UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 24, 2016 at 3:00 p.m.

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1. 16-22100-E-13 DAVID/DEANNA TIBBETT — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
SJS-1 Matthew DeCaminada — 4-13-16 [18]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 13, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is continued to 3:00 p.m. on June 24, 2016

The Motion to Value filed by David and Deanna Tibbett ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property

commonly known as 4724 Winter Oak Way, Antelope, California ("Property"). Debtor seeks to value the Property at a fair market value of $254,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

The Creditor filed an opposition on May 10, 2016. Dckt. 31. First, the Creditor objects to the Debtor's valuation of the Property as being inadmissible lay opinion and lacks competency.

Second, the Creditor requests that it is given additional time to conduct its own appraisal of the Property.

APPLICABLE LAW

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

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

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

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

DISCUSSION

First, to address the Creditor's objection as to the admissibility of the Debtor's opinion of the Property, the objection is overruled. As has been discussed by the Ninth Circuit, as the owner, Debtor's opinion of value is

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

Creditor's Statement That The Owner's Opinion is Inadmissible as Evidence of Value

Creditor is very clear in asserting, subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, that,

> "JPMorgan objects to **Debtors' valuation as it lacks competency** and is based on **inadmissible lay opinion** under the Federal Rules of Evidence Rule 701. A lay opinion is admissible under FRE 701 as follows:
>
> > 'If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Fed. R. Ev. 701.'
>
> Here, since Debtors are not qualified as experts, they offer their opinion under FRE Rule 701. Debtors' opinion does not satisfy the requirements of Rule 701 because the opinion is not rationally based on any relevant perception; Debtors do not provide a detailed explanation as to how they determined the property value to be $254,000.00."

Opposition, p. 3:8-18.

Creditor offers no case law interpreting Federal Rule of Evidence 701 to require that the owner of property provide the court with an explanation, as would an expert of a "detailed explanation of how they [the owner, layperson debtor] determined the value of the property to have a value of $240,000.00."

Turning first to Weinstein's Federal Evidence, with respect to a lay person providing that person's opinion as to value of property they own,

> § 701.03 Requirements for Admissibility
>
> [1] Opinion Must Be Based on Personal Perception
>
> To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.
>
> In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay

> witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations. **In this regard, homeowners and owners and officers of businesses are allowed to offer lay opinions about the value of the home or business.** [FN.]5
>
> Some courts, however, have been more expansive in their interpretation of Rule 701. These courts admit opinion testimony from lay witnesses based not only on their own observations and personal perceptions respecting the incident in question and, perhaps, others like it, but also on the witness's experience and specialized knowledge obtained in his or her vocation or avocation.

WEINSTEIN'S FEDERAL EVIDENCE, § 701.03.

The citations in footnote five reference in Weinstein's include *Christopher Phelps & Assocs., LLC v. Galloway*, 477 F.3d 128, 139 (4th Cir. 2007).

> "Courts indulge a common-law presumption that a property owner is competent to testify on the value of his own property. See, e.g., *North Carolina State Highway Comm'n v. Helderman*, 285 N.C. 645, 207 S.E.2d 720, 725 (N.C. 1974); Fed. R. Evid. 701 advisory committee's note ('[M]ost courts have permitted the owner or officer of a business to testify to the value or projected profits of the business, without the necessity of qualifying the witness as an [expert] . . . . The amendment does not purport to change this analysis')."

This basic federal evidentiary principle was addressed in by the Tenth Circuit in Hornick v. Boyce, 2809 Fed Appx. 770, 774 (10th Cir. 2008), stating:

> "As a starting point, we reject the argument advanced by the Boyces' in their supplemental brief to the effect that the district court committed plain error in admitting Hornick's [owner of the property] value opinion because Hornick was required to base his opinion on personal or first-hand knowledge since he was giving lay opinion testimony under Fed. R. Evid. 701. To the contrary, when a purported owner of property is testifying as to the value of the property, his testimony qualifies as expert witness testimony under Fed. R. Evid. 702 and he "is entitled to the privileges of a testifying expert." See *United States v. 10,031.98 Acres of Land*, 850 F.2d 634, 636-37 (10th Cir. 1988) (citing *La Combe v. A-T-O, Inc.*, 679 F.2d 431, 434 n.4 (5th Cir. 1982); *United States v. Laughlin*, 804 F.2d 1336, 1341 (5th Cir. 1986) (owner's testimony is expert opinion under Fed. R. Evid. 702); *Robinson v. Watts Detective Agency, Inc.*, 685 F.2d 729, 739 (1st Cir. 1982) (owner allowed to give estimate of property value based in part on hearsay); *Kestenbaum v. Falstaff Brewing Corp.*, 514 F.2d 690, 699 (5th Cir. 1975)...."

As noted by the Tenth Circuit Court of Appeal, so long as the landowner's opinion as to value is not based on "technical or specialized knowledge, it may

be admitted as lay opinion testimony." This precludes using Federal Rule of Evidence 701 for lay person opinion to circumvent the requirements of Federal Rules of Evidence 702 for expert witness opinions. *James River Insurance Co. V. Rapid Funding, LLC*, 648 F.3d 1134, 1149 (10th Cir. 2011).

This gets the court back to the Ninth Circuit Court of Appeals ruling in *Enewally v. Washington Mutual Bank*. The law in the Ninth Circuit, the Circuit where this bankruptcy court sits, the controlling law in this Circuit, states:

> "In the absence of contrary evidence, **an owner's opinion of property value may be conclusive**. *In re Brown*, 244 B.R. 603, 611 (Bankr. W.D. Va. 2000). Thus, **since the Bank provided no contrary evidence, the bankruptcy court was well justified in relying on the debtor's affidavit of value**. To allow the Bank to contest valuation on appeal would be manifestly unfair and an abuse of the appellate process. As we observed in another, similar bankruptcy appeal, "federal courts are not run like a casino game in which players may enter and exit on pure whim." *Investors Thrift v. Lam (In re Lam)*, 192 F.3d 1309, 1311 (9th Cir. 1999). The Bank has forfeited its right to challenge value of the collateral as determined by the bankruptcy court."

Merely because JPMorgan Chase Bank, N.A. and its attorneys do not like the law that a owner may express his or her opinion as to value of the residence that JP Morgan Chase Bank, N.A. would like to foreclose on, that does not mean that JP Morgan Chase Bank, N.A. and its attorney may ignore controlling Ninth Circuit law. Further, it does not give counsel the leeway to misrepresent the state of the law. It is not a novel or new principle that an owner may express his or her opinion as to value of the property they own.

It appears that the real objection to the Debtor's testimony as to value is that while stating an opinion as to value, it provides little else to assist the court in determining the value. As the Ninth Circuit Court of Appeals has stated, if nothing credible is offered by the creditor to the contrary, the trial court may use the owner's opinion of value as evidence upon which the final determination may be made by the court. Presumably, counsel for JP Morgan Chase Bank, N.A. could argue such an evidentiary value contention – once JP Morgan Chase Bank, N.A. has contrary evidence. Additionally, even if no evidence were presented by JP Morgan Chase Bank, N.A., its attorney could argue that Debtor has not carried the moving party's burden of proof, the layperson owner testimony of value being so ephemeral that the court cannot reasonable use it to determine value.

But that is not what JP Morgan Chase Bank, N.A.'s counsel has argued. Rather, counsel makes the unsupported argument that the Federal Rules of Evidence state what the Ninth Circuit Court of Appeals and other courts of appeals have repeated held they do not. Such unsupported arguments, contrary to well understood law only work to diminish not only the credibility of the creditor, but also the individual attorneys who advance such "throw it on the wall and see what sticks" contentions.

Continuance for Discovery

JP Morgan Chase Bank, N.A. does properly request that the court continue the hearing so that it may conduct discovery and obtain it's expert opinion as

to value so that it may properly determine its interest in the Property. The court continues the instant Motion to 3:00 p.m. on June 28, 2016. The Creditor shall file supplemental papers on or before June 14, 2016. Any replies or opposition shall be filed and served on or before June 21, 2016.

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 David and Deanna Tibbett ("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 continued to 3:00 p.m. on June 28, 2016.

2. 16-22100-E-13 DAVID/DEANNA TIBBETT
SJS-2 Matthew DeCaminada

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
4-15-16 [22]

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, Creditor, and Office of the United States Trustee on April 15, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of $11,850.00.

The Motion filed by David and Deanna Tibbett ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Trail-Lite 29' fifth wheel ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,850.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 2005, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,486.52. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $11,850.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA (“Creditor”) secured by an asset described as 2006 Trail-Lite 29' fifth wheel (“Vehicle”) is determined to be a secured claim in the amount of $11,850.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,850.00 and is encumbered by liens securing claims which exceed the value of the asset.

3. 16-22600-E-13 MICHAEL HANKS — MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella — 4-28-16 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Michael Hanks ("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. 15-29749) was dismissed on April 22, 2016, after Debtor failure to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-29749, Dckt. 22, April 22, 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.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 10, 2016.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor states that his daughter was shot through a window in her home and unfortunately died, leaving behind the Debtor's two grandchildren. While the grandchildren's father is in their life, he is unable to support them and the Debtor and his non-filing spouse have shared responbilities with the Debtor's former spouse. The unexpected funeral costs and the expense of the grandchildren led to the delinquency in plan payments. However, Debtor asserts that he is able to now propose a plan that is reflective of his current financial situation.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the

automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

4. 16-21102-E-13 LARRY VINCELLI — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 Bonnie Baker — **4-20-16 [26]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on April 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is $1,100.00 delinquent in plan payments to the Trustee. The Debtor has paid $0.00 into the plan to date.

2. The Debtor has failed to provide the Trustee with a tax

transcript or a copy of the return.

3. The Debtor's plan relies on a Motion to Value Collateral of Employment Development Department but has failed to file one to date.

4. Debtor's schedules do not accurately list all creditors. The Plan proposes a secured payment to Employment Development Department, but fails to list the creditor on Schedule D. Additionally, all other unsecured creditors except for the Internal Revenue Service have also been omitted from the amended Schedule which was filed on April 15, 2016.

5. The Debtor's additional provisions provide for the payment of "Class 1 arrears pro rata." The Trustee objects that this is ambiguous and may be in violation of 11 U.S.C. § 1325(a)(5).

