will contribute the significant amount needed to fund the plan.
3. Debtor has failed to properly disclose assets such as itemizing household goods and furniture.
4. Debtor has failed to properly disclose expenses.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling: No appearance at the May 24, 2016 hearing is required.**

---

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Debtor, Debtor's counsel, parties requesting special notice, and Office of the United States Trustee on April 3, 2016. 28 days' notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 court's decision is to sustain the Objection.**

#### SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on June 25, 2013 (Case No. 12-38100). Debtor filed this Chapter 13 case on March 2, 2016.

#### DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 16-21304.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

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

1. The Trustee is unsure of the proposed dividend to unsecured creditors. The plan lists dividend as 45.63%, while the supporting motion (dkt. 51) states "it has also been amended to increase the amount of general unsecured claims that were allowed in 2.15 and the percentage of dividend paid thereon." According to the Trustee's records, the confirmed plan lists the dividend as 100%.

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

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

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

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

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

\*\*\*\*\*

5. 15-29405-C-13 RHONDA SIMS  
DPC-1 Ashley Amerio

CONTINUED AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-9-16 [[31](#)]

**Also #6**

\*\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 9, 2016. Fourteen days' notice is required. That requirement was met.

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.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan relies on a pending motion to value.
2. Debtor is \$4,600 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,600 is due on February 25, 2016. Debtor has paid \$0.00 into the plan to date.

**Trustee's Update**

The Trustee reports that the delinquency has been cured.

**Discussion**

The Plan relies on the Motion to Value collateral of Moad, LLC.

At that hearing on March 15, 2016, the court set the motion to value for evidentiary hearing on April 4, 2016. The parties stipulated to continue the evidentiary hearing to May 10, 2016. Dkt. 68.

The parties later stipulated to that Debtor would file an amended claim to provide for the debt owed to Moad.

Accordingly, the court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 7, 2016. Twenty-eight days' notice is required. That requirement was met.

The Objection to Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 sustain the Objection.**

Creditor Moad, LLC opposes confirmation of the Plan on the basis that:

1. The Plan fails to provide for the secured claim of Moad, LLC.
2. Debtor has not filed schedules to support her ability to make the proposed plan payment.

**Discussion**

The Plan relies on the Motion to Value collateral of Moad, LLC.

At that hearing on March 15, 2016, the court set the motion to value for evidentiary hearing on April 4, 2016. The parties stipulated to continue the evidentiary hearing to May 10, 2016. Dkt. 68.

The parties later stipulated to that Debtor would file an amended claim to provide for the debt owed to Moad.

Accordingly, the court has considered the Creditor's concerns and finds them legitimate. 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 Moad, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

\*\*\*\*\*

\*\*\*\*

**Final Ruling: No appearance at the May 24, 2016 hearing is required.**

---

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Debtor, Debtor's counsel, parties requesting special notice, and Office of the United States Trustee on April 20, 2016. 28 days' notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (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(b) (1)(A) 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 court's decision is to sustain the Objection.**

#### SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on February 16, 2016(Case No. 15-28532). Debtor filed this Chapter 13 case on March 8, 2016.

#### DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 16-21406.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. The plan exceeds the maximum time of 60 months.

**Debtor's Reply**

Debtor filed her 2014 taxes and IRS filed Amended Proof of Claim on 5-10-16 showing that the 2014 taxes were filed.

This is a 100% plan, and to date of this reply, no unsecured non-priority claims have been filed. Given that the plan will complete less than 60 months based on these numbers, all claims filed to date will be paid in full.

## **Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on April 7, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan lists the debt to the Chapter 7 Trustee as a Class 6 claim. It should rather be treated in the additional provisions of the plan as a debt to be paid directly by Debtor.
2. Trustee cannot determine if Debtor can afford the plan payments absent as accounting of the amount still owing the Chapter 7 Trustee.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

Also #12

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Avoid Judicial Lien is granted.**

A judgment was entered against the Debtor in favor of Chase Bank USA, N.A. for the sum of \$32,061.53. The abstract of judgment was recorded with Sacramento County on May 10, 2011. That lien attached to the Debtor's residential real property commonly known as 9964 Nestling Circle, Elk Grove, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$375,000.00 as of the date of the petition. The unavoidable consensual liens total \$486,000.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the

judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A MINUTE ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Chase Bank USA, N.A., Solano County Superior Court Case, Book #: 20110510, Page # 0619 recorded on May 10, 2011, with the Sacramento County Recorder, against the real property commonly known 9964 Nestling Circle, Elk Grove, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

\*\*\*\*\*

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9964 Nestling Circle, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$375,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$390,000.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$97,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely undercollateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer*

*v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 9964 Nestling Circle, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$375,000.00 and is encumbered by

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 9, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Incur Debt is granted.**

The motion seeks permission to refinance the first mortgage currently encumbering the Debtor's residence commonly known as 4088 Preserve Way, Rancho Cordova, California, which the principle amount is \$258,885.00, with an interest rate of 4.5% and monthly payments of \$2,013.89.

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

The Chapter 13 Trustee filed a statement of nonopposition.

Debtor is current on plan payments and the plan proposes to pay 100% of all general unsecured creditors. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Kevin Bogan, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 48.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan is not Debtor's best efforts. On Schedule J, Debtor has expenses reported that are no longer necessary.
2. It is unclear whether Debtor has the ability to fund the plan. There is not perfected lien indicating that Debtor owns her residence. Thus Debtor may not be able to continue residing there and has not budgeted moving costs and expenses.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 19, 2016. Twenty-eight days' notice is required.

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

The motion seeks permission to refinance the first mortgage currently encumbering the Debtor's residence commonly known as 4328 Winding Way Sacramento, California, which the principle amount is \$380,544.50, with an interest rate of 3.5% and monthly payments of \$2,414.00.

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

The Chapter 13 Trustee filed a statement of nonopposition.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Brian James Farley and Anna Marie Marxson, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 114.

\*\*\*\*\*

**Also #17**

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. Forty-two days' notice is required. That requirement was met.

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 Motion to Confirm the Amended Plan is granted.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors have failed to file a Motion to Value Collateral of California Service Bureau -- the reason the Trustee's first objection to confirmation was sustained.

**Debtor's Reply**

Debtors have filed a motion to value that is set for hearing on May 24, 2016 at 2:00 p.m. Debtors request a continuance to that date.

**Prior**

The court continued the Motion to Confirm the Plan to May 24, 2016 at 2:00 p.m. to be heard in conjunction with the motion to value collateral.

**Discussion**

The court has granted the Motion to Confirm [see matter #17 below] thereby resolving the Trustee's objection to confirmation.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 21, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*\*

17. 15-28929-C-13 VIDAL/CONSUELO GRAGEDA  
TOG-3 Thomas Gillis

MOTION TO AVOID LIEN OF  
CALIFORNIA SERVICE BUREAU, INC.  
4-26-16 [40]

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on April 26, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of California Service Bureau, Inc. for the sum of \$78,747.07. The abstract of judgment was recorded with Sacramento County on August 6, 2015. That lien attached to the Debtor's residential real property commonly known as 1752 3rd Street, Colusa, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$117,780 as of the date of the petition. The unavoidable consensual liens total \$107,405 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A MINUTE ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of  
California Service Bureau, Inc., Sacramento  
County Superior Court Case No. CV24076,  
Document No. 2015-0002603, recorded on August  
6, 2015, with the Sacramento County Recorder,  
against the real property commonly known 1752  
3rd Street, Colusa, California, is avoided  
pursuant to 11 U.S.C. § 522(f)(1), subject to  
the provisions of 11 U.S.C. § 349 if this  
bankruptcy case is dismissed.

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

---

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

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 April 27, 2016. Twenty-eight days notice is required. That requirement was met.

The Objection to Confirmation 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 court's decision is to continue the hearing to June 14, 2016 at 2:00 p.m.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan exceeds 60 months.
2. The plan fails the liquidation analysis.
3. The debtor cannot make the plan payments as he failed to list an expense for auto insurance.
4. The plan is not the debtor's best efforts as it proposes a 0% dividend to unsecured creditors.
5. Debtor is \$2,462.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,462.00 is due on May 25, 2016. Debtor has paid \$0.00 into the plan to date.

**Debtor's Amended Opposition**

Debtor requests a continuance to await the filing of the claim of the mortgage creditor, to allow debtor to be specific as to the amount owed, and to calculate a new plan based upon the actual claim.

## **Discussion**

The court's decision is to continue the hearing to June 14, 2016 at 2:00 p.m.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to June 14, 2016 at 2:00 p.m.

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

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

1. The plan reduces the minimum percentage to unsecured creditors from 5% to 0%.
2. Schedules were filed using outdated forms.

**Debtor's Reply**

The trustee does not oppose the modified plan percentage as a minimum so long as Debtor is not attempting to limit the prior disbursements. Debtor is not attempting to do so. Debtor has updated the Schedules using the current forms.

**Discussion**

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

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

1. The plan is dependent on a loan modification. **The court issued its order granting the motion for authorization to modify the loan. Order, Dckt. 56.**
2. Debtor misstates the amount paid to the Trustee thus far. While the Plan states that \$65,100.00 has been paid into the Plan, for the period September 2013 through March 2016, **the total payments in the plan are \$62,150.00.**
3. The plan also contains a typographical error, stating that the remaining monthly payments shall be \$5,000.00 a month, when it appears that they are to be only \$500.00 a month.

## **Prior**

At the hearing held on May 3, 2016, the court continued the hearing to 2:00 p.m. on May 24, 2016 and ordered that Eric W. Vandermey, counsel for Debtor, shall appear at the hearing to: (1) advise the court why no appearance was made for the Debtor at the May 3, 2016, and (2) whether the proposed corrections are accepted as amendments to the Plan.

## **Discussion**

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

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

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

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

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

\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 21, 2016. Twenty-eight days' notice is required.

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

The motion seeks permission to purchase a 2012 Hyundai Santa Fe LTD or a vehicle of similar make and model, which the total purchase price is not to exceed \$20,922.77, with monthly payments of \$550.00.

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

The Chapter 13 Trustee filed a statement of nonopposition.

Debtors contend that they need the vehicle to commute to work. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Alan and Shirley Williams, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B+, Dckt. 116.

