

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

June 2, 2015 at 3:00 p.m.

-
1. [15-20810-E-13](#) VASILIIY/YELENA KUMANSKIY MOTION TO CONFIRM PLAN
MLA-2 Mitchell Abdallah 4-10-15 [[31](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

Vasiliy and Yelena Kumanskiy ("Debtors") filed the instant motion to Confirm the Amended Plan on April 10, 2015. Dckt. 31.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on May 18, 2015. Dckt. 52. Before discussing his objections, the Trustee notes that the instant plan fails to resolve the Trustee's prior objections to

June 2, 2015 at 3:00 p.m.

- Page 1 of 102 -

confirmation which were sustained on April 14, 2015. Dckt. 38 and 41. The Trustee objects on the following grounds:

1. Debtor cannot afford to make the payments or comply with the plan because the Debtors' plan relies on a Motion to Value the secured claim of BAC Home Loans Servicing. The court has denied Debtor's motion to value..
2. The plan is not the Debtors' best efforts. The Debtors claim inappropriate deductions. On Form 22C, the Debtors list \$2,305.10 for taxes which appears to be double the amount listed on Debtors' schedule I, # 51 (\$741.70 and \$410.85). Also the Debtors on Line 18 list life insurance in the amount of \$242.00 when on Schedule I, it is listed as an expense of \$42.00. The Monthly Disposable Income should be \$1,352.55 and not <-\$1,302.81>.
3. The plan is not the Debtors' best efforts because it does not report all of the Debtors' income. The Debtors' Statement of Financial Affairs report a joint tax refund for 2014 in the amount of \$5,805.00. The Debtors received a federal refund of \$5,215.00 for tax year 2013 and \$4,263.00 for 2012. No future tax refund is projected on Schedule I. Based on the previous tax years, the Trustee states that it appears that the Debtors will be able to claim the same deductions and that any future refunds would be similar. Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.
4. The Trustee notes that the new plan calls for payments of \$89.00 for one month, \$134.00 for 59 months, paying no less than 3.97% to the unsecured creditors. Schedule J was amended which reduced line 13 by \$44.25 per month, resulting in a monthly net income of \$133.25 per month.

DISCUSSION

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

As to the Trustee's first objection, the Debtors' filed a Motion to Value Collateral of Bank of America Company Home Loans Servicing which was denied without prejudice on May 19, 2015. Dckt. 57. The Debtors have not filed a new Motion to Value Collateral. Therefore, the Trustee's first objection is sustained

The Trustee's remaining objections are also well-taken. The Debtors' Form 22C seems to miscalculate the proper tax deductions and life insurance expenses which led to an improper calculation of disposable income. A comparison of Form 22C with Schedule I shows the discrepancy. Without the Debtors' Form 22c accurately reflecting the Debtors' financial reality and properly calculating the Debtors' disposable income for determining proper monthly plan payments, the court cannot determine if the Debtors can afford to make the proposed plan payments or even if those payments are proper.

Additionally, the failure of the Debtors to provide for future tax refunds raises concerns if the information provided in the schedules as well as Form 22C is an accurate reflection of the Debtors' financial reality. Without the plan and schedules reflecting the tax refund income, the court cannot confirm the plan.

The Debtors' new proposed plan does not correct any of the Trustee's prior objections. It is concerning to the court that after the prior plan being denied confirmation, the Debtors have not proposed a plan which addresses the detailed concerns outlined by the Trustee and the court.

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

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

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

The 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.

2. [15-22116-E-13](#) JOHN/NATALIE DYER
DPC-1 David Ritzinger

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[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 Debtors and Debtor's Attorney on April 29, 2015. 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 Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtors' plan fails the liquidation analysis. The Debtors' non-exempt equity totals \$20,870.67. The Debtors' plan proposes to pay the unsecured creditors no less than a 35% dividend where the plan estimates unsecured debts at \$28,484.67, equating to a \$9,487.00 dividend. The non-exempt equity comes from Debtors' cash on hand (\$100.00), deposit accounts at Bank of America, N.A. (\$1,111.38), E*Trade account (\$2,339.76), 2009 Yamaha Vstar 1300 Motorcycle (\$3,000.00), real property commonly known as 536 Del Mar Circle, Vacaville, California (\$1,919.53), and a 2011 Toyota Prius (\$12,400.00).

The Trustee's objections are well-taken. A review of the Debtors' Schedules B and C shows that there is non-exempt equity in the assets listed

by the Trustee in his objection. Namely, there is substantial non-exempt equity in the 2011 Toyota Prius and the 2009 Yamaha Motorcycle. Pursuant to 11 U.S.C. § 1325(a)(4), creditors would need to receive "not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7" as of the date of the petition. In calculating the non-exempt equity in the estate's assets, it appears that the unsecured claims would receive more in a Chapter 7 than they would under the proposed. 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.