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $1,100.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. This is an independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Employment Development Department. However, the Debtor has failed to file a Motion to Value the Collateral of Employment Development Department. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

As to the Trustee's fourth objection, the court is equally as concerned that the Debtor's schedules and disclosures as to creditors do not match with the creditors proposed to be paid in the plan. Without the Debtor truthfully and completely filling out the information of the schedules, the court nor any other party in interest can determine if the plan is feasible or viable.

The lack of accuracy in the Schedules and the Plan is just further exasperated by the vague language proposed in the additional provision. The Debtor proposes a "pro rata" payment arrears to Class 1. However, the Debtor does not provide for an "equal" amount of monthly installments nor the specifics as to which claimant. The ambiguity coupled with the Debtor failing to properly disclose all creditors in the schedules is an additional ground to deny confirmation.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

5. 14-29404-E-13 CYNTHIA GREEN **MOTION TO MODIFY PLAN**
GDG-4 Gary Greule **4-5-16 [65]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2016. By the court's calculation, 45 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by creditors. The Chapter 13 Trustee does not object to the proposed modification. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 1, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 15-27005-E-13 MICHELLE CAMPAU — MOTION TO MODIFY PLAN
RJ-2 Richard Jare — 4-12-16 [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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.

Michelle Campau ("Debtor") filed the instant Motion to Confirm the Modify Plan on April 12, 2016. Dckt. 48

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 58. The Trustee opposes confirmation on the following grounds:

1. The Debtor is delinquent $220.00 in plan payments.

2. The Debtor's plan will complete in 63 months as opposed to the maximum 60 months permitted.

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $220.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months.

According to the Trustee, the plan will complete in 63 months due to the remaining balance left to be paid to secured creditors and attorney's fees. These remaining claims along with the Trustee's fees calculates to the plan taking 63 months to complete. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

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

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

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

7. 15-21707-E-13 JUDITH LAYUGAN
TLA-5 Thomas Amberg

MOTION TO APPROVE LOAN MODIFICATION
5-5-16 [161]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Judith Layugan ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC, agent for creditor US Bank National Association, as Trustee ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,408.71 a month (including an estimated $346.47 towards escrow). The interest rate will be 2.0%. The principal balance will be $143,800.00 and deferred, leaving an interest bearing principal balance of $350,447.51.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides

evidence of Debtor's ability to pay this claim on the modified terms.

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on May 9, 2016. Dckt. 166. The Trustee states that there is no opposition to the general terms of the plan. Rather, the Trustee would like for Ocwen Loan Servicing, LLC to file documentation evidencing its authority to offer such loan modification.

While the court would have also liked to see the explicit documentation that gives Ocwen Loan Servicing, LLC the authority to enter into loan modifications, the Debtor and Creditor did correctly identify themselves as the "authorized agent." The court's prior concern with these Motions was namely the parties incorrectly identifying loan servicers as the real creditor. This had the potential of causing substantial harm to debtors who entered into these modifications because, essentially, the real creditor, years later, could say that the loan servicer was never authorized to modify the loan, rendering the order authorizing the loan modification ineffective since it incorrectly identified that true creditor.

However, in the instant case, Ocwen Loan Servicing and the Debtor are both correctly identifying it as the loan servicer and "agent for." This explicitly provides the parties involved and which parties are entering into the modification. While the Trustee raises a more nuanced point, the court has no reason to believe that Ocwen Loan Servicing would be misrepresenting, or that U.S. Bank, N.A., Trustee, would have such a misrepresentation made, that it is the agent for the creditor. Such is the business of Ocwen Loan Servicing, LLC as it has been represented by Ocwen Loan Servicing, LLC and various institutional lender clients in other cases. There is no need to make approval of the loan modification any more difficult by adding a "proof of agency" component under the facts of these types of motions. (This is similar to the loan servicer seeking relief from the automatic stay for the servicer and its identified principal.)

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 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 Judith Layugan 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 Judith Layugan ("Debtor") to amend the terms of the loan with Ocwen Loan Servicing, LLC, agent for creditor US Bank National Association, as Trustee, which is secured by the real property commonly known as 4448 H Street, Sacramento, California, on such terms as stated in the Modification Agreement filed as

Exhibit A in support of the Motion, Dckt. 164.

8. **16-21607-E-13** **NICOLE HARRISON**
MMM-1 **Mohammad Mokkaram**

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

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

The court having granted the Debtor's Motion to Value Collateral of Toyota Motor Credit Corp. based on the stipulation of the parties (Dckt. 31 and 32), **the matter is removed from calendar.**

9. 16-20113-E-13 MB-1 VICTOR NAVARRO AND KRISTINA ZAPATA-NAVARRO Michael Benavides

MOTION TO CONFIRM PLAN 4-8-16 [36]

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee withdrew his opposition following the Debtor becoming current under the proposed plan. Dckt. 50. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

10. 16-20414-E-13 RALPH HASKELL
DPC-1 Robert Fong

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-2-16 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on March 2, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. The Debtor’s plan may fail the Chapter 7 Liquidation analysis.

   a. The plan provides for Debtor’s reverse mortgage in Class 4 of the plan, with a $0.00 monthly contract installment. Schedule D provides for RMS, Reverse Mortgage with a value of $299,311.00 and a claim amount of $183,537.98. The Trustee is uncertain as to the amount the Debtor actually owes on this obligation based on the testimony at the Meeting of Creditors.

   b. The Debtor lists on Schedule B, line 19, the asset of Ralph T. Haskell, Inc., with a value of only $10.00. The description states that assets include reversionary interest in Gold River Auto Repair. Debtor no longer has a license to operate, previously sold to Todd A. Shaw, with a right to recover business in event of non-payment. Limited value, not operational if recovered because of lack of licenses and equipment. The Trustee believes the value of the asset may be higher.

2. The plan is not the Debtor’s best effort. The Debtor is over the median income and proposes plan payments of $275.00 for 60 months with a 12% dividend to unsecured creditors. Debtor’s Form B22C reflects negative disposable income of <$1,616.01>. However, the Trustee’s own calculations shows disposable income of $2,607.00 for 60 months, which totals $156,420.00 that unsecured creditors are entitled to. The following revisions were made by the Trustee:

   a. The Trustee removed the net mortgage or rent expense because the Debtor has a reverse mortgage and has not listed a mortgage expense on Schedule J.

   b. The Debtor deducted $1,054.17 for income taxes, however, the Debtor has only listed an expense for taxes of $188.20 on Schedule I.

   c. The Debtor deducts $50.00 for additional health care expenses, however fails to list this on Schedule J.

   d. The Debtor lists an expense on Schedule J in the amount of $213.00 per month for storage. The Debtor admitted that he is storing his motorcycles and household goods in storage.

3. The Debtor’s attorney, Robert Fong, has opted into the guidelines for payment of attorney fees in the amount

of $6,000.00. It does not appear that this is a business case and should only be permitted $4,000.00.

APRIL 5, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 24, 2016.

DEBTOR'S REPLY

On April 27, 2016, the Debtor filed a Brief in Support of Confirmation. Dckt. 36.

First, as to the reverse mortgage, the Debtor states that the reverse mortgage has a balance of $184,503.07. With a value of $299,311.00, the equity in the property is $114,808. Debtor claimed a $175,000.00 exemption in the property. The Trustee offers no evidence that the Debtor will draw from the reverse mortgage.

Second, the Debtor argues that the Trustee's argument that the plan is not the Debtor's best efforts is incorrect. The Debtor argues that it is a household of two, as the Debtor is married with a non-filing spouse. The Debtor asserts that his income as well as his non-filing spouse has been consistent, unlike the earnings in *In re Lanning*. The Debtor is not claiming that his income has decreased so significantly that his future income is only a fraction of his prior six-month figures.

The non-filing souse identifies both her average business income of $3,632.00 on the Means Test, and $3,600.00 on the Schedule I Business income and Expense Attachment. Further the Debtor asserts that the non-filing spouse's business activities include ongoing monthly costs of $1,530.00 which is reflected on both the Means Test and the Business income and Expense Attachment.

As to the taxes paid, the Debtor asserts that the Debtor correctly estimated a monthly obligation of $1,054.00 on the Means test. Debtor paid a total taxes of $10,287.00 in 2014.

The Debtor further asserts that the numbers on the Means Test are misleading, namely because the Debtor's non-filing spouse's business' net income is $2,100.00, which is substantially less than the gross of $3,6000.00.

As to the individual line items on the Means Test, the Debtor asserts that the taxes approximation is appropriate. The $50.00 listed on Line 22 for health expenses appears to be intended to be an entry for Line 23 for "optional telephone and telephone services." The Debtor asserts that him and his wife use their cellphones, $155.00 per month, regularly in the court of their work. The Debtor asserts that the $50.00 expense should be raised to $155.00.

For the $213.00 per month for storage, the Debtor states that the storage is voluntarily funded by Debtor from the family social security funds and should be allowed. The garage at the residence is used to keep cars and most of the extra garage space is used by Debtor's wife to story samples. The rental storage space is where the Debtor keeps motorcycles and other household items that cannot be stored at the residence.

The Debtor next argues that the Debtor's reversionary interest in a business that he previously sold was correctly valued at $10.00. The Debtor states that the reversionary clause of the sales agreement was included to "coerce ongoing payments." Dckt. 36. The Debtor asserts that he has no intention of recovering and operating the business . The Debtor asserts that there are no tangible assets and the business consists of name only. There were no tools or equipment for Debtor to recover. There is no longer a lease. The license which was under the Debtor's name has since expired and a new license was issued in the name of the buyer of the company.

As to the attorney's fees, the Debtor argues that the case is properly identifies as a business case because the Debtor has a business with a reversionary interest and the non-filing spouse also has a business. As such, the Debtor argues that the proper attorneys fees is $6,000.00.

TRUSTEE'S RESPONSE

The Trustee filed a response on May 13, 2016. Dckt. 39. The Trustee begins by stating that the Objection as to the reverse mortgage has been resolved by the Debtor's brief and copy of the mortgage statement.

The Trustee continues by asserting that the objection to the plan not being the Debtor's best efforts is still unresolved. The Trustee asserts that, without an actual mortgage expense, the Debtor should not be able to deduct $1,692.00 for net mortgage or rent expense. *See Ransom v. FIA Car Services*, 562 U.S. 61 (2011); *Hamilton v. Lanning*, 5601 U.S. 505 (2010).

As to the taxes, the Trustee reiterates that the Debtor only listed an expense of $188.20 on Schedule I for income taxes. While the Debtor's brief states that the tax deduction are understated, the Trustee is concerned that the Debtor may not be able to make the plan payments if the tax expense is in fact higher. The Debtor's actual tax expenses need to be resolved for the court to consider confirmation.