\*\*\*\*\*

22. 12-40445-C-13 BENANCIO DELOSSANTOS  
TOG-1 Thomas Gillis  
DEBTOR DISMISSED: 04/26/2016

MOTION TO VACATE DISMISSAL OF  
CASE  
5-3-16 [73]

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 3, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Vacate Dismissal 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 deny the Motion to Vacate Dismissal.**

Debtor moves the court for an order to vacate the dismissal entered on April 26, 2016 (dkt. 70) due to excusable neglect. The court granted the Chapter 13 Trustee's Motion to Dismiss for failure to make Plan Payments (Doc. No. 62). Said motion stated that:

"Debtor failed to provide for the post petition priority claim of the EDD in the amount of \$485.38 and is delinquent in plan payments in the amount of \$1,140 and another payment of \$380 will be due on March 15, 2016."

On April 16, 2016, debtor sent a Money Order to the EDD in the amount of \$485.38 to satisfy the unaccounted for claim of the EDD (see Exhibit B and declaration of Debtor).

#### **Trustee's Opposition**

The Trustee states that the EDD has not withdrawn or amended Claim #10. Thus the claim remains as Class 5 Priority not provided for by the Debtor's plan.

### **Creditor's Limited Opposition**

The unlisted creditor in this case, Jose I. Santos, pursuant to adversary proceeding case #16-2049-C, makes this appearance for the first time as the debtor, Benancio De Los Santos (hereinafter "Debtor"), failed to list the creditor as a claimant; This only came to the attention of the creditor after Debtor began post-petition collection of a unlisted claim alleged to still be owing to Debtor by the creditor.

In this instance, the creditor has no opposition to this Motion to Vacate Dismissal so that the underlying Adversary Proceeding may proceed forward.

### **Legal Standard**

Rule 60(b)

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

## **Discussion**

As the Trustee points out, the EDD has not withdrawn or amended Claim #10. Thus the claim remains as Class 5 Priority not provided for by the Debtor's plan and the reason for dismissal of stands unresolved.

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 Vacate Dismissal 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 to Vacate Dismissal is denied.

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors proof of service re this Motion was signed on April 6, 2016 but was entered into the record on April 21, 2016. This violates Local Bankruptcy Rule 9014-1(e)(2) no more than three days after the related documents are filed.

**Debtor's Reply**

FRCP 5(d) requires service "within a reasonable time after service." This simple innocent oversight did not prejudice interested parties.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

**Tentative Ruling:** The Motion to Withdraw as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 1007(b)(2). 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).

---

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 parties to the adversary proceedings, and Office of the United States Trustee on April 25, 2016. 28 days' notice is required. This requirement was met.

**The court's decision is to grant the Motion to Withdraw as Attorney.**

Peter G. Macaluso, attorney of record for Debtors Diane and Michael Malcolm, filed a Motion to Withdraw as Attorney in this Chapter 13 bankruptcy. Movant states the following reasons for the motion: Since filing, Debtors have been uncooperative and often unresponsive to counsel's requests for information, causing delay in confirmation and causing unreasonable delay prejudicial to creditors. The § 341 meeting was held 03/24/16, to which Debtors appears late and counsel had to return to court to appear. The meeting was continued to 04/21/16. Counsel's staff mailed all documents to Debtors on 04/01/16 for their review and asked to have them returned by 04/11/16. No communication was received from Debtors. On 03/30/16, Trustee filed an objection to confirmation, which was based on among other things failure to produce tax return, which was not given to counsel despite numerous requests. On 04/05/16, Trustee filed a motion to dismiss case based on delinquency and failure to produce tax returns. To date, Debtors have made no payments to Chapter 13 Trustee. Debtors have made clear to the court and counsel that they no longer wish to be represented by counsel on numerous occasions. Counsel understands that such withdrawal is governed by Rules of Professional Conduct. Counsel received \$1,000 for fees prior to filing this case. No additional fees have been paid to counsel thus far.

Counsel provides that Debtor is an attorney herself, Diane L. Malcolm, State Bar NO. 127450, active since April 20, 1987. Counsel believes Debtor will be able to maintain the case while choosing new counsel.

#### **RELEVANT LEGAL AUTHORITY**

District Court Rule 182(d) governs the withdrawal of counsel. Local Bankr. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. Cal. L.R. 182(d). The attorney must provide an affidavit stating the current or last

known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. 2010). FN.1.

-----  
FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.  
-----

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 21 Cal. App. 4th 904 (Cal. App. 1st Dist. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 915.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e).

The termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdrawal from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. Cal. R. Prof'l. Conduct 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person, (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act, and (3) has a mental or physical condition which makes Counsel's continued employment unreasonably difficult. Cal. R. Prof'l. Conduct 3-700(B).

Permissive Withdrawal is limited to when to situations where:

(1) Client:

- (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
- (b) seeks to pursue an illegal course of conduct, or
- (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

- (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
  - (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
  - (f) breaches an agreement or obligation to the member as to expenses or fees.
- (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or
  - (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or
  - (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or
  - (5) The client knowingly and freely assents to termination of the employment; or
  - (6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Cal. R. Prof'l. Conduct 3-700(C).

## **DISCUSSION**

Movant provides the reason for his Motion to Withdraw as Attorney such as the client knowingly and freely assenting to termination of the employment.

Movant discusses that Diane L. Malcolm is an attorney and will be able to represent herself as Debtors seek new counsel, countering any prejudice his withdrawal as a counsel will or will not cause to the other litigants or harm it might or might not have on administration justice. Neither the Trustee, Debtor or any other relevant party has filed an opposition to this Local Bankruptcy Rule 9014-1(f)(1) motion. This is sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Debtor's Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Withdraw as Attorney is granted.

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2016. 14 days' notice is required. That requirement was met.

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

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

The Motion to Approve Loan Modification filed by Sharon Elizabeth Washburn ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,119.39 a month to \$1,285.90 a month. The interest rate on the loan will not change, the principle amount owed will not change, arrearages if any will be cured. The terms of the loan will change from a full term Adjustable Rate Mortgage to a Mortgage 2% per annum for 5 years, the 3% for 1 year, then 3.625% for the remainder of the life of the loan (40 years).

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

This post-petition financing is consistent with the Chapter 13 Plan in

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

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

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

The Motion to Approve the Loan Modification filed by Debtor Sharon Elizabeth Washburn having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Sharon Elizabeth Washburn ("Debtor") to amend the terms of the loan with Nationstar Mortgage, which is secured by the real property commonly known as 21 Casa Linda Drive, Woodland, California, on such terms as stated in the Modification Agreement filed as Exhibit Dckt. 46 in support of the Motion, Dckt. 46.

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. Forty-two days' notice is required. That requirement was met.

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 continue the Motion to Confirm the Plan to June 28, 2016 at 2:00 p.m.**

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

1. Debtors did not appear at the first meeting of creditors on April 28, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The next meeting was continued to 05/26/16.
2. Debtor is \$925 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$925 is due May 25, 2016. The case was filed on March 4, 2016, and Debtor has paid \$0 into the plan to date.

The court agrees that continuing the instant motion is appropriate in order to give Debtors an opportunity to appear at the continued meeting.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to June 28, 2016 at 2:00 p.m.

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. Forty-two days' notice is required. That requirement was met.

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.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 6, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

**CHAPTER 13 TRUSTEE OPPOSITION**

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

1. First US Credit Union filed a claim for pre-petition arrears in the amount of \$13,658.34, Claim #4, which is provided for in the plan in class 1. The plan lists the amount of arrears at \$33,000. Creditor also filed a Notice of Post-Petition mortgage fees, expenses and charges on January 28, 2016 in the amount of \$15,439.33 filed as a supplement to claim #4. The plan fails to provide for the supplemental claim in the amount of \$15,439.33.
2. Debtor's plan proposes "Sale of parcels of undeveloped land." Debtor gives no specifics of sale, such as when the sale will occur, the sale price, and how much will be paid into the plan from the sale.
3. Trustee's Objection to Confirmation was heard and sustained on November 17, 2015. The amended plan fails to address objections raised:
  - a. The plan is not Debtor's best efforts as Debtor has failed to propose to pay his income tax refund into the plan. Debtor

received a tax refund of \$5,332 for his 2014 taxes. Debtor appears over the median income and proposes plan payments of \$200 for 4 months, \$705 for 2 months, \$900 for 54 months with a 0% dividend to unsecured creditors.

- b. The plan fails the liquidation analysis as the Debtor's non-exempt assets total \$5,577 and Debtor is proposing a 0% dividend to unsecured creditors.

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

Creditor, First US Community Credit Union, opposes the plan on the basis that:

1. The Plan provides for four payments of \$200 each, which does not even cover the Monthly Contract Installment Amount of \$300 proposed to be paid to First U.S. Thus, First U.S.'s claim is being impermissibly impaired. This also suggests that the Plan is not feasible.
2. The proposed Arrearage Dividend of \$400 is insufficient to pay First U.S.'s arrears, which total not less than \$33,000. If the Debtor pays \$400 for 56 months as proposed, that would total just \$22,400, leaving a deficit of \$10,600. The suggestion that the Debtor may sell certain real property parcels, which proceeds "may" be used to pay off the arrears to First US, is both non-committal and highly speculative in nature. See Motion to Confirm, Dckt. No. 154. This approach also suggests that the Plan is not feasible.
3. The Plan will not be feasible once the Debtor's payments change to include principal and interest in July 2017 (the payments currently are interest-only). In July 2017, the Monthly Contract Installment Amount will increase to approximately \$793.44 per month, which is nearly \$500 more than the current amount. The Debtor's representation that he will make a second bedroom "usable by that time for acquiring a roommate," and that he estimates that he "should be able to net \$500 more at that time if necessary," is once again both non-committal and highly speculative in nature. *Id.* Again, this suggests that the Plan is not feasible.
4. This is Debtor's 5th attempt to confirm a plan over the course of 2 bankruptcies, pending for a total of 15 of the last 19 months. Creditor requests court deny any more time for Debtor to propose a new plan.

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

Debtor responds to Trustee's opposition as follows:

1. Class 1 arrears were adjusted to calculate the pre and post petition arrears and will disburse to those categories.
2. Trustee objects to the plan because sale of parcels do not give enough detailed information regarding the sale of the land. However sale of parcels are not essential to the confirmation of the plan, merely a possible event that would accelerate the plan. The debtor has already proposed a step up sufficient to accommodate the increased mortgage payment the sale of the property is only as a contingent back up plan should he need to take further time to find a roommate at the time of

the step up.