3. 15-23917-E-13 PATRICK/ELIZABETH PEACE
MMM-1 Mohammad Mokarram

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
5-19-15 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, JP Morgan Chase Bank, N.A., and Office of the United States Trustee on May 19, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of JP Morgan Chase 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 Patrick Anthony Peace and Elizabeth Ann Peace ("Debtors") to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 9135 Carradale Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$300,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see

also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$338,787.00. Creditor's second deed of trust secures a claim with a balance of approximately \$39,542.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Patrick A. Peace and Elizabeth A. Peace ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank, N.A. secured by

a second in priority deed of trust recorded against the real property commonly known as 9135 Carradale Way, Sacramento, 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 \$300,000.00 and is encumbered by senior liens securing claims in the amount of \$338,787.00, which exceed the value of the Property which is subject to Creditor's lien.

4. [15-21125-E-13](#) STEPHEN/MARIE THOMAS CONTINUED OBJECTION TO
DPC-1 Eamonn Foster CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-16-15 [[17](#)]

Final Ruling: No appearance at the May 19, 2015 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. By the court's calculation, 33 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:

1. The First meeting of Creditors was continued to May 14, 2015 because the Debtor did not recollect details regarding the Chapter 13 plan. The Debtor had not filed 2014 taxes at the time of the first scheduled Meeting of Creditors. The Debtor has since filed the taxes.
2. The plan may not pay unsecured creditors what they would receive in the event of a Chapter 7 liquidation. The Debtor's non-exempt equity totals \$52,350.00 according to Schedule B and C. Debtor's plan proposes to pay the unsecured creditors no less than a 21% dividend where the plan estimates unsecured at \$134,978.22 which would be a \$28,345.22 dividend.
3. The Debtor's plan may not pay unsecured creditors the amount required under 11 U.S.C. § 1325(b). The Debtor Marie Thomas filed a Chapter 7

on August 29, 2014 which was dismissed after the United States Trustee filed a motion to dismiss under 11 U.S.C. § 707(b). Case No. 14-28836. The Means test form in that case had shown monthly disposable income of \$1,418.76 but the Debtor had claimed several additional expenses, and the United States Trustee had opposed them and argued the Debtor could pay creditors \$1,590.00 per month. The court granted the motion. Case No. 14-28836, Dckt. 37.

The Trustee provides the following comparison in expenses from those listed in the Debtor's prior Chapter 7 and the instant case:

Expense	Prior Schedule J	Current Schedule J
Medical and Dental	\$150.00	\$333.00
Charity	\$10.00	\$800.00

The Trustee states that there is no proof of expenses nor any explanation from the Debtors concerning the substantial increase in expenses.

MAY 19, 2015 HEARING

At the hearing, the court continued the instant Objection to 3:00 p.m. on June 2, 2015 to allow the Debtor to appear at the continued Meeting of Creditors and to allow the Debtor to provide supplemental evidence to resolve the Trustee's objections. Dckt. 21.

NO SUPPLEMENTAL PLEADINGS FILED BY DEBTOR

Though the Trustee's Objection has been pending since April 16, 2015, Debtor has not filed any opposition or evidence in opposition thereof.

SURVEY OF PRIOR CHAPTER 7 CASE INFORMATION

In Form B22A Debtor states under penalty of perjury that the average actual monthly charitable contributions made during the six months preceding the August 29, 2014, filing of the Chapter 7 case was \$0.00 per month. 14-28836 Dckt. 1 at 46. This is corroborated by Debtor in the response to Question 7 on the Statement of Financial Affairs in which it is stated that no charitable contributions to any one recipient has exceed the aggregate amount of \$100.00 during the one-year period preceding the commencement of the Chapter 7 case. *Id.* at 28.

Debtor states under penalty of perjury that there have been charitable contributions were made during the six months preceding the February 13, 2015, commencement of this present case on Form B22C in the amount of \$800.00 a month. Dckt. 1 at 51. In response to Question 7 on the Statement of Financial Affairs Debtor states under penalty of perjury that they tithe every two months to both Calvary Chapel Church (Red Bluff) and Sacred Heart Catholic Church (Red Bluff) - but fail to disclose the amount of the stated "tithe."

Transferee has defense if a religious or charitable institution, and amount of transfer not in excess of 15% of transferor's gross annual income, or if

transfer was consistent with past practices of debtor. The charitable contribution limits are provided for in 11 U.S.C. § 548(a)(2), in the context of fraudulent conveyances, which provides:

"(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which-

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions."

Debtor states that the expense is \$800.00 a month, which aggregates to \$9,600.00 per year. Debtor lists gross income of \$7,915 a month on Schedule I. Dckt. 1 at 25. Debtor offers no evidence that such contributions have actually been made prior to bankruptcy or are being made by Debtor.

The Proposed Chapter 13 Plan needs \$500.00 a month to fund it for 60 months. Dckt. 5. This provides for a 21% dividend to creditors holding general unsecured claims (stated to aggregate \$134,978). Plugging in an \$800.00 a month charitable expense generates the required "Monthly Net Income" of \$500 to justify the Proposed Plan amount.

DISCUSSION

No supplemental papers have been filed by the Debtors in connection with the instant Objection. Furthermore, the Debtors failed to appear at the Continued Meeting of Creditors held on May 14, 2015. Trustee Report at 341 Meeting, May 15, 2015.