For the individual Means Test items, the Trustee states that the Debtor is correct that line 45 on Form B22C should be $922.00. After correcting the Trustee's calculation, the totals equals $991.00 for 60 months = $59,460.00 which unsecured creditors would be entitled and the Debtor is proposing a 12% dividend which totals $10,947.00.

For the "$50.00" additional health care expense, the Trustee agrees that the deduction should be listed on Line 23 for "optional telephone and telephone services." After deducting that, the monthly payment should be $942.00 for 60 months, totaling $56,520, which unsecured creditors are entitled.

For the storage claim, the Debtor lists four motorcycles on Schedule B, which have a combined value of $9,250.00. The Debtor is proposing to pay $213.00 for 60 months, which totals $12,780. The Debtor is paying $3,530 more than the value of the property over the course of the plan. The Debtor asserts that he is paying the $1,800.00 of their social security income per month fund the plan, though case law does not require it. The problem, however, is that the Debtor has not addressed what expenses are being paid by social security. The Debtor actually has Schedule J that shows an expense "$2,055.00 Social Security Retained," so the Trustee is unsure what expenses are paid by social

security.

The Trustee concedes that the only evidence of the value of the business is the Debtor's opinion, and withdraws this part of the objection.

For attorney's fees, the Debtor's income is from wages and social security income. The Debtor's non-filing spouse appears to be a 1099 employee as the Debtor has provided a Sales Rep Commission Payments of Joanne & Company. The Debtor states in his reply that he has only a reversionary interest in the business he sold to Todd Shaw and that the business has no assets. The Trustee argues that when the Debtor states that Debtor no long operates the business as of August 2015, the case cannot be considered a business case.

DISCUSSION

The remaining objections and conflict between the Debtor and the Trustee appears to be whether the plan is the Debtor's best efforts given conflicting and inappropriate expenses taken by the Debtor.

The Trustee argues that the plan is not feasible nor the Debtor's best efforts. As discussed by the Trustee, the Debtor's proposed disposable income includes expenses that would not otherwise be calculated in. The Debtor attempts to include rent/mortgage payment when stating that he holds a reverse mortgage. Furthermore, the Debtor includes expenses such as supplemental health insurance and taxes on Form B22C but does not include the same amounts in Schedule J. These conflicting budgets and expenses makes it impossible to determine the viability or feasibility of the Debtor's plan.

The Debtor attempts to argue that the precedent of *Lanning* does not apply because there is no indication of a any sort of reduction of the Debtor's income. Here, the Debtor argues that because the income has been consistent, disallowing the mortgage expense would be inappropriate. However, the courts have not so read the ruling in *Lanning* to be only for cases where there is anticipated reduction in forward looking earning. The Supreme Court has in fact ruled in Ransom v. FIA Car Services explicitly that,

> If a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not "reasonably necessary" within the meaning of the statute.

562 U.S. 61 (2011). The Debtor has admitted that there is no mortgage cost in light of the Debtor holding a reverse mortgage. As such, the Debtor does not incur a mortgage expense which means that it is not "reasonably necessary."

Additionally, the Debtor admits that the taxes are understated on Schedule I and may be overstated on the Means Test. Facially, the court cannot determine if the Plan is viable or feasible when the Debtor's own financial information is conflicting. The court cannot determine whether the plan, as presented, and the budget, as presented, is capable of being successfully completed when the Debtor admits to not provide an accurate financial information.

The Trustee's objection as to the best efforts is sustained.

Attorneys' Fees

Lastly, the Trustee is correct in that the Debtor's attorney appears to be claiming fee's for a business case when it does not appear that the instant case is one. The Debtor's plan proposes to pay the attorney through the plan pursuant to Local Bankr. R. 2016-1(c) in the amount of $6,000.00. However, $6,000.00 is only permitted for business cases. The Debtor has failed to provide any evidence or argument that would indicate that the case is, in fact, a business case. The only reason presented by the Debtor is the reversionary interest in the Debtor's sold business and the Debtor's non-filing spouse's business. The Debtor does not argue that the non-filing spouse's business is community property. In fact, the Debtor states multiple times that the plan will be funded through the use of social security income. Therefore, the attorney's fee provision is improper and grounds to deny confirmation.

Information About Business

The court cannot identify any information about the sale of Debtor's business and the proceeds thereof. While on the Statement of Financial Affairs Debtor stating that he has operated the business within four years of commencing the case, Debtor fails to provide information about the operation of the business. Statement of Financial Affairs Question 27.

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

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

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

11. 15-29616-E-13 KRISTIN CRISTE — MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella — 4-6-16 [26]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is continued to 3:00 p.m. on June 14, 2016.

Kristin Criste ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 6, 2016. Dckt. 26.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 26, 2016.

CREDITOR'S OPPOSITION

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") filed an opposition to the instant Motion on April 28, 2016. Dckt. 43. The Creditor objects to the plan on the basis that the plan does not provide for the full claim of the Creditor. The Creditor asserts that it is secured by a vehicle that of which debt was incurred within the 910-day window which removes the ability for a debtor to value the claim.

The Creditor asserts that the Debtor's proposed treatment does not take into account the full amount of the claim, a proper interest rate to reflect the depreciation of the vehicle, and the adequate protection payments being too low.

DISCUSSION

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

The crux of the Creditor's opposition is directly related to the

pending Motion to Value Collateral of Creditor, which was continued to be heard at 3:00 p.m. on May 10, 2016. Dckt. 47. The Debtor is attempting to value the service contract portion of the overall finance agreement, which is not part of the purchase money security portion.

In light of the two Motions being interconnected, the court continues the instant Motion to 3:00 p.m. on June 14, 2016.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to 3:00 p.m. on June 14, 2016.

12. 12-35317-E-13 SJS-2 — JOHN VIRGEN AND ELIZABETH LOWERY-VIRGEN — Matthew DeCaminada — MOTION TO MODIFY PLAN — 4-18-16 [78]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

John Anthony Virgen and Elizabeth Lowery-Virgen ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 18, 2016. Dckt. 78.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 89. The Trustee opposes confirmation on the basis that:

1. The Debtor is $555.00 delinquent in plan payments.

2. The Debtor filed an addendum to the instant Motion with a summary of expenses for Home Maintenance, Utilities, Food, and Housekeeping Supplies for a 3-month period. Dckt. 78. The

addendum discloses an average monthly expense for utilities at $850.92 versus the $425.00 reported on Schedule J. Dckt. 77. The 3-month average for Food and Housekeeping supplies was $1,912.19 versus $1,100.00 as reported on Schedule J. It does not appear the Debtor has the ability to make plan payments.

3. The Debtor's Motion is inconsistent with the proposed plan. Item 9 of the Motion states that the plan payment is $1,330.00. However, the plan proposes $995.00. Additionally, the Motion states that the percentage to be paid to general unsecured creditors is 11.35% However, the plan only provides for 2.67%

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $555.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, the court is equally concerned with the conflicting expenses and amounts listed on Schedule J versus the addendum provided by the Debtor. While the Schedule J lists moderate expenses, the addendum filed along with the Motion lists expenses that are nearly double than that stated on Schedule J.

For example, the Debtor's most recent Schedule J, filed the same day as the Motion, states that "Food and housekeeping supplies" expense is $1,100.00. Dckt. 77. However, the addendum, which was filed on April 18, 2016, as well, states that the three-month average of "Food and Housekeeping" is $1,912.19. This conflicting information between the Debtor's supplemental Schedule J and the expenses listed in the Motion raises concerns with the court over whether the Debtor is actually able to afford plan payments.

Under the proposed Second Modified Plan, with the increased monthly expenses, Debtor manages to pay the claim secured by Debtor's vehicle, Debtor repay the loan owed to Debtor's 401k plans, and pay Debtor's nondischargeable taxes and support obligation, and a 2.67% dividend to general unsecured claims. To accomplish this, Debtor will fund the Plan going forward with $995.00 a month. This is premised by Debtor having $5,147.95 on combined take home income.

The original plan filed in this case provided for a 0.00% dividend to creditors with unsecured claims after payment of the reasonable and necessary expenses as stated by Debtor under penalty of perjury on Schedule J. Original Plan, Dckt. 5. The Original Plan continued to pay Debtor's car loans and nondischargeable taxes and support obligation and pay Debtor back for the 401K loans.

Debtor has shed a $992.00 a month domestic support obligation payment, but that money is not being used to increase the payment to creditors. Rather, bumps up the plan payment by $280.00 a month, with the rest of these monies evaporating into the newer, higher "necessary" monthly expenses.

These conflicting statements under penalty of perjury and Debtor's increasing "necessary" expenses, which just happen to soak up the additional money otherwise available to pay creditors based on Debtor's earlier provided information under penalty of perjury indicates that Debtor is not prosecuting this bankruptcy case in good faith, nor is Debtor proposing the present plan in good faith.

Debtor, almost four years into a plan, now seeks to improperly divert projected disposable income into Debtor's own pocket, unwilling to properly provide for creditor's claims. Though desiring the tremendous benefits available under the Bankruptcy Code, Debtor has crafted new financial statements under penalty of perjury which are not credible – and appear to be affirmative misstatements of expenses under penalty of perjury for the purpose of improperly diverting monies improperly out of the bankruptcy plan.

Based on the conflicting expenses filed concurrently with each other, the court does not believe the Debtor's projection is in good faith (especially since it appears to have been made in response to the Trustee's objection to Plan confirmation). This is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

This concern is only further exasperated by the Debtor's proposed plan conflicting with the Motion. The Debtor's Motion states, "[t]he Debtors have proposed to remit plan payments of $1,330.00." Dckt. 78. However, the Debtor's plan proposes "monthly plan payments shall be $995.00 for the remainder of the plan." Dckt. 80. This facially conflicting information raises concerns over whether the plan is feasible but also if the plan and the financial information is accurate and the Debtor's best efforts.

This lower amount stated in the Plan, which would control if confirmed, in a significantly lower amount than as stated in the Motion (subject to Fed. R. Bankr. P. 9011 certifications) further taints the credibility of Debtor and Debtor's team in this case. The appearance of a scheme is exacerbated by Debtor's failure to promptly respond to this basic inconsistent statement of the plan payment amount. It appears that the Debtor, caught in the scheme to mislead the court, is as frozen as a deer caught in the headlights of a semi-truck careening at 70 miles per hour down the highway at the deer.