3. Debtor explains with regard to 2014 tax return that the tax refund was already accounted for in the bank accounts disclosed in schedule J.
4. The newly updated means test validates that the excess income on the original means test was due to the income that may have been created with a successful lien strip. However with the lien still remaining and arrears being calculated, the disposable income on the means test was not an adequate measure and has been corrected in the amended means test filed May 10, 2016.

## **CHAPTER 13 TRUSTEE'S RESPONSE**

Chapter 13 Trustee has filed a response to Debtor's reply to Chapter 13 Trustee's opposition:

1. Trustee has reviewed Debtor's reply as to the issue of the post petition arrears mortgage claim of First US Community Credit Union. Trustee objected that the post petition mortgage arrears claim of Creditor is not provided for in the plan as Class 1. Debtor's response was that "the class 1 arrears was adjusted to adequately calculate the pre and post petition arrears and will disburse to those catagories [sic]". While Trustee appreciates that Debtor's counsel intends for the amount of arrears to include both pre and post petition arrears, that the pre petition arrears claimed are \$13,658.34 and that the post-petition arrears claim in the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed 01/28/16 totals \$15,439.33, the Trustee would appreciate if counsel in the future would clearly label arrears as post-petition in the plan so as to avoid future objections.

The plan proposes to pay class 1 mortgage arrears in the amount of \$33,000. however there are 2 separate claims that have been filed by First US Community Credit Union in the amounts of \$13,658.34 and \$15,439.33. The plan does not specify what portion in the additional provisions that this amount will be paid towards the post-petition arrears and what portion will be paid towards the pre-petition arrears. Trustee agrees with Creditor's objections that the monthly payment called for is not sufficient to pay the arrears.

2. Debtor's plan does not address best efforts and liquidation issues.
  - a. Best efforts. Debtor received a tax refund in 2014 in the amount of \$5,332. Debtor has failed to propose to pay any future tax refunds into the plan. The Debtor filed an amended means test on May 10, 2016, which added an \$800 deduction for First US Credit Union's second deed of trust. which Debtor is proposing to pay in class 1. Based on Debtor's calculations, the projected disposable income totals \$14,07 for 60 months, which totals \$844.20 owed to unsecured creditors. Based on Trustee's calculations, line 45 should be \$258.72 for 60 months, which totals \$15,523.20 owed to unsecured creditors. Turstee has revised the following lines:
    - i. Line 22: Additional Health Care Expenses was \$0, now \$140. This amount does not appear to be on schedules I and J and no explanation provided as ot why this amount was added

when it was initially \$0. The Trustee adds this amount back into line 45.

- ii. Line 25: Health Insurance was \$104.90, now \$175. However according to amended schedule J, Debtor pays \$12.50, therefore Trustee added \$12,50 back into line 45.
  - iii. Line 36: Projected Monthly Chapter 13 Plan payment. Debtor uses a plan payment of \$2,850 however Debtor's plan payments are \$200 for 4 months, \$705 for 2 months, then \$900 for 54 months, with an average monthly payment of \$846.83. Using the average payment, the Debtor is entitled to a deduction of only \$38.95. Trustee added \$92.15 back into line 45.
- b. Liquidation. Debtor amended schedule A on May 10, 2016 and changed the value of the unimproved vacant lot on 2695 Ft. Churchill Road, Silver Springs, NV from \$14,400 to \$9000. Debtor's reply states that "We have attached the statement of Court Authorized Broker who has given an opinion of the value on that parcel with previously believed equity." The Trustee has searched the record and cannot find such statement. The Debtor's non-exempt equity without considering the vacant lot is \$724.00 from the Bank of America account #0990, which is valued at \$925.52 and \$201.10 has been exempt on schedule C, leaving \$724 non-exempt, and Debtor is proposing a 0% dividend to unsecured creditors.

## DISCUSSION

Chapter 13 Trustee and Creditor have identified several glaring deficiencies present in Debtor's proposed plan, as well as Debtor's seeming inability to confirm a plan. First, not only does Debtor not correctly label the pre and post petition arrears, and the monthly payments called for in the plan are insufficient to rectify the arrearages pointed out by both Creditor and Trustee. Next, Debtor has not satisfied the court that he is able to make the payments called for by the plan or comply with the plan. Debtor merely states in his response to opposition that the sale of vacant parcels proposed by the plan is not essential to the confirmation of the plan. However, the court is not convinced. The plan does not appear to be Debtor's best efforts, and the court is not satisfied that Debtor satisfies liquidation analysis. This being Debtor's 5th attempt to confirm a plan over the course of 2 bankruptcies, pending for a total of 15 of the last 19 months, the court will not permit Debtor another opportunity to present another plan, and will dismiss the case. Debtor is causing unreasonable delay prejudicial to creditors.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

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

\*\*\*\*\*

Also #29

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 16, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is causing unreasonable delay in filing a new plan and obtaining confirmation. The case was filed on September 15, 2015, and Debtor has yet to confirm a plan. Debtor's motion to confirm plan was heard and denied on March 15, 2016 and Debtor has failed to amend the plan and set a confirmation hearing date.

The last motion to confirm and amended plan had been filed January 19, 2016. Trustee filed and served an opposition February 16, 2016, and Creditor First U.S. Community Bank filed and served opposition February 23, 2016. Debtor filed a response March 7, 2016 which acknowledged an amended plan needed to be filed. This case was filed September 15, 2015 and 6 months have elapsed without confirmation of a plan.

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

Debtor responds stating a new plan and motion to confirm were filed April 5, 2016 and will be heard May 24, 2016.

## **TRUSTEE'S STATUS REPORT**

Trustee updates the court, providing a status report. Trustee states that Debtor is causing unreasonable delay to creditors. This is Debtor's second bankruptcy filing and there has been no confirmed plan. This is Debtor's 5th attempt to confirm a plan over the course of two bankruptcies. Debtor filed his first chapter 13 bankruptcy on October 22, 2014 and was unable to confirm a plan, case 14-30438, which was dismissed on May 11, 2015. Debtor filed a second amended plan in this case April 5, 2016 and a motion to confirm plan, which is set for hearing on May 24, 2016. Trustee has reviewed the motion and will be filing an opposition as the Debtor has failed to address the issues raised in both Trustee's objection to confirmation and trustee's objection to Debtor's motion to confirm first amended plan. Debtor's plan does not address the following issues:

1. The plan is not Debtor's best efforts as Debtor has failed to propose to pay his income tax refund into the plan. Debtor received a tax refund of \$5,332 for his 2014 taxes.
2. The plan fails the liquidation analysis as the Debtor's non-exempt assets total \$5,577 and Debtor is proposing a 0% dividend to unsecured creditors.

## **CREDITOR'S RESPONSE**

Creditor First U.S. Community Credit Union files a statement in support of Trustee's Motion to Dismiss. Creditor echos the sentiments of Trustee, pointing out that Debtor is causing unreasonable delay prejudicial to creditors as this is Debtor's new plan the fifth plan over the course of two bankruptcies, which is again unconfirmable.

1. The Plan provides for four payments of \$200 each, which does not even cover the Monthly Contract Installment Amount of \$300 proposed to be paid to First U.S. Thus, First U.S.'s claim is being impermissibly impaired. This also suggests that the Plan is not feasible.
2. The proposed Arrearage Dividend of \$400 is insufficient to pay First U.S.'s arrears, which total not less than \$33,000. If the Debtor pays \$400 for 56 months as proposed, that would total just \$22,400, leaving a deficit of \$10,600. The suggestion that the Debtor may sell certain real property parcels, which proceeds "may" be used to pay off the arrears to First US, is both non-committal and highly speculative in nature. See Motion to Confirm, Dckt. No. 154. This approach also suggests that the Plan is not feasible.
3. The Plan will not be feasible once the Debtor's payments change to include principal and interest in July 2017 (the payments currently are interest-only). In July 2017, the Monthly Contract Installment Amount will increase to approximately \$793.44 per month, which is nearly \$500 more than the current amount. The Debtor's representation that he will make a second bedroom "usable by that time for acquiring a roommate," and that he estimates that he "should be able to net \$500 more at that time if necessary," is once again both non-committal and highly speculative in nature. *Id.* Again, this suggests that the Plan is not feasible.

## **DEBTOR'S RESPONSE**

Debtor responds to Creditor's statements and Trustee's basis for objection.

First, Debtor states that Creditor improperly raises objections to confirmation that have not been addressed by this court and to which the Debtor has not had opportunity for hearing and reply. These objections are more properly raised in a motion to confirm and in a manner to give Debtor opportunity to reply. Objections to confirmation are not in and of themselves proper reasons for support in a motion to dismiss, and Creditor suggests further reasons for opposition that are speculative. Furthermore, Creditor appears to imply that filing two cases causes unreasonable delay to creditors.

Next, Debtor addresses concerns of Trustee, stating that as to the Debtor's 2014 tax return, it was clarified that the funds that existed in the bank accounts as disclosed include the refund from the 2014 taxes. Second, as to the liquidation analysis which relies on the equity Debtor has in a bare parcel, the values did not account for the cost of sale. As to the sale of that parcel, Debtor was approved to hire a real estate agent to assist in the sale of the parcel, and Debtor's valuation of the parcel was far off the mark and it is unlikely that the parcel can be sold for enough to cover the loan against it let alone pay for the cost of sale. The true value will result in 0% to unsecured creditors.

#### **APRIL 20, 2016 HEARING**

On April 20, 2016, the court continued the instant motion. The court agreed that Trustee and Creditor had a substantial basis for concern, and that it appeared that Debtor is causing unreasonable delay prejudicial to creditors. However, Debtor also raised a valid argument that these basis for objection, as they are given merely days after Debtor's amended plan and accompanying motion to confirm plan, are best argued in the context of the plan and not here in this motion to dismiss. The court continued the instant motion to take place concurrently with the hearing on the amended plan for permit time for parties to formulate their analysis and basis for objection.

#### **DISCUSSION**

The court having agreed with Chapter 13 trustee and Creditor and a number of deficiencies remain in the plan, has not confirmed the proposed plan. Debtor appears to be causing unreasonable delay prejudicial to creditors, and the court will dismiss the case.

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

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

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

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

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. Forty-two days' notice is required. That requirement was met.

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 continue the hearing on the Motion to Confirm to July 12, 2016 at 2:00 p.m.**

Chapter 13 Trustee, David Cusick, opposes the instant motion on the basis that:

1. Debtor is \$1,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,530 is due February 25, 2015. The case was filed on November 3, 2015, and Debtor has paid \$1,530 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

At the hearing, the Trustee confirmed that Debtor had cured the delinquency.

2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Long Beach Mortgage. The motion was set for hearing on

January 26, 2016, and was continued to March 22, 2016.

#### **DEBTORS' RESPONSE**

Debtors respond, stating that they have cured the delinquency, and the Motion to Value was continued to March 22, 2016 at 2:00 p.m.

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

**Brio Ventures, LLC** opposes confirmation of the Plan on the basis that Movant holds a junior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b) (2)'s anti-modification provision.

#### **FEBRUARY 9, 2016 HEARING**

At the hearing on February 9, 2016, the court continued the matter so that it could be decided on the same hearing date as the Motion to Value Collateral of Brio Ventures, LLC upon which the plan relies. Subsequently, Brio Ventures, LLC filed an opposition to the Motion to Confirm Plan.

The Parties concurred with continuing the hearing on this Motion to after the May 3, 2016 Evidentiary Hearing Scheduling Conference on the motion to value to afford the Parties to consider the evidence and document a settlement, if any, on the motion to value and corresponding amendments to the Plan which would then allow this Plan to be confirmed.

#### **DISCUSSION**

On May 3, 2016, the court set an evidentiary hearing to be heard before the Honorable David E. Russell on July 8, 2016 at 10:00 a.m. to resolve the underlying basis for this objection, a Motion to Value Collateral, Dckt. Control No. PGM-2. The court will continue the instant motion to confirm plan to July 12, 2016 at 2:00 p.m.

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 hearing on the Motion to Confirm is continued to July 12, 2016 at 2:00 p.m.

\*\*\*\*\*

31. 16-22266-C-13 MICHAEL AIRINGTON AND  
DBJ-1 SUSAN BOLDI  
Douglas Jacobs MOTION TO VALUE COLLATERAL OF  
MAIN STREET ASSET SOLUTIONS  
4-25-16 [14]

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 24, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 10791 S. Ponderosa Way, Rough and Ready, California. The Debtors seeks to value the property at a fair market value of \$449,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$452,000.00. Main Street Asset Solution's second deed of trust secures a loan with a balance of approximately \$271,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely undercollateralized.

**CREDITOR'S OPPOSITION**

Main Street Asset Solutions, Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to

\$572,000.00 as of March 31, 2016. The remaining balance on the loan due and owing is \$271,387.96. Creditor here opposes Debtors' valuation of the property, and offer the declaration of Real Estate Broker, Betty Pendergraft a license real estate broker.

#### **DEBTORS' RESPONSE**

Debtors respond, asserting they have obtained the a Broker's Opinion of Value from Cheryl Rellstab, a license Real Estate Broker, asserting that the value of the property was \$449,000 at the filing of the chapter 13 bankruptcy filing and therefore worth less than the amount owed by Debtors.

#### **DISCUSSION**

Noting the varying valuations proffered by both parties, both based upon the opinions of values asserted the parties, the court will set this matter for evidentiary hearing on [DATE] at [TIME].

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 Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is set for evidentiary hearing on [DATE] at [TIME].

\*\*\*\*\*

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 23, 2016. Fourteen days' notice is required. This requirement was met.

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

**The court's decision is to overrule the Objection and confirm the plan.**

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule I lists "Rent from Hand in Hand Fou [sic]" of \$500 per month. Debtor testified at the First Meeting of Creditors that Hand in Hand is a non-profit corporation that Debtor owns. Schedule I does not disclose any other business income from this source. Debtor has not filed a business income and expense attachment to Schedule I, provided any profit or loss statements, or any other business or financial information to Trustee such as IRS form for tax-exempt organizations. The Trustee does not have sufficient information to determine if Debtor can make plan payments or if Debtor could possibly pay more to unsecured creditors.

On April 12, 2016, Chapter 13 Trustee filed an updated status with the court. The Trustee's records show that on March 28, 2016, Debtor's counsel emailed Trustee attaching copies of profit and loss reports dates August 2015, September 2015, October 2015, December 2015, and January 2015. These

reports do not reveal the name of the business entity and are not signed. A review shows that the average monthly income totals \$5,066.12 and average monthly expenses totaling \$5,325, a net loss of (\$258.88). A search on the California Secretary of State website returns a search for Hand & Hand Foundation, Inc., showing Harris Walker as the agent for service of process, and states that the status of business is "FTB forfeited." A search on the Nevada Secretary of State website shows that Hand & Hand Foundation, Inc., with Harris Walker, Jr. as the registered agent. The detail indicates that the status of the business is "revoked."

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

Debtor responds to the objection, stating that Debtor "MAY not be able to make his plan payments." Trustee expresses concern that he may not receive the rent money to pay his plan payments. Debtor provided proof that he has received rent from Hand & Hand, a non profit organization. Debtor's declaration, Dckt. 24, provides that the non-profit is an organization that pays Debtor rent of \$500 per month for over a year, and is expected to continue to do so for the rest of Debtor's plan terms. In the last six months, Hand in Hand ran a small deficit of less than \$50 a month. Debtor is working to expand the services offered by partnering with local businesses and expects net income to increase. Hand and Hand is not required to file tax returns, and Debtor did file an online statement with the IRS for the 2014 and 2015 tax years stating no return was required.

#### **APRIL 26, 2016**

At the hearing on April 26, 2016, the court continued the instant motion on order to give Trustee additional time for the supplemental profit and loss statement by May 10, 2016, and to allow Trustee time to either withdraw the objection or explain why the objection remains.

#### **CHAPTER 13 TRUSTEE SUPPLEMENTAL OBJECTION**

On May 11, 2016, Chapter 13 Trustee state that Debtor provided the update profit and loss statement, and that Debtor is current under the plan. Trustee no longer opposes confirmation of the plan.

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan filed February 5, 2016 is confirmed.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

Chapter 13 Trustee opposes confirmation of the plan on the following basis:

1. Debtor's plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. It appears that the tax deductions reported on schedule J may be unnecessary. Debtor deducts on schedule J \$1,250 per month for self-employment income tax. Debtor also deducts \$650 per month for past due tax payment. Debtor fails to provide any documentation supporting the payments of \$650 per month to tax authorities, no evidence of need to save \$1,250 per month for self-employment tax or bank statements showing the setting aside and saving of tax funds. Debtors also offer no evidence of past due tax liabilities owed or the balance owed by non-filing spouse.
  - a. Debtor files as exhibit L and exhibit M 2013 and 2012 tax returns. The 2013 return shows that Debtors overpaid their federal taxes by \$3,732 and their state taxes by \$781. Debtor provides a second copy of the 2013 tax return for an unknown reason. Th 2012 return shows debtors overpaid federal taxes by \$7,573. No state return is provided. There was a federal overpayment of \$1,615 and state overpayment of \$436.

- b. Trustee questions what if any balance is owed on past tax debt considering after filing 2012, 2013, and 2014 returns the IRS would have kept a combined about of \$12,920 in refund the Debtor would have otherwise been entitled to and FTB would have kept at least \$1217 for the same reason.
- 2. In section 6.01 - 6.02, Debtor appears to be reducing the previous term of 60 months to a plan term ending in August 2016 however the plan is not clearly designated. It may be 44 months.
- 3. Debtor's motion to approve loan modification was heard and denied on February 25, 2014 and denied, PJR-9. Debtor's plan proposes to pay ongoing mortgage in class 4. Debtor currently has a pending adversary proceeding attempting to get the mortgage lender to enter a loan modification. Until Debtor gets a loan modification, she has no proposal to cure the arrears, which are owing of \$47,791.
- 4. Debtor's plan may not comply with 11 U.S.C. § 1325(a)(1). Debtor's plan proposes to pay interest on arrears to Legacy Lan HOA in Class 1. However this creditor may not be entitled to interest unless the not provides for interest on late payments or non-applicable bankruptcy law requires it.
- 5. Trustee is unable to determine whether Debtor is able to make plan payments under 11 U.S.C. § 1325(a)(6). No income statements or profit/loss statements, paystubs, corporate tax returns, etc., have been provided to Trustee.
- 6. Debtor has not provided copies of the corporate tax returns to show what Debtor's non-filing spouse's corporation has earned in 2013, 2014, or 2015.
- 7. Debtor's plan was not filed in good faith. In section 6.04 of the plan, Debtor indicates that prior to reconverting to chapter 13, Debtor paid off her 07 GMC Yukon and sold the property. A representative of the Trustee's office has searched the court docket and cannot find authorization from the court authorizing the sale. Debtor has manipulated the bankruptcy process for her benefit, converting the case to sell property of th estate without any payments to chapter 7 trustee or the estate.

The court notes the Trustee's concerns, and agrees that there are glaring deficiencies in not only the plan, but Debtor's ability to comply with the plan, Debtor's failure to account for arrearages, failure to provide documents to the Trustee, and Debtor's sale of a vehicle without any accountability from the court. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

Also #35

\*\*\*\*

**Tentative Ruling:** The Objection to 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.**

---

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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-responsing parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 2 is overruled as moot, and the claim is allowed as amended on April 15, 2016 as a priority tax in the amount of \$4,787.78 and general unsecured in the amount of \$21,537.39.**

Debtor Ka May Kha, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be a priority claim in the amount of \$12,400.63. Objector asserts that the IRS claim shows Debtor's 2011 federal income tax and 2014 federal income tax return were not filed, and thus owes a priority claim of \$12,400.63. Debtor avers that her 2011 and 2014 federal income tax returns were filed, and submits signed, redacted copies of the 2011 and 2014 federal income tax returns filed concurrently as Exhibit B and C. Debtor alleges she was to receive a refund on the 2011 federal income tax return in the amount of \$4,760. Debtor alleges she is to receive a refund on the 2014 federal income tax return in the amount of \$3,131. Debtor thus requests this court enter an order modifying the proof of claim of the IRS at \$0.00

secured and \$0 priority, and \$21,537.39 general unsecured.