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

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

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

13. 16-22328-E-13 MARIA COLEMAN
SS-1 Scott Shumaker

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
4-15-16 [11]

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, Creditor, and Office of the United States Trustee on April 15, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of $10,500.00.

The Motion filed by Maria Coleman ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Chevrolet Impala ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 3, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,451.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $10,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA (“Creditor”) secured by an asset described as 2011 Chevrolet Impala (“Vehicle”) is determined to be a secured claim in the amount of $10,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

14. 13-31632-E-13 JANELLE GILMORE MOTION TO MODIFY PLAN
PGM-4 Peter Macaluso 4-14-16 [110]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

Janelle Gilmore ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2016. Dckt. 110.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 121. The Trustee opposes confirmation due to the fact that the Trustee is unsure if Debtor can afford the monthly plan payment. The Trustee notes that in the Debtor's declaration the Debtor explains circumstances that have arisen which have caused her to modify the plan, including having her purse and blank money order check for the Trustee's payment stolen and her rent and expenses increasing.

The Trustee states that the most recent Schedule J filed on September 1, 2105 reflects her expenses at the time, without the changes alleged in the

Declaration.

DEBTOR'S REPLY

The Debtor filed a reply on May 17, 2016. Dckt. 124. The Debtor states that she has explained what caused the delinquency and has testified as to how she will be able to make timely payments moving forward.

The Debtor states that while there were some changes in the Debtor's expenses, the Debtor asserts that there was nothing significant enough to impede future $570.00 monthly Chapter 13 plan payments.

The Debtor states that if the court should require, the Debtor will file Amended Schedules I and J.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor is proposing a plan to cure a delinquency that arose due to the Debtor having her purse and money order payment stolen. The Debtor also indicates that he rent and utilities have increased and that her roommate will be moving out, leaving her responsible for the rent.

Rather than providing supplemental Schedules I and J to represent these explicit changes in expenses as stated by the Debtor, the Debtor's counsel merely responds with "don't you worry about the changes. We can make the payments still." The Debtor could have easily filed supplemental schedules in response to the Trustee's opposition. Instead, counsel shifted the burden to the court to "require" the filing.

Without an accurate picture of the Debtor's current financial situation, including the increase rent payment and utilities, the court nor any other party in interest can possibly determine the same conclusion as the Debtor that the expenses were "nothing significant enough to impeded future $570" plan payments. Dckt. 124.

Therefore, due to the Debtor failing to provide updated, supplemental Schedule I and J for the court to determine whether the plan is feasible or viable given the Debtor's financial situation, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

and the proposed Chapter 13 Plan is not confirmed.

15. 16-21439-E-13 DOUGLAS/KIM JACOBS
DPC-1 Steven Alpert

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-16 [15]

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

The case having previously been dismissed, the Objection to Confirmation is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

16. 16-21446-E-13 ANGELA SEIBERT
BF-1 Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
3-30-16 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee on March 30, 2016. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

JPMorgan Chase Bank, N.A., the Creditor, opposes confirmation of the Plan on the basis that the proposed plan understates the pre-petition arrearage owed to Creditor.

DEBTOR'S OPPOSITION

Angela Seibert ("Debtor") filed an opposition to the instant Objection on May 10, 2016. Dckt. 37. The Debtor asserts that the Creditor has failed to file a declaration in support nor has the Creditor filed a proof of claim to date. The Debtor asserts that without evidence, the Objection should be

overruled. FN.1.

FN.1. The Debtor and Debtor's counsel appears to also to admit into evidence an alleged letter sent to Debtor from Creditor as to details of her loan. However, while the Debtor's attorney argues that the Creditor has not provided evidence or testimony to support the Creditor's contention on the amount of arrearage owed, the Debtor's attorney failed to lay a foundation and authenticate the letter for it to be admissible. The Debtor's attorney uses terms as "party admission and/or business record" as the basis for the letter to be admissible. However, as the Debtor pointed out as to the Creditor's objection, the court cannot admit evidence that has not been authenticated nor for which a foundation has not been laid.

DISCUSSION

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

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

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

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

FN.2. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

Therefore, with the Creditor's objection is overruled.

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

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

17. 16-21446-E-13 ANGELA SEIBERT
DAO-2 Dale Orthner

MOTION TO VALUE COLLATERAL OF PERITUS PORTFOLIO SERVICES II
4-22-16 [27]

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

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

Below is the court's tentative ruling.

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, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Peritus Portfolio Services II ("Creditor") is denied without prejudice.

The Motion filed by Angela Seibert ("Debtor") to value the secured claim of Peritus Portfolio Services II ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Kia Sportage ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,000.00 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 only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service

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

Therefore, due to the Debtor failing to properly serve the Creditor the instant Motion, the Motion is denied without prejudice.

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

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

18. 16-21446-E-13 ANGELA SEIBERT
DPC-1 Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-16 [32]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on the Motion to Value Collateral of Peritus Portfolio SVC

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Peritus Portfolio SVC. However, the court denied the Motion to Value due to the Debtor failing to properly serve the Creditor. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. §

1325(a)(6). Therefore, the Trustee's objection is sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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.

19. 15-29147-E-13 JOHN QUIROZ
RK-2 Richard Kwun

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF PATRICIA COSTLEY, CLAIM NUMBER 2
2-20-16 [51]

Debtor's Atty: Richard Kwun

Notes:
Set by order of the court dated 3/25/16 [Dckt 91]. Court to determine whether to set a briefing schedule for filing an opposition and reply, or if the Status Conference should be further continued in light of the on-going state court litigation.

20. 15-29147-E-13 JOHN QUIROZ
RK-3 Richard Kwun

CONTINUED STATUS CONFERENCE
OMNIBUS OBJECTION TO CLAIMS
2-27-16 [66]

Debtor's Atty: Richard Kwun

Notes:
Set by order of the court dated 3/25/16 [Dckt 90]. Court to determine whether to set a briefing schedule for filing an opposition and reply, or if the Status Conference should be further continued in light of the on-going state court litigation.

21. 16-22550-E-13 STEVEN KEITH
DPC-1 C. Anthony Hughes

MOTION TO EXTEND TIME
5-9-16 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Time to Object to Confirmation is granted.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Extend the Time to Object to Confirmation on May 9, 2016. Dckt. 15. The Trustee is seeking to extend the time for objection to confirmation to no later than May 31, 2016.

The Trustee states that he inadvertently noticed creditors of the Meeting of Creditors with 19 days notice rather than 21 days of notice. Pursuant to Local Bankr. R. 3015-1(c)(4), an objection to confirmation must be filed no later than seven days after the first set Meeting of Creditors, which, in total, would give 28 days notice of time period to object.

The notice provided the Meeting of Creditors is set for May 19, 2016 and parties have seven days, which would be May 26, 2016, to object to confirmation.

The Trustee requests that the court extend the time within which parties can object so as to allow 28 days notice of the time period to object.

The Trustee requests the deadline be May 31, 2016.

The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

The court concurs with the Trustee that in light of the inadvertence of the Trustee's office providing insufficient days of notice, cause exists to extend the deadline to object to confirmation to May 31, 2016. 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 Extend the Time to Object to Confirmation filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline to object to confirmation is set for May 31, 2016.

22. 16-22850-E-13 JENNIFER SABINE
TLA-1 Thomas Amberg

MOTION TO VALUE COLLATERAL OF FIRST INVESTORS FINANCIAL SERVICES, INC.
5-2-16 [10]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 2, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of First Investors Financial Services, Inc. ("Creditor") is granted and the secured claim is determined to have a value of $10,225.00.

The Motion filed by Jennifer Sabine ("Debtor") to value the secured claim of First Investors Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Ford Fusion ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,225.00 as of the petition filing date. As the owner, the Debtor's opinion

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

The lien on the Vehicle's title secures a purchase-money loan incurred in July 26, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,399.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $10,225.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Jennifer Sabine ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of First Investors Financial Services, Inc. ("Creditor") secured by an asset described as 2011 Ford Fusion ("Vehicle") is determined to be a secured claim in the amount of $10,225.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,225.00 and is encumbered by liens securing claims which exceed the value of the asset.

23. 16-21351-E-13 EDUARDO ILANO
DPC-1 Rowena Libang

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-16 [14]

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

24. 16-21451-E-13 TRACY SABATHIA
DPC-1 Gabriel Liberman

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-16 [13]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan is not the Debtor's best efforts. The Debtor is under the median income and proposes plan payments of $785.00 for 60 months with a 1% dividend to unsecured creditors, totaling $431.00.

The Debtor stated at the Meeting of Creditors that she received income for her two children listed on Schedule J. However, the Debtor does not list these sources of income on Schedule I.

DEBTOR'S REPLY

The Debtor filed a reply on May 10, 2016. Dckt. 17. The Debtor states that the additional income would increase the plan payment from $785.00 to $1,762.00, which the Debtor alleges makes the budget unfeasible.

The Debtor states that the Debtor originally filed the Chapter 13 case to protect her vehicle from repossession. However, now, the Debtor states that surrendering the vehicle would be best and that she would prefer continuing the case as one under chapter 7.

The Debtor concludes stating that she will file the necessary paperwork to convert.

DISCUSSION

The Trustee's objections are well-taken.

To date, no supplemental papers have been filed nor has the case been converted to one under Chapter 7.

The Trustee next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> [i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan–-(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 1% dividend to unsecured claims, which total $431.00, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $1,762, as admitted by the Debtor. The Debtor states in her response that the plan payment, if the additional income was properly included, would make the plan payments $1,762.00. Thus, the court may not approve the plan.

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

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

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

25. 14-28452-E-13 SATINDERJIT BAINS MOTION TO MODIFY PLAN
MAC-2 Marc Carpenter 4-18-16 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Satinderjit Bains ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 18, 2016. Dckt. 55.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 64. The Trustee opposes confirmation on the following grounds:

1. The Trustee is uncertain of the treatment for creditor Carfinance Capital. The proposed plan does not list this creditor. Under the confirmed plan, the Creditor was listed as a Class 2 secured purchase money security interest. The Trustee states according to his records the Creditor filed a secured claim on September 9, 2014 in the amount of $16,995.42 and the Trustee has disbursed an amount of $1,100.89 which is not

authorized under the proposed plan.

The Trustee notes that the Trustee previously objected to this matter during the confirmation of the confirmed plan. The Trustee notes that language was added to authorize the payment in the order confirming. The Trustee does not oppose correcting this in the order confirming again.