On April 14, 2016, Chapter 13 Trustee filed a statement of non-opposition.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

A review of Proof of Claim No. 2 reflects that on April 15, 2016, the Internal Revenue Service filed an amended proof of claim, presumably in response to the instant objection. The originally filed proof of claim (filed November 20, 2015) and the amended proof of claim (filed April 15, 2016) reflects the following.

The original 2011 federal \$4,787.78 priority tax assessment is not based upon Debtor's failure to file a 2011 tax return, but based upon "UNASSESSED TAX LIABILITY ESTIMATED BY EXAMINATION." Proof of Claim No. 2, November 20, 2015. Debtor here objects to the 2011 priority tax amount asserted by the IRS on the basis that Debtor did indeed file a 2011 federal income tax return, and that she was to receive a refund for tax year 2011 in the amount of \$4,760. The IRS then filed an amended proof of claim, reflecting that Debtor still owes a priority tax of \$4,787.78 based on a seemingly independent examination of Debtor's remaining tax liability for this tax year, "UNASSESSED TAX LIABILITY ESTIMATED BY EXAMINATION," not based on Debtor's failure to file a tax return for 2011. Amended Proof of Claim No. 2, April 15, 2016. While Debtor has submitted a declaration, Dckt. 46, and the submitted 2011 income tax return, Exhibit B, Dckt. 47, that \$4,760 was expected as a refund, the IRS's April 15, 2016 amended proof of claim informs the court that a subsequent tax examination has determined that Debtor is responsible for a priority tax liability of \$4,787.78. Debtor has not sufficiently presented evidence to rebut the prima facie validity of the proof of claim with regard to the 2011 \$4,787.78 priority tax liability.

The original 2014 federal \$7,612.85 priority tax assessment is to reflect the amount owed for the tax year 2014 based on Debtor's failure to file a tax return at all. "THE ABOVE LIABILITY HAS BEEN LISTED AS A POTENTIAL LIABILITY FOR THE DEBTOR BECAUSE THE RETURN HAS NOT BEEN FILED." Proof of Claim No. 2, November 20, 2015. Debtor objected to the 2014 priority tax amount by claiming and proffering proof that Debtor did indeed file a 2014 tax return filed November 23, 2015, Exhibit C, Dckt. 47. The IRS then filed an amended proof of claim reflecting that Debtor does not have a priority tax liability for 2014 taxes. The IRS's basis for 2014 priority tax liability having been based upon Debtor's failure to file a 2014 tax return, and Debtor having provided proof that a 2014 tax return was filed, the Debtor has sufficiently overcome the prima facie validity of the proof of claim with regard to the 2014 \$7,612.85 priority tax liability.

Finally, the court notes that the IRS filed the amended proof of claim subsequent to the filing of this objection, making moot

Based on the evidence before the court, the creditor's claim is overruled as moot, and the claim is allowed as amended on April 15, 2016 as a priority tax in the amount of \$4,787.78 and general unsecured in the amount of \$21,537.39.

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

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

The Objection to Claim of the Internal Revenue Service, Creditor filed in this case by Ka May Kha, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 2 of the Internal Revenue Service is overruled as moot, and the claim is allowed as amended on April 15, 2016 as a priority tax in the amount of \$4,787.78 and general unsecured in the amount of \$21,537.39..

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.**

Chapter 13 Trustee opposes confirmation on the bases that:

1. Debtor filed an objection to claim of the Internal Revenue Service, proof of claim no. 2. The IRS filed an amended claim on April 15, 2016. This amendment indicates a revised priority debt of \$4,787.78 and an unsecured debt of \$21,537.39. Debtor's first amended plan does not provide for Internal Revenue Service as a priority debtor, and Schedule E does not disclose this priority debt, though Schedule F does list the debt as \$1.00. The objection is set for hearing the same date as the instant motion. If it is not sustained, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.
2. Debtor's declaration in support of the motion to confirm states in part that "The main reason for my Chapter 13 filing is to pay the delinquency on my vehicle." It is not clear why Debtor state this on her declaration, as the claim filed by Wells Fargo Dealer Services does not assert any amount owed in arrears.

**DISCUSSION**

The court notes that Trustee has raised some points of concern. First, Debtor does indeed appear to underestimate her liability for priority taxes owed for tax year 2011. Debtor owes a priority debt of \$4,787.78 that the amended plan does not provide for. The court will not sustain Debtor's objection to this claim for the 2011 tax year, and thus the plan does not have sufficient monies to pay the claim in full. Next, the court agrees that the inconsistency between Debtor's declaration stating that Debtor was delinquent on vehicle payments and the lack of arrearages owed in the Creditor's proof of claim is concerning. The Debtor should clarify this point to Chapter 13 Trustee and the court.

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

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

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

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2016. 28 days' notice is required. This requirement was met.

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

**The objection to claimed exemptions is sustained.**

The Trustee objects to the Debtor's claim of exemption(s) as follows. On Schedule C, Debtor claims as exempt business account-non-filing spouse First Northern Bank #5344 in the amount of \$800 under CCP § 703.140(b)(5) and mechanic tools, tool box, etc., in the amount of \$12,000 under CCP § 703.140(b)(6). Debtor is claiming 100% of fair market value rather than claiming a dollar amount to deduct from the allowances under the code. The Statutes CCP §§ 704.140(b)(5) and (b)(6) do not allow for Debtors to claim 100%. They must claim a value.

California Code of Civil Procedure § 703.140(b)(5) provides:

The debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property,

California Code of Civil Procedure § 703.140(b)(1) provides:

The debtor's aggregate interest not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property, or personal property that the debtor or a dependant of the debtor uses as a residence, in a cooperative that own property that the debtor or a dependent of the debtor uses as a residence.

California Code of Civil Procedure § 703.140(b) (6) provides:

The debtor's aggregate interest, not to exceed seven thousand one hundred seventy-five dollars (\$7,175) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

Chapter 13 Trustee objects to two claimed exemptions: (1.) 100% of fair market value of \$800 valued business account (First Northern Bank #5344) under CCP 703.140(b)(5), and (2.) 100% of fair market value in mechanics tools, tool box, etc. valued at \$12,000 under CCP 703.140(b)(6). The court sustains the Objection to Claim of Exemption, with leave for Debtor to file, on or before June 3, 2016, an amended schedule c which accurately and correctly states the asset in which the exemption is claimed, the basis for the exemption, and the amount of the exemption.

First, although Debtor has marked 100% of the fair market value rather than stating or claiming a dollar amount, which Trustee objects to, the box marked by Debtor states "100% of fair market value, up to any applicable statutory limit." This is straightforward enough. Debtor appears to be exempting the full \$800 amount permitted under CCP § 703.140(b)(5), which permits that a Debtor may exempt up to \$1,280 under (b)(5), plus any unused amount in (b)(1) (\$24,060). Debtor has not exhausted this exhausted the statutory limit permitted under this code section, and thus is permitted to claim the full \$800 amount exempt. However, the court agrees that for the sake of clarity, especially where Debtor has for every other claimed exemption specifically notates that the full dollar amount valued is the amount claimed, an amended schedule C clarifying the amount claimed may be appropriate. the next issue proves less straightforward. Next, Debtor claims that mechanic tools, tool box, etc. is valued at \$12,000, yet does not claim a dollar amount exempt under CCP. CCP § 703.140(b)(6) permits an amount up to \$7,175 for an exemption in implements or tools of trade. The court may presume that Debtor intended to exempt up to the full statutory amount, \$7,175. Again, for the sake of clarity, the court will sustain the instant objection with leave for Debtor to amend schedule C.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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 Exemptions 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 to Exemptions is sustained and the Debtor's exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) for "100%" claimed in the asset described as "business account-non-filing spouse First Northern Bank #5344" in the amount of \$800 is

disallowed in its entirety.

**IT IS ORDERED** that the Objection to Exemptions is sustained and the Debtor's exemption pursuant to California Code of Civil Procedure § 703.140(b)(6) for "100%" claimed in the asset described as "mechanic tools, tool box, etc.," in the amount of \$12,000 is disallowed in its entirety.

**IT IS FURTHER ORDERED** that leave is granted Debtor Timothy Wilson to file on or before June 3, 2016, an amended Schedule C to state what exemption, if any, is to be claim in the above described asset in this bankruptcy case by Debtor.

\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

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

1. Debtor is \$770 delinquent in plan payments to the Trustee to date. According to the proposed modified plan payments, \$19,705 has come due. The Debtor has paid a total of \$18,935 to Trustee with the last payment posted on April 11, 2016 in the amount of \$600.
2. Trustee is uncertain of the proposed percentage to the unsecured creditors. Debtor's motion and section 2.15 of the modified plan propose 13.44% while Debtor's Declaration, proposes 25.94%.
3. Debtor is proposing plan payments of \$18,935 total paid in through March 2016 then \$770 per month beginning April 25, 2016 for the remainder of the plan. Debtor's plan payment under the confirmed plan is \$630 for 6 months then \$780 for months 7 through 60.

- a. Debtor filed an amended schedule I in which it appears that Debtor's employer, employment, income, deductions, all remain unchanged since 2013 at the outset of the case. Trustee is uncertain these figure are an accurate reflection Debtor's monthly income.
- b. Debtor's amended schedule J reflects various unexplained changes that Debtor does not account for in the declaration.

The court agrees with Trustee that Debtor is deficient not only in plan payments, but also unclear on terms of the plan and must clarify items concerning income and expenses, as raised by chapter 13 trustee. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that there is no current statement of income and expenses on file. Debtor is proposing to increase plan payments from \$1,220 to \$1,406. While the Trustee would normally support a payment increase, according to Trustee's records, the last statement of income and expenses was filed on February 11, 2015 and reflects Debtor can afford to pay monthly plan payments of \$1,220.

The court docket reflects that Chapter 13 Trste is correct that there appears to be no current statement of income and expenses. The court is not convinced Debtor is able to afford in increase in plan payments. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

\*\*\*\*\*

\*\*\*\*

**No Tentative Ruling:** The Motion to Extend Automatic Stay has been set for hearing on the notice required by court order, Dckt. 12. Debtor was ordered to file and serve on all parties the instant motion and supporting pleadings and notice of the May 3, 2016 hearing on this motion, and further ordered that opposition to this motion be filed and served on or before April 27, 2016.

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.**

---

Court Order, Dckt. 12, Briefing Schedule - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2016. 28 days' notice is required.

The Motion to Extend Automatic Stay has been set for hearing on the notice required by Order of the court, Dckt. 12.

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

## HISTORY

Miracle Wanzo ("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.

The Debtor filed two previous chapter 13 cases, both of which were dismissed within a year of filing this case. First, Case 14-28488-C-13 was filed on August 21, 2014, and dismissed on June 28, 2015 because Debtor was in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c), specifically debtor became delinquent in plan payments. Case No. 14-28488, Dckts. 31 & 39.

Next, Case No. 15-25621-E-13 was filed on July 15, 2015, and dismissed on February 18, 2016 because again Debtor was in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c), in that debtor became delinquent in plan payments. Case No. 15-25621, Dckts. 24 & 35.

On April 1, 2016, Debtor filed the instant chapter 13 bankruptcy case. Understanding that no stay was in place under the provision because this is Debtor's third bankruptcy case in less than a year, Debtor applied under 11 U.S.C. § 362(c)(4)(B) to impose a stay during the first 30 days in order to forestall a trustee's sale to be conducted on Debtor's residence on April 6, 2016. The court entered the order granting emergency stay effective until May 13, 2016, Dckt. 12, and further ordered briefings and a hearing in order

to determine whether to extend the stay should continue beyond the May 13, 2016 date.

#### **DEBTOR'S MOTION**

On April 13, 2016, Debtor filed the instant Amended Motion to Extend the Automatic Stay pursuant to 11 U.S.C. § 362(c)(3)(B). (This appears to be a typographical error, as 11 U.S.C. § 362(c)(4)(B) is the applicable section, as referenced in the court's order (Dckt. 12) and the original Motion (Dckt. 8)). Upon timely motion of a party in interest and after notice and hearing, the court may impose a stay under 11 U.S.C. § 362(a) in the bankruptcy if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(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)(4)(C)(i)(II). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(D).

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). (The good faith analysis under 11 U.S.C. § 362(c)(4) being similar to the under § 362(c)(3).) 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. Specifically, Debtor provides that in the prior case, Debtor was attempting to stop a trustee's sale on her home and pay back taxes. Debtor is self-employed and sells merchandise online. Her income varies from month to month. In the prior case, Debtor fell behind on payments because she had some "banking issues," and states that Debtor has since resolved those issues.

In her Declaration, Debtor states, "At that time [previous case], I did not foresee having the issues with the hold on funds, and the limited ability to transfer those funds to an account, that would cause me to become delinquent." Declaration, p. 3:6.5-9.5. Debtor further testifies that Amazon, the company through which she was selling goods, would hold releasing monies for thirty-days, with there being \$15,000.00 withheld.

Debtor asserts that her circumstances have changed because Debtor is making more money, has cut some expenses and provided for self-employment taxes. Debtor has also offered unsecured creditors 20% more to show good faith. Debtor states she is able to afford plan payments because although mortgage arrears have increased in this case, the amount of the class 1 monthly mortgage payments went down from \$1,391.67 to \$979.48 based on the proof of claim filed by lender in last case.

#### **CHAPTER 13 TRUSTEE**

Chapter 13 Trustee opposes Debtor's motion to extend stay, stating the Debtor has provided no actual evidence of changed circumstances regarding business income, such as income statements or banking records. Debtor states that her income has increased in this case. In Case No. 14-28488, Debtor reported income of \$3,800 per month. In Case No. 15-25621, Debtor reported income of \$3,900 per month. In this case, Debtor reports on her schedule I a monthly income of \$4,500. However, Debtor did not attach a statement showing gross receipts, ordinary and necessary business expenses, or the total monthly net income as required, increasing 15% without any supporting evidence.

Debtor states in her motion that her mortgage has decreased from \$1,391.67 to \$979.48 based on the proof of claim filed by lender in the last case. However, in the current case, Debtor's plan states a monthly contract installment amount of \$979.48 which appears to exclude escrow. Debtor also filed a schedule J which does not include any expense for property taxes or insurance, and as such. the mortgage may actually remain the same when all factors are considered.

## **DISCUSSION**

The court agrees that Debtor has not sufficiently shown to evidenced to the court that circumstances have sufficiently changed enough to make the present plan succeed. First, Debtor's assertion that her income has increased in this instant case by 15% is unsubstantiated. Debtor herself explains in her moving papers that as a self-employed merchandise seller online, her income varies from month to month. Yet in the same breath, Debtor asserts that her monthly income has substantially increased in efforts to show that plan payments in the present case will not be an issue. Debtor has provided no evidence to the court to substantiate this claim by providing, as suggested by Trustee, gross receipts, ordinary and necessary business expenses, or the total monthly net income. This is of great concern because the reasons for the prior dismissals in the two previous cases were because Debtor was not making plan payments.

Debtor's contention that she had the money in the prior cases, it was just "held up" rings hollow. If that were true, though getting behind for a month or two, after the initial delay, the payments would be coming in regularly (with the subsequently delayed payments being timely). Debtor could have then modified the plan to waive the missed month or two, and then use the delayed earlier payment to pay the subsequent current month, and then continue doing that thereafter.

However, in case no. 15-25621, Debtor made the first two months payments for August and September 2015, and then defaulted. The Trustee filed the motion to dismiss on December 14, 2015, asserting that the October and November 2015 payments were missed. 15-25621, Dckt. 24. If it were merely that Debtor's income for October and December had been delayed for 30+- days, by December 14, 2015, Debtor should have received the October 2015 monies and probably some of the November 2015 monies.

The hearing on the Trustee's motion was continued from the January 20, 2016 hearing date to February 17, 2016, to afford Debtor's counsel the opportunity to appear. Only the Debtor appeared at the January 20, 2016 hearing. Civil Minutes, *Id.* at 30. The Debtor's Opposition to the Trustee's Motion to Dismiss was based on there being a delay in Debtor receiving the money from the sale of her goods. *Id.*, Dckt. 28.

Taking the delay contention as true, by the February 2016 hearing, the Debtor should have had in hand the monies for the \$2,670.00 monthly plan payments for October, November, and December 2015, and part of January 2016. This would be in excess of \$8,010.00. However, no such monies were presented to the court. Civil Minutes, *Id.*, Dckt. 33.

A similar story is told in Debtor's first Chapter 13 case, No. 14-28488. Monthly plan payments of \$2,425.00 were required, commencing in September 2014. 14-28488; Plan, Dckt. 5. On May 11, 2015, the Chapter 13 Trustee filed a Motion to Dismiss that case, citing to Debtor having defaulted in three monthly payments. *Id.*, Dckt. 31. Debtor's opposition was that she was in default and would try to cure the payment. *Id.*; Response, Dckt. 35.

Next, the court agrees that Debtor appears to be misconstruing the decrease in mortgage payments, and instead appears to disregard the costs associated with property taxes, insurance, and monthly escrow payments. The court is not satisfied that Debtor's circumstances have actually changed, and that this case will merely be a repetition of the last two cases, which were both dismissed within this last year.

The following chart of Debtor's income and expenses highlights the lack of credible evidence showing an ability of Debtor to perform the Chapter 13 Plan:

<b>Schedule I Income, Dckt. 1 at 31-32.</b>	
Self-Employed Net Take Home Monthly Income	\$4,500
Debtor does not provide the court with the required statement showing Debtor's gross income and all of the expenses and other reductions to generate this net income number.	
<b>Schedule J Expenses, Dckt. 1 at 33-35, For Debtor and Two Minor Children</b>	
Mortgage Expense	\$0
Property Taxes	\$0
Property Insurance	\$0
Electricity, Heat, Water, Sewer, Garbage	(\$270)
Phone, Internet, Cable	(\$130)
Food and Housekeeping Supplies	(\$700)
Clothing, Laundry	(\$100)
Personal Care Products	\$0
Medical, Dental	(\$55)
Transportation (gas, repair, registration, transit)	(\$100)

Entertainment, Recreational	\$0
Health Insurance	\$0
Vehicle Insurance	\$0
Self-Employment Tax	(\$450)
Total Expenses	(\$1,805)
<b>Monthly Net Income As Computed on Schedule J</b>	<b>\$2,695</b>

Debtor needs this \$2,695.00 a month Monthly Net Income to fund her plan which requires the following payments, which are amortized over the sixty months of the Chapter 13 Plan for purposes of this discussion:

- A. Debtor's Attorneys' Fees (\$3,000).....(\$ 250)
- B. Chapter 13 Trustee Fees (Est. 7%).....(\$ 189)
- C. Current Mortgage Payment.....(\$ 979)
- D. Cure Mortgage Arrearage (\$63,000).....(\$1,050)
- E. EDD Priority Claim (\$4,933).....(\$ 82)
- F. STATE BOARD OF EQUALIZATION Priority Claim  
(\$3,649).....(\$ 61)
- G. FTB Priority Claim (\$3,803).....(\$ 63)
- H. Class 7 Unsecured Claims (0.00% Dividend)....(\$ -0- )
  
- I. Total Required Plan Payments.....(\$2,647)

This leaves a "surplus" of \$48.00 a month, which would otherwise go to creditors holding general unsecured claims.

But this is premised on: (1) Debtor having increased her income, (2) the expense listed on Schedule J being reasonable, and (3) there not being any other regular monthly expenses for Debtor and her two minor children.

In reviewing Schedule J, a couple items immediately come to light. First, Debtor provides for no "recreational" expense for herself or her two minor children. Nothing for the children to participate in school programs or field trips. No movies or other outing for the children.

The Plan is driven by Debtor's desire to retain her home, for which a monthly payment of \$2,029.48 is required to be made through the plan. The amount of this claim, as asserted in the Debtor's immediately prior bankruptcy case is \$185,711.51. 15-25621, Proof of Claim No. 7. As of that time, Creditor listed the pre-petition arrearage to be \$59,470.57 (which was 32% of the total claim).

As raised by the Trustee, the Proof of Claim clearly states that the \$979.48 is just the principal and interest payment amount. This does not include the property taxes and insurance. The monthly escrow for these additional necessary expenses is \$330.33. *Id.*, Proof of Claim No. 7 attachment, p. 17. The property tax payments are stated to be \$3,222 and the hazard insurance is stated to be \$742 annually. *Id.* at 6. This

averages \$330.33 a month, so the monthly escrow amount stated on the Proof of Claim appears to be limited only to these items (such as curing past escrow arrearage or to provide a future "escrow cushion").