2. There are appears to be an issue with the proofs of claim filed by creditors Department of Education (Proof of Claim No. 7) and Navient Solutions, Inc. (Proof of Claim No. 8). The Debtor's motion states the following:

"Debtor is seeking to modify her Confirmed Plan to clarify that the payments due in her Chapter 13 plan will not cover 94% of her Class 7 unsecured debts as projected in her Confirmed Plan. Student Loan Servicer, Navient Solutions Inc., did not file a proof of claim until July 24, 2015, and the remaining payments due in Debtor's Chapter 13 plan would not cover 94% of her Class 7 unsecured debts remaining by the end of her Chapter 13 plan."

The Trustee states that he will file an objection to claim to determine if claim 9 is an amendment to claim 8 or if they are two separate claims. The hearing on these objections is set for the June 28, 2016 calendar.

DISCUSSION

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

While it appears that the Trustee's first objection could be rectified with added language in the order confirming to authorize the payment of Carfinance Capital, the Trustee's second objection raises concerns over the proposed distribution to unsecured. The reason for the modification appears to be the subsequent Proof of Claim filed by Student Loan Servicer, Navient Solutions, Inc. On July 24, 2016. As the Trustee noted, the court cannot tell whether the most recent claim is an amended to Claim 8 or whether they are two separate claims.

The proposed distribution in the prior confirmed plan was 94% to Class 7. The instant proposed plan reduces that claim to 60%, due to the subsequent proof of claim filed. The percentage listed in Class 7 is a minimum rather than an exact amount of distribution. The Trustee asserts that he will be filing an Objection to Claim to determine the status of Proof of Claim No. 8 and No. 9. However, these objections do not render the plan confirmable or not. Rather, if the Trustee is successful in disallowing the Proof of Claim, the Trustee will be able to still disburse the 94% to Class 7 claimants, even with the proposed plan minimum distribution of 60%.

As discussed at the hearing on the confirmation of the previous Motion, the Carfinance Capital claim was amended to reflect a secured claim of $0.00, as the vehicle was paid in full. The prior order confirming used the following language concerning the Carfinance Capital claim:

> Debtor hereby waives any objection to payments in the amount of $1,100.89, made by the Chapter 13 trustee on behalf of Debtor to Car Finance Capital.

Dckt. 47. The Trustee does not oppose to have this language included in the instant order confirming.

The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed, after the Debtor includes language authorizing the payment to Carfinance Capital.

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 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following language,
>
> > Debtor hereby waives any objection to payments in the amount of $1,100.89, made by the Chapter 13 trustee on behalf of Debtor to Car Finance Capital,
>
> transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 16-20252-E-13 LEONARD SCROGGINS **MOTION TO AVOID LIEN OF NAOMI**
MWB-4 Mark Briden **HELENE WHITCHER**
4-23-16 [57]

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 23, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial 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 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Naomi Helene Whitcher aka Naomi Helene Scroggins ("Creditor") against property of Leonard Scroggins ("Debtor") commonly known as 1131 Echo Road, Redding, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $93,973.14. An abstract of judgment was recorded with **Shasta** County on November 28, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $160,000.00 as of the date of the petition. The unavoidable consensual liens total $330,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. ProcMay 21, Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Naomi Helene Whitcher aka Naomi Helene Scroggins, California Superior Court for Shasta County Case No. 166345, recorded on November 28, 2011, Document No. 2011-0036096 with the Shasta County Recorder, against the real property commonly known as 1131 Echo Road, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

27. 15-29555-E-13 DIANNE AKZAM **MOTION TO CONFIRM PLAN**
DA-1 Pro Se **4-8-16 [38]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Dianna Akzam ("Debtor") filed the instant Motion to Confirm on April 8, 2016. Dckt. 38.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 2, 2016. Dckt. 41. The Trustee objects on the following grounds:

1. The Debtor has failed to file a declaration in support of the motion.

2. This is the Debtor's seventh bankruptcy between 2010 and 2015. Jeffrey Akzam and his sister, the Debtor, have filed a series of coordinated Chapter 13 cases without either of them engaging in good fath prosecution of those cases.

3. The Debtor has listed personal loans owed to Sandra Smith and Stacey White in Class 6 of the plan. However, it does not appear that these debts are not entitled to special treatment, as the reason listed in the plan is "promised to pay."

4. It appears that the Debtor's plan fails the Chapter 7 liquidation analysis due to non-exempt equity in the amount of $905.00 while proposing unsecured dividend of 0%.

5. The Debtor lists real property on Schedule A but fails to provide for this debt on Schedule D or in the plan. Additionally, the Debtor fails to list the co-debtor on Schedule H.

6. It appears that the Debtor cannot make the payments. The Debtor filed an amended Schedule J on March 10, 2016 and made the following changes without any explanation:

   a. Rent expense of $300.00 to $0.00.

   b. Electricity expense of $0.00 to $130.00.

   c. Water expense of $0.00 to $100.00

   d. Phone expense of $0.00 to $70.00.

DISCUSSION

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

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has reported non-exempt equity in the amount of $905.00 while proposing a 0% dividend to unsecured creditors. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upwards of $905.00 in non-exempt equity.

The Debtor's amended Schedule J provides changes in expenses that facially appear to be implausible. The Debtor, without explanation, reduces her rent expense to $0.00 but does not provide any explanation as to where the Debtor will be living and how she does not have a rental expense. These questions are just further exasperated when her amended Schedule J now indicates an electric expense of $130.00 even though she no longer has rent. When viewing these inconsistencies coupled with the fact that the Debtor failed to report real property, co-debtors, and secured claims in the petition, the court is left to question how accurate the entire case has been. The Debtor's failure to provide even a basic explanation of these changes raises serious

concerns over the truthfulness and accuracy of the Debtor's finances. Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

Though not grounds in and of itself grounds to deny confirmation, the following is the series of cases filed by the Debtor and Debtor's brother, Jeffrey Azkam and subsequently dismissed:

A. 11-25844 in *Pro Se*

1. Chapter 13 Filed March 9, 2011

2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.

3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.

4. Discharge entered September 2, 2011.

B. 13-20155 in *Pro se*

1. Chapter 13 Filed January 7, 2013.

2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*

3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.

a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured claim and alleged violations of the automatic stay.

b. The court determined that abstention pursuant to 28 U.S.C. § 1334(c), the court finding that there were no issues arising under the Bankruptcy Code or in the bankruptcy case. Civil Minutes, Dckt. 85.

C. 14-30332 in *Pro Se*

1. Chapter 13 Case filed October 17, 2014

2. Case dismissed on July 8, 2015.

3. The case was dismissed due to debtor Jeffrey Akzam's failure to file an amended plan after the court denied confirmation of the proposed plan. Civil Minutes, Dckt. 83.

The six prior bankruptcy cases filed by Debtor are summarized as follows:

14-28272 *In Pro Se*	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan. II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28. III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.	
14-23825 *In Pro Se*	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014
	I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49.	
12-37369 *In Pro Se*	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012
	I. The case was dismissed due to Debtor failing to file Schedules, Statement of Financial Affairs, and Plan. Dckt. 21. II. Motion to Vacate Dismissal Order denied. Order, Dckt. 33 III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.	
11-43187 *In Pro Se*	Chapter 13 Case	Filed September 27, 2011 Dismissed December 14, 2011

	I. The case was dismissed for failure of Debtor to file Schedules, Statement of Financial Affairs, and Plan. Order, Dckt. 25. II. Case also dismissed due to Debtor failing to pay filing fees. Order, Dckt. 26.	
11-20282 *In Pro Se*	Chapter 13 Case	Filed January 4, 2011 Dismissed March 18, 2011
	I. Case dismissed due to Debtor's failure to attend First Meeting of Creditors and failure to file motion to confirm Chapter 13 Plan. Motion and Order, Dckts. 22, 27. II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.	
10-45216 *In Pro Se*	Chapter 13 Case	Filed September 22, 2010 Dismissed December 16, 2010
	I. The bankruptcy case was dismissed due to Debtor failing to file a motion to confirm the Chapter 13 Plan and Debtor being delinquent in Plan payments. Motion and Order, Dckts. 22, 38. II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.	

Jeffrey Akzam and his sister, the Debtor Diane Akzam, have filed a series of coordinated Chapter 13 cases without either of them engaging in the good faith prosecution of those cases. To the extent that either of them believe they have a bona fide dispute with the lender who asserted a lien against property in which these two debtor believed they had an interest, those issues are outside of bankruptcy.

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive bankruptcy cases. 15-2247.

This plan is facially not feasible and the Debtor has facially failed to provide accurate, honest, truthful, and candid disclosure of the Debtor's financial reality.

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

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

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

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

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

28. 16-21256-E-13 HEATHER WRIGHT
BLG-2 Paul Bains

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
4-26-16 [23]

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

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

Below is the court's tentative ruling.

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 26, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required

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

The Motion to Value secured claim of Citibank, N.A. ("Creditor") is denied without prejudice.

The Motion filed by Heather Wright ("Debtor") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a (1) Car Radio; (2) Laptop; and (3) Refrigerator ("Asset"). The Debtor seeks to value the Asset at a replacement value of $750.00 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).

Unfortunately, the Debtor does not provide testimony or admissible evidence of the date the lien was incurred. Pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a),

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim. . . if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Here, the Debtor is seeking to value the Asset. As the section explicitly states, the debt has to have been incurred prior to the one-year period preceding the filing of the bankruptcy. The Debtor does not provide any date specific of when the debt was incurred. There is no security contract nor a proof of claim to determine the date the debt was incurred.

Due to the lack of the information, the Motion is denied without prejudice.

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

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

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

The Motion filed by Heather Wright ("Debtor") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a (1) Car Radio; (2) Laptop; and (3) Refrigerator ("Asset"). The Debtor seeks to value the Asset at a replacement value of $750.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Asset's title secures a purchase-money loan incurred in xxxx, 20xx, which is more than 1-year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,478.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-

collateralized. The creditor's secured claim is determined to be in the amount of $750.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Heather Wright ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. ("Creditor") secured by an asset described as (1) Car Radio; (2) Laptop; and (3) Refrigerator ("Asset") is determined to be a secured claim in the amount of $750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Asset is $750.00 and is encumbered by liens securing claims which exceed the value of the asset.

29. 13-23157-E-13 HOSSEIN BAKTVAR AND LALEH MOGHADAM
DPC-2 Peter Macaluso

OBJECTION TO CLAIM OF AEGIS SECURITY INSURANCE COMPANY, CLAIM NUMBER 22
4-4-16 [48]

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, Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 4, 2016. By the court's calculation, 50 days' notice was provided. 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). 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 22 of Aegis Security Insurance Company is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Aegis Security Insurance Company ("Creditor"), Proof of Claim No. 22 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,499.66. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is July 10, 2013. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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 deadline for filing a Proof of Claim in this matter was July 10, 2013. The Creditor's Proof of Claim was filed October 21, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Aegis Security Insurance Company, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 22 of Aegis Security Insurance Company is sustained and the claim is disallowed in its entirety.

30. 16-22360-E-13 DERRICK NOBLES **MOTION TO RECONSIDER DISMISSAL**
NUU-1 Chinonye Ugorji **OF CASE**
5-4-16 [14]

DEBTOR DISMISSED: 05/02/2016

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is granted and the order dismissing the case (Dckt. 9) is vacated.

Derrick Nobles ("Debtor") filed the instant Motion to Vacate Dismissal on May 4, 2016. Dckt. 14.

The instant case was filed on April 14, 2016. Dckt. 1.

On April 18, 2016, the Clerk of the Court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed. Dckt. 7 The Notice stated that the Debtor failed to file the Schedules,

Disclosure Statement, Proposed Plan, Form 122C-1, and Statement of Financial Affairs. The Debtor was required to provide the missing documents by April 28, 2016.

On May 2, 2016, the Clerk of the Court issued an order dismissing the case for failure to file timely documents. Dckt. 9.

On May 2, 2016, the Debtor filed the missing documents. Dckt. 10, 11, 12.

During the period of April 15, 2016 and April 29, 2016, Debtor's counsel suffered some ill health and was not able to perform her professional services. This led to the Debtor's counsel failing to upload the necessary paperwork by the April 28, 2016 deadline.

The Debtor seeks to have the order dismissing the case vacated, per Rule 60(b), on the ground that the Debtor's failure to upload the required documents was due to the illness of Debtor's counsel..

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 10, 2016. Dckt. 19.

APPLICABLE LAW

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.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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 an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 Fed. Appx. 194, 196-197 (9th Cir. 2004); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 792 (B.A.P. 9th Cir. 2002).

As stated by the Debtor, the Debtor filed the documents immediately on May 2, 2016, when the Debtor's counsel was able to return to work after illness. The court is confident that both Debtor and Debtor's counsel will continue to be attentive to deadlines in the future (as Debtor's counsel has been in the past), this type of accidental late filing of papers due to counsel's illness provides justification under Fed. R. Civ. P. 60(b)(1) for mistake and inadvertence.

Therefore, in light of the foregoing, the Motion is granted and the order dismissing the case (Dckt. 9) is vacated.

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 of Case 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 the order dismissing the case (Dckt. 9) is vacated.

31. 13-29064-E-13 TERRY/REBECA BRISTER MOTION TO MODIFY PLAN
MET-5 Mary Ellen Terranella 4-17-16 [72]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2016. By the court's calculation, 37 days' notice was provided. 35 days' notice is required.

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

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

Terry and Rebeca Brister ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 17, 2016. Dckt. 72.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 82. The Trustee objects to the plan on the basis that the plan will take 71 months to complete. The Trustee states that the plan is proposing to pay $650.00 a month with a 0% dividend to unsecured creditors. After Trustee's fees, there is $604.81 for claims. The Trustee's calculations, based on the remaining claims and amounts owed, the total plan period would need to be 71 months.

DISCUSSION

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

The Trustee’s objection is well-taken.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 71 months due to the remaining claims to be paid through the plan. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

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

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

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

32. 16-21365-E-13 DAVID/CONNIE KELLER
DPC-1 Peter Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-16 [16]

No 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 Debtors, Debtor's Attorney on April 27, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to xxxx the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan is not the Debtor's best effort.

The Debtor's plan proposes plan payments of $2,500.00 for 60 months, with a 0% dividend to unsecured creditors. The Trustee argues that the Debtor has failed to complete Form B22C correctly in light of the Debtor failing to list his gross retirement income. The Debtor lists net retirement income on Schedule I in the amount of $1,889.00. At the Meeting of Creditors, the Debtor stated that his gross retirement income was approximately $2,400.00. By adding this to Form B22C, the average monthly income would increase to $94,858.32.

DEBTOR'S SUPPLEMENTAL PAPERS

The Debtor filed an amended Form B22C and amended Schedules I and J on May 9, 2016. Dckt. 20 and 21.

On Original Schedule I (Dckt. 11 at 38-39) and Amended Schedule I (Dckt. 21 at 4-5), Debtor lists the following income and deductions:

(Dollar amounts rounded)	DEBTOR 1 Original Schedule I	DEBTOR 1 Amended Schedule I		DEBTOR 2 Original Schedule I	DEBTOR 2 Amended Schedules I
Gross Wages	$4,140	$4,140			
Taxes, Medicare, Soc. Sec.	($1,695)	($1,695)			
Social Security	$2,009	$2,009		$1,543	$1,543
Retirement	$1,889	$2,254		$1,231	$1,231

On Amended Schedule I, there is an additional, hand written in response to Question 13, expected increase or decrease in income within one year, which states:

"OCT retiring <2335.61.> Retiring in Oct. This year." Dckt. 21 at 5.

DISCUSSION

Considering the Objection filed by the Trustee and the amended schedules (this being a 9014-1(f)(2) contested matter for which an opposition may be stated at the hearing), the court is unsure of whether the Trustee's objection (while the Trustee has not provided a declaration, it appears that all of the information pertaining to the issue are stated in the Schedules and Current Monthly Income Forms 122C-1) has been addressed. The Trustee states that Debtor (presumably 1) stated that Debtor's gross "retirement income" was $2,400.00. This appears to be so stated on Original and Amended Schedule I. However, the Trustee's focus is on the Computation of Current Income, for which the court is directed to the information on Form B22C (which, as the court realized only when looking at this issue is now "Official Form 122C-1").

On Original Form 122C-1 (Dckt. 11 at 50-53) and Amended Form 122C-1 Debtor states under penalty of perjury that in the six months prior to the commencement of the bankruptcy case Debtor's average current monthly income was $5,504.86, which generates an annualized pre-petition income of $66,058.32 for purposes of the Means Test.

In making this calculation, Debtor states average monthly income of: (1) Debtor 1 wages of $4,273, (2) Debtor 2 retirement of $1,231. (Rounded to the dollar.) This yields the $5,504.86 in average monthly income. However, as the Trustee points out, Debtor 1 reports having an additional $1,889 in retirement income which is not included on the Form 122C-1 calculation.

Amended Schedule I states that the Debtor anticipates in the post-petition "retirement" from his job that is generating $2,335.61 in monthly

take-home income. But that is a post-petition change, which the court would consider in determining projected disposable income, but not a retroactive, modification of what the Debtor's actual pre-petition income was for the Means Test.

Thus, it appears based on the information provided by Debtor, both in the Original Schedules, Amended Schedules, Statement of Financial Affairs, and Amended Form 122C-1 (Dckt. 20) it appears that computation of the "Current Monthly Income" for the six month period preceding the commencement of this bankruptcy case and the pre-petition annualized income for the Means Test is computed as (rounding to dollars) follows:

Income Source	Debtor 1	Debtor 2
Wages (Gross)	$4,273	$0
Retirement	$2,254	$1,231
Individual Totals	$6,527	$1,231
Combined Monthly Income	$7,758	
Annualized Income	x 12 =	$93,096

On Amended Form 122C-1, Debtor now provides a disposable income calculation. Debtor's calculation is that Debtor has a negative disposable monthly income of ($1,685). It appears that a significant reason for this negative number is more than ($3,000) a month in expenses to care for a chronically ill adult child. However, while showing an expense, no income, support, benefits, or other revenue is show for this adult child.

The Plan proposes a $2,500 a month payment which will be used to make: (1) the current monthly mortgage payment of $1,283 and a monthly arrearage cure payment of $500; (2) monthly payments on a car and motorcycle totaling $170; and pay $16,000 of nondischargeable taxes (averages $267 a month). Dckt. 9.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxx.**

~~The Trustee's objections are well-taken. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.~~

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

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

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

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

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

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

33. 11-20466-E-13 BENJAMIN/JANE GARCIA
SDB-6 Scott de Bie

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
4-25-16 [100]

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, Creditor, and Office of the United States Trustee on April 25, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Benjamin and Jane Garcia ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7242 Pleasant Valley Road, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $490,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor notes that they had filed a similar Motion back in 2011, in which the court granted. However, due to possible ineffective service, the Debtor is resubmitting.

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

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

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

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

DISCUSSION

The senior in priority deeds of trust secures a claim with a balance of approximately $756,422.51. Creditor's third deed of trust secures a claim with a balance of approximately $91,944.26. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Benjamin and Jane Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a third in priority] deed of trust recorded against the real property commonly known as 7242 Pleasant Valley Road, Vacaville, 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 $490,000.00 and is encumbered by senior liens securing claims in the

amount of $756,422.51, which exceed the value of the Property which is subject to Creditor's lien.

34. 14-29067-E-13 MET-4 **EARLINE MILES** **Mary Ellen Terranella** **OBJECTION TO CLAIM OF PERITUS PORTFOLIO SERVICES II, LLC/NCEP, LLC, CLAIM NUMBER 2-1 4-6-16 [76]**

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, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 48 days' notice was provided. 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). 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 2-1 of Peritus Portfolio Services II, LLC/NCEPT, LLC, transferee of Santander Consumer USA, Inc is sustained and the claim is disallowed in the amount of $3,356.77, with a remaining allowed secured claim of $25,182.53.

Earline Miles, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Peritus Portfolio Services II, LLC/NCEPT, LLC, transferee of Santander Consumer USA, Inc. ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $28,539.30. Objector asserts that part of the Retail Installment Sale Contract included: (1) Optional Service Contract in the amount of $1,966.77; Optional Service Contract in the amount of $595.00; and (3) Gap

Contract in the amount of $796.00. The Debtor asserts that she cancelled these optional contracts on April 11, 2014, which was within the 90-day cancellation period.

The Debtor asserts that the Creditor did not adjust the balance of the vehicle loan. The Debtor asserts that the secured amount should be $25,182.53, which is the balance of the Creditor's alleged secured claim on the Proof of Claim of $28,539.30 less the cancelled contracts of $3,356.77.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 12, 2016.