On Schedules A/B and D Debtor lists the property securing the Creditor's claim as having a value of \$260,000.00. Dckt. 17 at 3, 20. Debtor lists only one creditor having a lien on the property, which secures a claim of (\$185,711.51). Schedule D, *Id.* at 20. Thus, it appears that Debtor has an equity of approximately \$70,000.00 in this property.

Though a significant equity, Debtor's desire to retain the property, cure a \$60,000.00 arrearage, and maintain the current payments are beyond her self-demonstrated economic means. Getting to this point, Debtor has incurred significant taxes to the California Franchise Tax Board, State Board of Equalization, and Employment Development Department. The court has no idea of whether the ongoing tax obligations are included in Debtor's expenses, since she has not provided her business gross income and expense statement.

Even if included, Debtor cannot afford to fund the Plan. Rather than saving her \$70,000.00 equity, Debtor (with the assistance of her counsel) are bent on further defaults and ultimately losing the property to foreclosure. This is based on the clear and convincing evidence presented by the Debtor herself as to her finances. To create the appearance that the plan is feasible, Debtor ignores the required property taxes and property insurance which runs \$330.00 a month.

While Debtor could have proposed a plan to reasonably market and sell the property, preserve her \$70,000.00 equity, and begin a restructured financial life, this case is just another in a string which Debtor demonstrates as being the last gasps of her financial death and wasting of a valuable asset.

At the May 3, 2016 hearing, Debtor's counsel stated that an amended Plan would be filed, which provides for the orderly sale of the Property to try and preserve Debtor's exemption. The court set the following dates and deadlines:

- A. The automatic stay provided by 11 U.S.C. § 362 shall continue in full force and effect, for all purposes and persons, through and including noon on June 3, 2016, unless extended or terminated before that date by further order of this court.
- B. At 2:00 p.m. on May 24, 2016, the court shall conduct the continued hearing on the Motion to Impose the Stay and whether to extend or terminate the interim stay imposed by this Order.
- C. On or before 5:00 p.m. on May 20, 2016, the Debtor shall file and serve on all parties in interest the amended Chapter 13 Plan, and the motion to confirm amended plan, supporting pleadings, and notice of hearing thereon.
- D. On or before 5:00 p.m. on May 20, 2016, Debtor shall obtain authorization to employ a real estate broker to market and list for sale the real property commonly known as 118 Redwing street, Vallejo, California. A copy of the fully executed

contract to employ the real estate broker shall be filed with the court before 5:00 p.m. on May 23, 2016 (a copy of the fully executed agreement may be included as an exhibit to the motion for authorization to employ the real estate broker). The contract shall state the listing price for which the broker will initially list the property for sale.

- E. Miracle Michelle Wanzo, the Debtor, and Scott D. Hughes, her attorney, shall each appear in person at the 2:00 p.m. continued hearing on May 24, 2016 for this Motion. No telephonic appears are permitted for Ms. Wanzo or her counsel for this continued hearing

## **DISCUSSION**

The court docket reflects that on May 19, 2016, Debtor Michelle Wanzo filed a Motion to Confirm Plan, Dckt. 45, an amended plan, Dckt 48, set for hearing on July 19, 2016. The amended plan provides the following amendments:

- I. To provide for the sale of the debtor's residence within a year while she makes regular ongoing mortgage payments to the class one lender. If the residence does not sell in a year, the class one creditor secured by the residence shall have a class 3 claim for the surrender of the home.
- II. The plan payments shall be \$1973.00 a month for 12 months or until the residence is sold whichever happens earlier. The plan payments shall then be \$485.00 per month through month 60 of the plan.
- III. The plan increased the proposed dividend to unsecured creditors from zero to 20 percent.
- IV. The plan provides for a disputed DSO claim for child support.
- V. The debtor agrees to turn over any tax refunds received during the case.

Further, the docket reflects that on May 19, 2016, Debtor filed an ex parte application to employ a real estate broker for the sale of Debtor's residence, 118 Redwing Street, Vallejo, California, Dckt. 50.

At this time, the court believes that the Debtor is taking the proper steps necessary to ensure the successful completion of the plan, including filing an amended plan and moving to sell the residence. However the court further notes that Chapter 13 Trustee, who filed an initial opposition to this motion, has not had the opportunity to review the amended plan or form a opinion as to the legitimacy or feasibility of the proposed amended plan and Debtor's good faith in asserting her ability to carry the terms of the proposed amended plan through.

The court will render its decision upon hearing the oral arguments of the parties at hearing.

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 automatic stay provided by 11 U.S.C. § 362 . . . .

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on April 15, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 20, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1041 Orchard Avenue, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$210,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$219,026. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$60,345. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by

Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1041 Orchard Avenue, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$210,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

-----

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 14, 2016. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to continue the Motion to Confirm the Modified Plan to June 28, 2016 at 2:00 p.m.**

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

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

1. Debtor's plan is not Debtor's best efforts 11 U.S.C. § 1325(b) or in the alternative the plan has not been proposed in good faith under 11 U.S.C. § 1325(a)(3).
  - a. Debtor's motion states "Attached hereto as Exhibits are updated Scheduled I & J, which reflect the Debtor's current financial situation and the ability to fund the plan." The declaration of the debtor states "4. I changed my exemptions to be able to not owe on my taxes and now have a significant deduction to IRS every paycheck." and "17. I changed my withholdings at the end of 2015." Schedule I filed in support

- reports line 4, gross income, as \$7,509.58. Debtor reports on line 5a, Tax, Medicare, and Social Security deductions, \$5,171.83. Debtor reports on line 5e, Insurance, \$887.03. The debtor reports line 5h, parking, as \$34.99. Debtor reports on line 7 take home pay of \$1,415.73. These are the exact same amounts reported on Schedule I at the time of filing, Dckt.
1. Based on Debtor's annual gross income of \$268,872.00, the annual withholding for Medicare and Social Security is \$988.68 per month. This leaves \$4,183 for income taxes. Debtor reports an additional \$9,500 on schedule J as 2016 tax deductions. Thus total tax expense per month is \$13,683 or \$164,196 annually. This represents 61% of Debtor's income. According to Trustee's calculations, the total tax on gross income for federal and state taxes will be approximately \$89,012.44, which would be without any exemption or deductions which is approximately \$75,000 less than tax expenses on schedules I and J.
- b. Debtor does not report on schedule I any income or expense for Debtor's rental property.
- c. Debtor's declaration and proposed plan reflects the surrender of property at 773 Harvey Way. The debtor has provided no information or expense on schedule J for Debtor's current residence location.
- d. Trustee requests Debtor provide the last 6 months pay stubs, the last 6 months bank statements and copies of Debtor's 2014 and 2015 tax returns.
2. Debtor is \$2,750 delinquent in plan payments to the Trustee to date. The case was filed on December 3, 2015, and Debtor has paid \$51,924 into the plan to date.
3. According to Trustee's calculation, the plan will complete in 71 months and not the 60 proposed.
4. Debtor did not serve the IRS per the Roster of Governmental Agencies. Additionally, Debtor did not serve creditor Ocwen Loan Servicing LLC per the Request for Special Notice.

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

Debtor responds to Trustee's opposition, stating:

1. Debtor proposes 100% plan, surrendering the class 1 claim. Debtor states she will update her current residence and provide Trustee with the 6 months pay stubs, bank statements, and 2014 and 2015 tax returns as requested.
2. Debtor will be current on or before the date of this hearing.
3. Debtor acknowledges that the amount needed to end the plan within the 60 months is \$149,325.52, requiring approximately \$17,325.52 to end timely, and would propose to increase the monthly payment by \$400 to \$3,150 per month.
4. Debtor states that service issues can be remedied if Debtor is

allowed to serve notice of a continued hearing on the two creditors inadvertently omitted.

## **DISCUSSION**

The court agrees that while Trustee has raised valid concerns, the best course of action at this time is to continue the instant motion in order to permit Debtor to serve all parties appropriately, and to permit Trustee time to review the requested documents, including paystubs, bank statements, and 2014 and 2015 tax returns. The court will continue the motion to June 28, 2016 at 2:00 p.m.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to June 28, 2016 at 2:00 p.m.

**IT IS FURTHER ORDERED** that Debtor shall serve notice of the continued hearing, modified plan, Dckt. 52, and motion to modify plan, Dkct. 49, on Ocwen Loan Servicing and the Internal Revenue Service by May 27, 2016. The notice shall reflect that opposition, if any, by Creditors, Chapter 13 Trustee, or parties in interest, shall be filed and served by June 17, 2016.

\*\*\*\*

\*\*\*\*

**Tentative Ruling:** The Motion to Reconsider 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Reconsider 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 Reconsider is granted.**

Chapter 13 Trustee moves the court for an order granting this motion to reconsider ruling, Dckt. 44. Trustee filed an Objection to Confirmation, DPC-1, on March 30, 2016. Subsequently, Debtor resolved Trustee's Objection on April 22, 2016 by providing her 2014 income tax return and filing a stipulation with the IRS, Dckt. 41. Trustee filed a withdrawal of Objection on April 22, 2016, Dkct. 42, however Trustee's Objection was sustained on April 26, 2016.

The court notes that on April 22, 2016, Trustee did indeed file a notice of withdrawal, Dckt. 42. The court further notes that on April 26, 2016, the stipulation between Debtor and IRS was entered on the docket, resolving Trustee's basis for objection, Dckt. 43. The court sustained Trustee's objection, Dckt. 50, on May 3, 2016, having overlooked Trustee's notice of withdrawal. The court will here vacate said the order sustaining Trustee's objection to confirmation, and will confirm the chapter 13 plan.

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

**IT IS ORDERED** that the Motion is granted and the Order sustaining Chapter 13 Trustee's Objection to Confirmation, Dckt. 50, is vacated.

**IT IS FURTHER ORDERED** that Debtor's chapter 13 plan, filed February 12, 2016, Dckt. 5, is confirmed.

\*\*\*\*\*

\*\*\*\*

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 24, 2016. Fourteen days' notice is required. That requirement was met.

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.**

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

1. The plan fails to provide for priority debts as required by 11 U.S.C. § 1322(a)(2). The IRS filed a proof of claim for \$12,136.73, of which \$12,103.55 is priority. Debtor's plan does not provide for the priority portion of the debt.
2. Debtor has not complied with 11 U.S.C. § 1325(a)(2). On April 5, 2016, the court issued an order to show cause which was set for hearing on April 20, 2016. Debtor has failed to make a payment of \$79.00 due March 31, 2016.

The Debtor, having failed to account for the priority claim of the IRS and not making a filing fee payment, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

\*\*\*\*\*

45. 14-20299-C-13 KENNETH/RAMONA BRADFORD MOTION TO APPROVE LOAN  
PGM-3 Peter Macaluso MODIFICATION  
4-13-16 [102]

**Also #46**

\*\*\*\*

**Final Ruling:** No appearance at the May 24, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 13, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification filed by Kenneth R. Bradford and Ramona C. Bradford ("Debtor") seeks court approval for Debtor to incur post-petition credit. US Bank, N.A., serviced by America's Servicing Company ("Creditor") has agreed to a trial loan modification, which will become permanent after all trial period payments are timely made, and Debtors have continued to meet all eligibility requirements. The trial period here was February 1, 2016 to April 1, 2016. The loan modification reduces Debtor's mortgage payment to \$2,395.51. The modification provides for an initial interest rate of 7.050%, and will never be greater than 14.050% nor less than 7.050%, but which will not increase by more than one and a half percent from the rate of interest paid in the preceding month.

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

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Kenneth Ray Bradford and Ramona Clair Bradford ("Debtors") to amend the terms of the loan with US Bank, N.A., serviced by America's Servicing Company, which is secured by the real property commonly known as 3712 Comanche Way, Antelope, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion, Dckt. 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.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2016. Thirty-five days' notice is required. That requirement was met.

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.**

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

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

1. Debtors' modified plan proposes to reclassify America's Servicing Company regarding the ongoing mortgage and pre-petition arrears from a class 1 secured creditors to a class 4 secured claim paid directly by Debtors based on a trial loan modification. Debtors have filed a motion to approve loan modification, Dckt. 102, which provides no provision should Debtors be unsuccessful in obtaining the trial loan modification.
2. Debtor has not proven they will be able to make plan payments in the even a loan modification is denied. Trustee is uncertain the Debtors will be able to collect a tax refund, the Debtor has not adequately explained what measures Mrs. Bradford is taking to procure employment in the next 6 months, and Debtors have failed to explain

the addition of income from employment and increase in pension income for Mr. Bradford on line 2 of amended schedule I.

- a. According to Trustee's records, Debtors are paying priority debt to the Internal Revenue Service and the Franchise Tax Board in the combined amount of \$209,718.60 based on the claims filed by each. On the amended schedule I, Debtors project a \$308 "Tax Refund Monthly Projected From 2015 Rtn". Debtors also list on amended schedule J and expense for "Payroll Taxes" in the amount of \$535.46. There is no explanation of why this expense is listed or for how long it will last. Trustee is uncertain if the taxing authorities will keep this refund as a set off against the claims they have both filed in this case. The Trustee would point out that this income would only be a projection for one year, as the amount and the potential of the refund will vary yearly for the remainder of the plan. Trustee also points out that Debtor did not include any tax refunds on schedule B and did not exempt any on schedule C when the case was filed. There may also be a potential liquidation issue.
  - b. Debtors fails to explain efforts made by Mrs. Bradford in seeking employment or what field she is searching. Debtor merely makes the blanket statement that she will be employed in 6 months.
  - c. When the case was filed, Mr. Bradford was listed as an unemployed Correction Sargeant on Schedule I. His sole source of income was from pension or retirement income in the amount of \$4,307.59. Amended schedule I lists he is employed as Correction Sargeant retired. Debtor now lists income from employment of \$1,365 and even more peculiar is that his pension or retirement income has increased to \$5,014.54. Debtors' declaration in support is silent as to these changes.
3. Debtors are \$13,900 delinquent in plan payments. The case was filed January 13, 2014, and 27 payments have come due. Debtors have paid \$74,855 with the last payment of \$800 posted 05/02/16.

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

Debtors respond to Trustee's opposition, stating:

1. The last month for the trial loan modification was April 2016, which was timely paid.
2. Debtor is willing to provide Trustee with further documentation as to Mrs. Bradford's search for employment, as well as testimony as to Mr. Bradford's employment. Mr. Bradford is retired and works a part-time job which is reflected but not identified properly.
3. Debtors are attempting to cure the arrears, where applicable, and continue the plan.

#### **DISCUSSION**

The court has granted Debtors' motion to approve loan modification, Dckt. Control No. PGM-3, resolving Trustee's first basis for opposition. However, the court agrees that Trustee has raised valid concerns, raising doubt as to Debtor's ability to afford plan payments, as reflected in the inconsistency and particulars of Debtors' income and employment and well as the delinquency in plan payments. Debtors state that they are "willing" to provide Trustee with further documentation as to Mrs. Bradford's job search and Mr. Bradford's change in status from "unemployed" to "retired" as well as his monthly income. However, the docket reflects that no such documentation or declaration was provided. Moreover, Debtors are almost \$14,000 delinquent in plan payments, which Debtors state they are attempting to cure. However, Debtors do not provide how they expect to do so. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in given the Debtors' limited projected disposable income.

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

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

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

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

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

\*\*\*\*\*

47. 16-23118-C-13 LE AIRHEART MOTION TO EXTEND AUTOMATIC STAY  
PGM-1 Peter Macaluso O.S.T.  
5-16-16 [9]

\*\*\*\*\*

**Tentative Ruling:** The Motion to Extend Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the

Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (3).**

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 16, 2016. While generally at least fourteen days' notice is required, for good cause, the court granted an order shortening time, requiring fewer than fourteen days' notice. Movant has submitted, and the court has granted, an order to shorten time on this matter.

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

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

Le T. Airheart ("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. 14-32047) was dismissed on March 13, 2016, after Debtor fell behind in plan payments. See Order, Bankr. E.D. Cal. No. 14-32047, Dckt. , March 13, 2016. Therefore, pursuant to 11 U.S.C. § 362(c) (3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting*

*the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically Debtor states that the instant case was filed in order to retain her vehicle and satisfy her tax debt. Debtor is a Physicians Services Program Manager for Sutter Health and has been employed for more than 10 years. Her current gross monthly income is \$8,319.83, deductions amount to \$2,25.80, and therefore has a monthly net income of \$6,294.03. Additionally, Debtor's son is contributing his social security income of \$927 per month. Further Debtor's schedule I and B2C reflect that she is earning enough wages and money to cover all her necessary obligations in addition to the proposed chapter 13 plan. The Debtor reflects reasonable and necessary expenses of approximately \$6,541 allowing for a monthly plan payment of \$680 and the ability to fund the current plan. Debtor is not attempting to abuse the bankruptcy process, and is filing in good faith.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

Chapter 13 Trustee opposes Debtor's motion, pointing out that this is Debtor's sixth case within four years.

1. 12-33825 filed July 27, 2012, dismissed 04/01/13 for delinquency.
2. 13-26237 filed May 4, 2013, dismissed 05/17/13 for failure to timely file documents.
3. 13-26831 filed May 18, 2013, dismissed 10/03/13 order to show cause sustained.
4. 14-20024 filed January 2, 2014, dismissed 09/23/14 for delinquency.
5. 14-32047 filed December 12, 2014, dismissed 03/02/16 for delinquency.

In each of these cases, there has been one unsecured creditor for the same vehicle, priority amounts for federal and state income taxes and general unsecured creditors. Debtor has had the same employment for 10 years. A motion to extend stay was denied in the prior case on January 13, 2015.

Trustee is uncertain the current case was filed in good faith or if this is the Debtor's best efforts. Schedules I and J reflect \$29,976 expenses for income tax. Schedule I reports monthly withholding of \$1,134.06 which is approximately \$498 per month net of Social Security and Medicare withholding. Thus total expense is \$2,498 monthly or \$29,976 annually. Debtor's estimated maximum income taxes are \$24,465 based on gross income of \$99,837.96 and using 2015 tax rates after exemptions and standard deductions. It appears tax expense is overstated approximately %5,511 or \$459 per month.

## **DISCUSSION**

The court agrees with Chapter 13 Trustee that Debtor has failed to rebut the presumption of bad faith under the facts of this case, thus not warranted an extension of the automatic stay. A primary consideration in determining whether to extend the automatic stay is to consider what has changed to make this plan more likely to succeed. Debtor has submitted no new circumstances. Trustee is correct in noting that Debtor is trying to save the same vehicle, and priority amounts for federal and state taxes follow Debtor for bankruptcy filing to bankruptcy filing. Debtor proffers no explanation to the court to describe why Debtor became delinquent in plan payments in Case No. 14-32047, and thus the court is not satisfied that this will merely be another bankruptcy filing in a string of 6 total bankruptcy filings since only 2012. The court further notes that in Case Number 14-32047, the court denied the motion to extend automatic stay, Dckt. 30, in the previous case. Although this is not evidence of Debtor's intent in the filing of the present case, all things taken together, it would have been in Debtor's interest to present a set of reasons and facts to persuade the court to extend the stay in this case, pressing why this case was different and separate from the previous case. Instead, Debtor has merely reiterated the reasons for following the instant case (save vehicle and satisfy tax debt) which were the same reasons for filing the previous cases, without assurances what circumstances have changed to make this bankruptcy filing different and successful.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case.

The motion is denied and the automatic stay is not 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 denied and the automatic stay is not extended pursuant to 11 U.S.C. § 362(c)(3)(B).

\*\*\*\*\*

48. 12-40968-C-13 SAM BUECKERT  
JGD-2 John Downing

MOTION FOR ORDER APPROVING  
POST-PETITION FINANCING O.S.T.  
5-12-16 [48]

\*\*\*\*\*

**Tentative Ruling:** The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently,

the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 12, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Incur Debt is granted.**

The motion seeks permission to obtain a mortgage to secure the purchase of a residence commonly known as 10517 Evansham Place, Truckee, California, which the principle amount is \$434,904.00, with monthly payments of \$2,938.00.

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

The Chapter 13 Trustee filed a statement of nonopposition.

Debtor is current on plan payments and the plan proposes to pay 5% of all general unsecured creditors. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Sam Bueckert, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 50.

\*\*\*\*