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 shows that as an attachment is the Retail Installment Sale Contract. Outlined in that contract are the three optional service contracts that the Debtor alleges were cancelled within 90-days of the signature. The date of the Contract is March 18, 2014. The Debtor provides a copy of the Cancellation Form which is dated April 11, 2014, within 90-days of the sale. Dckt. 79.

The Proof of Claim No. 2 does appear to include the $3,356.77 that the Debtor cancelled within the permitted period. The secured claim was not properly reduced by the cancellation of the optional contracts

Based on the evidence before the court, the creditor's claim is disallowed in the amount of $3,356.77, with a remaining allowed secured claim of $25,182.53. 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 Peritus Portfolio Services II, LLC/NCEPT, LLC, transferee of Santander Consumer USA, Inc., Creditor filed in this case by Earline Miles, 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 2-1 of Peritus Portfolio Services II, LLC/NCEPT, LLC, transferee of Santander Consumer USA, Inc. is sustained and

the claim is disallowed in the amount of $3,356.77, with a remaining allowed secured claim of $25,182.53.

35. 14-29067-E-13 EARLINE MILES
MET-5 Mary Ellen Terranella
MOTION TO MODIFY PLAN
4-6-16 [81]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

36. 14-28968-E-13 KATHERINE PONGRATZ — MOTION TO MODIFY PLAN
EJS-1 Eric Schwab — 4-5-16 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2016. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

Katherine Annette Pongratz ("Debtor") filed a Motion to Confirm the Modified Plan on April 5, 2016. Dckt. 24.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 37. The Trustee opposes confirmation on the following grounds:

1. The Debtor's Motion to Confirm does not comply with applicable law. The Motion does not cite applicable code sections, such as 11 U.S.C. § 1329.

2. The Debtor's declaration is not sworn under the penalty of perjury. The Debtor states that the proposed plan payments are $5,883.00. The proposed plan calls for monthly payments of $1,834.00

DISCUSSION

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

The Trustee's objections are well-taken. While the court agrees with the Trustee that the Debtor's counsel appears regularly before the court and typically files Motions that state with particularity the grounds for which the relief is sought, particularly with the relevant code sections. See Fed. R. Bankr. P. 9013 and Local Bankr. R. 9014-1(d). The Motion neglects to state the relevant Bankruptcy Code section, 11 U.S.C. § 1329, as the basis for the Motion.

As both the Trustee and respective counsel are aware, the Motion is not a "points and authorities" in which citations and quotations are placed in lieu of a "real" points and authorities. Commonly, reference is made to the federal and state statute upon which the relief is based in the motion, as well as stating with particularity the grounds. This provides a better informational framework upon which the motion is reviewed by the court and all parties in interest.

The "motion" filed by Debtor recounts the history of the case and that Debtor seeks to modify the plan. However, what the motion fails to do is to state sufficient grounds for the court to issue an order granting it and confirming a modified plan as permitted by 11 U.S.C. §§ 1329 and 1325.

The Trustee's objection, pointing out failure to make reference to the Code section identifies the "sizzle," but not the "stake" in the shortcomings of the motion. Merely citing the Code sections, for this contested matter 11 U.S.C. §§ 1329 and 1325, is not the same as stating with particularity the grounds upon which the relief is based (Fed. R. Bankr. P. 9013). While it may seem perfunctory that a party actually state each and every element of what is required for the relief requested for such "simple" relief, it is required. As this court has said to other counsel, the court does not leave attorneys and pro ses guessing when the rules apply and when "it is so simple that even a judge" can figure it out without proper pleadings.

Amended Pleadings

The court notes that an "Amended Motion" was filed on May 20, 2016. The Amended Motion inserts an amended paragraph 3 which states (new language underlined):

"3. The Debtor now seeks to modify her Chapter 13 Plan pursuant to §1329 (a) (2) to allow for claims as filed and to account for changes to her budget."

Dckt. 40. Otherwise, the Amended Motion is identical to the Original Motion (Dckt. 24).

In some respects, this addition is the equivalent of a person filing a complaint for violation of that person's civil rights, and the claim as stated in the complaint alleges the following grounds, "Plaintiff seeks a judgment for the violation of her civil rights pursuant to 42 U.S.C. § 1983."

The grounds necessary for a court to confirm a modified Chapter 13 plan are as follows:

§ 1329. Modification of plan after confirmation

(b) (1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if–

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B) (I) the plan provides that--

(I) the holder of such claim retain the lien securing such claim until the earlier of–

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if--

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

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

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as

defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

§ 1322. Contents of plan

(a) The plan--

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may--

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any

unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law--

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

The Movant has also filed an Amended Declaration on May 20, 2016. Dckt. 41. The amendment has been to add additional language to the unnumbered paragraph at the start of the declaration (new language underlined),

"I, Katherine Pongratz, declare <u>under penalty of perjury</u>:...."

The form used for written declarations under penalty of perjury has been specified by Congress in 28 U.S.C. § 1746, which requires as follows (emphasis added):

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> **(2) If executed within the United States**, its territories, possessions, or commonwealths: "**I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).**
>
> **(Signature)".**

The above is standard language attorneys commonly use in declarations. It appears that in the hurry to “get ‘er done,” and amended pleadings filed, counsel’s normal declaration form was shortcut.

Interestingly, while the “under penalty of perjury” language has been stitched into the documents, nowhere does the Declarant actually state, under penalty of perjury that the information is “true and correct.” While the court does not have the slightest concern that this was done intentionally to give Declarant an opportunity to provide “creative testimony,” the declaration has to comply with 28 U.S.C. § 1746.

The modified Plan, as presented in the Amended Motion and supported by the Amended Declaration does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

37. 14-28079-E-13 ERNESTO/MILAGROS SANTOS MOTION TO MODIFY PLAN
MRL-3 Mikalah Liviakis 3-31-16 [70]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2016. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 31, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 16-21581-E-13 GWENDOLYN WILSON
DPC-1 Candace Brooks

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-16 [17]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

1. The plan fails to provide for the secured portion of the claim filed by the Internal Revenue Service in the amount of $25,239.00. This would result in the plan taking longer than 60 months to complete.

2. The Debtor has not provided tax returns and business documents for GOALS for Women to the Trustee.

3. The Debtor cannot make the plan payments. The Debtor admitted at the Meeting of Creditors that the Debtor failed to list an expense of $274.00 per month for auto insurance on Schedule J.

4. The Debtor admitted at the First Meeting of Creditors that she has a possible cause of action with the Internal Revenue Service that was not disclosed by the Debtor in the schedules or Statement of Financial Affairs.

5. The Debtor is $2,400.00 delinquent in plan payments.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on May 19, 2016. Dckt. 26. The Debtor responds to the objections as follows:

1. The Debtor is in discussion with the Internal Revenue Service on a stipulation to allow the Debtor to pay the secured portion after the completion of the plan. A stipulation has been forwarded to the Internal Revenue Service for consideration.

2. The Debtor was initially uncomfortable with providing internal business documents for the non-profit as she did not want the entity to be impacted by her personal bankruptcy. The business documents have been provided to the best of her ability.

3. The Debtor has amended Schedule J to include the monthly insurance payment of $71.83. Debtor also decreased her home repairs until she has an increase in her salary. She has been making her automobile insurance payment with Mercury Insurance.

4. The Debtor states that at the Meeting of Creditors she believes that she may have a claim against the Internal Revenue Service for an $800.00 off-set of a state tax refund and a possible abatement for penalties and interest that is currently owed on the subject tax liability.

5. The Debtor states that she made her payment on April 25, 2016.

DISCUSSION

The Trustee's objections are well-taken.

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C.

§ 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

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

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

However, these three possibilities are relevant only if the plan provides for the secured claim. Here, the Debtor fails to provide for the secured claim of the Internal Revenue Service. While the Debtor claims that a stipulation is being circulated, no such stipulation has been filed.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

The Debtor admitted at the Meeting of Creditors that she failed to report a $274.00 expense on Schedule J. The Debtor has since filed an amended Schedule J which correctly lists the expense as well as reduces certain expenses to make the plan viable. While the Debtor will need to actually file the amended Schedules as such, a review of the Schedule shows that with the inclusion of the insurance and the reduction of other expenses, the objection is overruled.

As to the Debtor failing to report the potential claim against the Internal Revenue Service, the Debtor provides, as an exhibit, amended Schedule B and C to include the claim. Therefore, the objection is overruled.

Lastly, the basis for the Trustee's objection is that the Debtor is $2,400.00 delinquent in plan payments. The Debtor has failed to make any plan payments to date. The Debtor states that she made the payment on April 25, 2016. Unfortunately, the Debtor does not provide evidence that the delinquency has been cured but rather just states she did. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

39. 16-21581-E-13 GWENDOLYN WILSON
KLF-1 Candace Brooks

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
3-31-16 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2016. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Deutsche Bank National Trust, the Creditor, opposes confirmation of the Plan on the basis that the Debtor's plan does not provide for the full amount of the pre-petition arrearage.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on May 10, 2016. Dckt. 22. The Debtor states that the Creditor has failed to provide sufficient evidence nor any declaration to authenticate or provide foundation for the Creditor's objection.

DISCUSSION

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

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

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

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

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

Further, it will be Creditor's proof of claim, when filed, which controls as to the amount of arrearage which will need to be cured – absent there being an order of the court determining such on a objection to claim or other contested matter. See Chapter 13 Plan, Section 2, ¶ 2.04;l Dckt. 5. Here, Creditor alleges that the arrearage is $22,530.05, which the Debtor states it is $14,160.00 – a difference of $8,370.00. Over sixty months of a plan, that would require an additional $140.00 a month for the cure payment. It may well be that this renders any plan not feasible, but Debtor and Debtor's counsel are proceeding with this information from Creditor.

The objection is overruled.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled. The Plan is not confirmed, the court having sustained the objection of the Chapter 13 Trustee.

40. 11-35484-E-13 WILLIAM/DIANE CATLETT MOTION TO MODIFY PLAN
PGM-5 Peter Macaluso 4-18-16 [115]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

William and Diane Catlett ("Debtors") filed the instant Motion to Confirm the Modified Plan on April 18, 2015. Dckt. 115.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 10, 2016. Dckt. 127. The Trustee objects to the treatment proposed for Shellpoint Mortgage Servicing/Bank of America. The Trustee states that the Creditor is listed in Class 1 on the confirmed plan. The proposed plan has the Creditor in Class 4. The Debtor states that it received a modification but the Trustee asserts that it has no record.

DEBTOR'S REPLY

The Debtor filed a reply on May 17, 2016. Dckt. 130. The Debtor states that they filed a Motion to Approve Loan Modification on December 21, 2105. Dckt. 85. The hearing on the Motion was held January 26, 2016. The Motion was granted. Dckt. 105.

DISCUSSION

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

It appears that the Debtor is correct. On January 27, 2016, the court entered an order authorizing the Debtors to modify their loan with "The Bank of New York Mellon, serviced by Shellpoint Mortgage Servicing." Dckt. 108. While the court assumes that the Trustee inadvertently did not see the order because the Debtor lists the Creditor as "Shellpoint Mortgage Servicing/Bank of America," this appears to be a mere scrivener's error that has continued through the life of the plan, even after the Debtor has correctly identified the creditor as the Bank of New York Mellon.

The court having authorized the loan modification and the plan correctly listing the Creditor as a Class 4 claim, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. 11-35484-E-13 WILLIAM/DIANE CATLETT
PGM-6 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
4-20-16 [121]

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

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

The period for which the fees are requested is for the period March 20, 2015 through May 25, 2016. Applicant requests fees in the amount of $1,500.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 22, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing modifications to the plan, preparing a Motion to Approve Loan Modification, and appearances at hearings. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

...

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

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

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate

> the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

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

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

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

FEES REQUESTED

Fees

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

Motion to Modify Plan: Applicant spent 5.25 hours in this category. Applicant met with Client to discuss the Motion to Dismiss; reviewed and sent letter regarding the potential dismissal; filed a response to the motion to

Dismiss; prepared a Motion to Modify; responded to opposition; met with client about changing in income; appeared at hearing; and drafted order confirming.

Motion to Modify Plan and Motion to Approve Loan Modification: Applicant spent 6.9 hours in this category. Applicant met with Client to discuss delinquency; met with clients to discuss a new plan and to prepare for loan modification; prepared Motion to Approve Loan Modification; filed a response to the motion to Dismiss; prepared a Motion to Modify; responded to opposition; met with client about changing in income; appeared at hearing for both Motions.

Motion to Modify Plan: Applicant spent 2.6 hours in this category. Applicant met with Client to discuss denial of the former proposed plan and prepared a new Motion to Modify and proposed plan.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso, Esq.	14.75	$200.00	$2,950.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,950.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $1,500.00 for its fees incurred for the Client, notwithstanding the actual higher amount when computed based on the number of hours and hourly rate. The Applicant asserts that the additional post-confirmation work was actual, reasonable, necessary and unanticipated. Namely, the Applicant's work in preparing the Motion for Loan Modification and the Motions to Modify due to the Debtor's delinquency and loan modification.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Unanticipated and Substantial fees in the amount of $1,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,500.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,500.00
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

42. 16-21089-E-13 STEPHEN MAR **OBJECTION TO CONFIRMATION OF**
DPC-1 Peter Cianchetta **PLAN BY DAVID P. CUSICK**
4-20-16 [27]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on July 26, 2016.

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

1. Debtor is delinquent in plan payments.

2. The Debtor has failed to provide the Trustee with a copy of the tax return.

3. Debtor has failed to provide the Trustee with 60 day pay advices.

4. The plan is not the Debtor's best efforts.

5. The secured claim of Unifund CCR, LLC is not provided for in the plan.

6. The Trustee calculates that the plan could pay all creditors at 100% within 36 months if the plan payment were increased to $585.00 per month.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a supplemental declaration on May 4, 2016. Dckt. 33. The Trustee states that the Debtor has resolved the first three objections. However, the remaining objections still remain.

STIPULATION

On May 20, 2016, the Debtor and Trustee filed a stipulation to continue the hearing due to allow Debtor's counsel opportunity to resolve the remaining issue and due to a conflict Debtor's counsel has at the time of the scheduled hearing. The parties stipulate to continue the hearing to 3:00 p.m. on July 26, 2016.

43. 16-21294-E-13 JOSE GODINEZ
APN-1 Mark Wolff
OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
4-14-16 [18]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

Wells Fargo Bank N.A. dba Wells Fargo Dealer Services, the Creditor, opposes confirmation of the Plan on the basis that the Plan does not properly state that the Creditor holds a purchase money security interest and fails to provide for the full amount of the claim.

The Creditor's objections are well-taken. The security agreement was entered into on January 27, 2014, which is less than 910-days preceding the filing of the instant bankruptcy case. On Class 2 of the proposed plan, the Debtor states that the Creditor does not hold a purchase money security interest.

Additionally, the plan understates the amount claimed by the Creditor in its secured claim. The objecting creditor, who holds a security interest in personal property, also alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditor are insufficient to provide it with adequate protection during the period of the plan. The creditor cites to *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), for the proposition that "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

Timbers, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See*, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., In re Sanchez, 384 B.R. 574, 576 (Bankr. D. Or. 2008); In re Denton, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

The plan provides only for a $457.23 monthly payment. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too.

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

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

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

44. 16-21294-E-13 JOSE GODINEZ
DPC-1 Mark Wolff

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-16 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, on April 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on a Motion to Value Collateral of Franklin Credit Management but has failed to file one to date.

2. The Debtor's plan indicates that the Debtor is in the process of a loan modification. However, the additional provisions do not contain the provisions routinely seen in the context of when loan modifications are pending.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Franklin Credit Management. However, the Debtor has failed to file a Motion to Value the Collateral of Franklin Credit Management. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

As to the Trustee's second objection, while there is no requirement that a plan provide for alternatives for if a loan modification is denied, the court routinely expects that the Debtor provides for a creditor offering a loan modification adequate protection payments while the modification is pending as well as other provisions to ensure the creditor is treated properly. The court has coined these terms the "Ensminger Provisions." As the Trustee highlighted, there is information concerning the pending loan modification that the court finds necessary in order to confirm the proposed plan. Without providing information as to whether the plan will be effective post-loan modification, who the actual creditor is, whether the expense includes property taxes, etc., the plan is facially not viable.

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

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

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

45. 10-52096-E-13 WILLIAM/KAYLENE DILL
DPC-2 Peter Macaluso
OBJECTION TO CLAIM OF CHIWAN KIM, MD/CSMGS, CLAIM NUMBER 12-1
4-6-16 [88]

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, Debtor, Debtor's Attorney, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 48 days' notice was provided. 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-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 5-1 of "Chiwan Kim, MD/CSMGS" is overruled.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of "Chiwan Kim, MD/CSMGS" ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,547.43. Objector asserts that the Claim is a duplicate of Proof of Claim Number 5-1.

Trustee seeks to disallow the claim of "Chiwan Kim, MD/CSMGS." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose claim is sought to be disallowed. The court will not issue orders on incorrect or

partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

The court notes that in reviewing the following web sites maintained by governmental entities which are commonly used to identify creditors, their addresses, and agents for service of process, the following entities have the words "Chiwan Kim, MD/CSMGS" in their names:

A. California Secretary of State http://kepler.sos.ca.gov/

1. Chiwan Kim, MD/CSMGS

a. [NONE]

2. Chiwan Kim, MD/CSMGS

a. [NONE]

3. CSMGS

a. [NONE]

Additionally, the Objection is seeking to disallow the claim of "Chiwan Kim, MD/CSMGS." Dckt. 88. The Proof of Claim No. 12-1 that the Trustee is seeking to have disallowed names the Creditor as "Chiwan Kim MD." The Trustee appears to have convoluted the name of the creditor and the name of where payment should be sent into a single entity. This is improper as it does not identify correctly the real creditor in interest.

This then raises concerns over whether the Trustee provided proper service. There is no indication that Chiwan Kim MD is a corporation or limited liability. The Trustee served:

Chiwan Kim M
Attn: Officer or Managing Agent Bankruptcy Dept.
One Medical Plaza

Roseville, CA 95661-3037

Dckt. 92. Without contrary evidence, Chiwan Kim MD is an individual and does not have an "Officer or Managing Agent." As such, service on the Creditor was not proper.

Therefore, based on the Trustee naming an accurate creditor and failing to properly serve the Objection, The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Chiwan Kim, MD/CSMGS, Creditor filed in this case by David Cusick, the Chapter 13

Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 12-1 of Chiwan Kim, MD/CSMGS is overruled.

46. 15-28199-E-13 CHANCE/MICHELE PETERSON MOTION TO MODIFY PLAN
RJ-2 Richard Jare 4-12-16 [38]

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

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

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

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

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

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

47. 16-21099-E-13 KWAJHALIEN DORN-DAVIS
DPC-1 Marc Carpenter

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-12-16 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on April 12, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's plan relies on the Motion to Value Collateral of Ditech.

MAY 10, 2016 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on May 24, 2016 to be heard in conjunction with the Motion to Value Collateral. Dckt. 25.

DISCUSSION

The Trustee’s objections are well-taken.

At the May 24, 2016 hearing, the Motion to Value Collateral of Ditech was denied without prejudice due to the failure of the Debtor to correctly identify the real creditor in interest.

A review of the Debtor’s plan shows that it relies on the court valuing the secured claim of Ditech Financial, LLC. However, the court denied that Motion without prejudice on May 24, 2016. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee’s 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 Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

48. 16-21099-E-13 KWAJHALIEN DORN-DAVIS
MAC-1 Marc Carpenter

MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC
4-5-16 [15]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Ditech financial, LLC, and Office of the United States Trustee on April 5, 2016. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Ditech Financial LLC ("Creditor") is denied without prejudice.

The Motion to Value filed by Kwajhalien Dorn-Davis ("Debtor") to value the secured claim of Ditech Financial, LLC("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5021 Sky Parkway, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $196,707.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Ditech Financial, LLC." As stated in other unrelated bankruptcy cases, Ditech Financial, LLC commonly serves as a loan servicer for the actual creditor. The court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors. FN.1.

FN.1. It appears that the name "Ditech Financial, LLC" may be the loan servicer rather than the actual creditor. If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

The misidentification of creditors for purposes of § 506(a) motions will be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual

creditor, and no effort is made to afford the actual creditor any due process rights.

Additionally, no Proof of Claim has been filed on the claims registrar by Ditech Financial LLC, which may assert that it is the holder of the Note secured by the deed of trust, or any other party claiming that it is the actual owner of the subject claim. The real creditor of interest in possession of the Note may not have received notice of the Debtor's bankruptcy, and may not have been served notice and the pleadings in this Motion that fundamentally affects its right as a Creditor in this case.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

Based on the foregoing, the valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kwajhalien Dorn-Davis ("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 Value is denied without prejudice.