The Trustee's objections are well-taken. The basis for the Trustee's first objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to Trustee's second objection, a review of the Debtors' Schedule B and C show that there is a substantial amount of non-exempt equity in assets of the estate. Under the proposed plan, it appears that the unsecured claims would receive nearly half of what they would under a Chapter 7 liquidation. Pursuant to 11 U.S.C. § 1325(a)(4), creditors would need to receive "not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7" as of the date of the petition. In calculating the non-exempt equity in the estate's assets, it appears that the unsecured claims would receive more in a Chapter 7 than they would under the proposed. Therefore, the Trustee's objection is sustained.

The court notes that Schedule J no provision is made for a mortgage payment or rent. However, Debtor lists expenses of (\$168) for real estate taxes, (\$84) for property insurance, and (\$333) for home maintenance monthly. Dckt. 1 at 26. In the Proposed Chapter 13 Plan, Debtor makes no provision for the payment of any mortgage or other debt secured by any real property. Dckt. 5, see Classes 1, 2, and 4. For Class 3, Debtor states that the property securing the Wells Fargo Bank, N.A. claim will be abandoned. No explanation is provided by Debtor for why there is no rent or mortgage expense, but (\$585) in housing related expenses, including real estate taxes.

Lastly, the comparison of the Debtors' current Schedule J and Debtor Marie Thomas' prior Schedule J show substantial increase in expenses, namely in medical and charitable expenses, with no explanation as to why, or providing credible evidence that such expenses actually exist. Absent explanation from the Debtors as to how and why the expenses increased, the court does not believe the Debtors' projection is in good faith. This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3). FN.1.

FN.1. It appears that even under the most "charitable" light, Debtors and counsel have engaged in "manufacturing virtual expenses," for which no actual expenses exist, solely for the purpose of violating the Bankruptcy Code and defrauding the court, creditors, Chapter 13 Trustee, and other parties in interest. Such conduct raises serious issues for Debtors and their ability to ever obtain a discharge in a bankruptcy case.

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

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

The 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. [15-21927-E-13](#) MICHAEL BARBIERI
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[15](#)]

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) Notice of Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on April 29, 2015. 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 Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor may not be entitled to Chapter 13 relief because he is over the debt limit of 11 U.S.C. § 109(e). The Debtor lists on Schedule E priority claims in the amount of \$59,388.00 and \$19,735.00 on Schedule F. Dckt. 1. The State Board of Equalization file a claim in the amount of \$1,239,686.79. Proof of Claim No. 1. The Debtor listed on Schedule E a tax debtor owing to the State Board of Equalization as \$25,000.00 priority and \$125,000.00 unsecured for "Redetermination of Tax Debt owed by Auburn Associates No. 2 Inc. dba Auburn Nissan. The Debtor does not list any stock ownership on Schedule B, does not list any

other names on the petition, does not show any income from these business in the last two years, and does not show the Debtor was an officer, director, partner, or managing executive in a business in the last 6 years.

2. The plan does not pay all priority debts. The State Board of Equalization filed a claim for a priority unsecured claim in the amount of \$1,239,686.79. The plan only pays \$63,180.00.

The Trustee's objections are well-taken. 11 U.S.C. § 109(e) limits Chapter 13 eligibility to individuals with regular income who owe, "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525." The Proof of Claim No. 1 filed by the State Board of Equalization, stating an \$1,239,686.79 unsecured claim, disqualifies the Debtor from relief under Chapter 13 under 11 U.S.C. § 109(e).

Lastly, the Debtor's proposed plan does not provide for the full payment of the State Board of Equalization's priority claim. Under 11 U.S.C. § 1325(a)(2), a Debtor's plan must provide for the full payment of priority claims unless the creditor agrees to alternative treatment. Here, the State Board of Equalization has not indicated that they have opted for different treatment. Based on Proof of Claim No. 1, the Debtor's plan does not fully satisfy the priority claim, and 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.

6. [15-21729-E-13](#) JIM SINGH
DPC-1 David Foyil

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-20-15 [[21](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Objection" for the pending Objection to Exemptions, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Objection" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to, and good cause appearing, **the court overrules without prejudice the Chapter 13 Trustee's Objection to Exemptions.**

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.

An Objection to Exemptions having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection is overruled without prejudice.

7. [15-23930](#)-E-13 CHRISTOPHER/GAIL BROWN
MMM-1 Mohammad Mokarram

MOTION TO EXTEND AUTOMATIC STAY
5-19-15 [[14](#)]

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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Christopher and Fail Brown ("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. 13-28041) was dismissed on April 3, 2015, after Debtor failing to cure the default in their plan payment. See Order, Bankr. E.D. Cal. No. 13-28041, Dckt. 123, April 3, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as they were unable to make plan payments due to the Debtor not receiving payments from their customers in the Debtor's business. The Debtor state that their income has stabilized and the customers have been making their payments. The Debtor states that they filed the instant case to allow them the opportunity to save their home.

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.

8. 15-23930-E-13 CHRISTOPHER/GAIL BROWN
MMM-2 Mohammad Mokarram

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
5-19-15 [[10](#)]

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

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

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

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

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

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

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 Christopher and Gail Brown ("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 260 Sumatra Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$202,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut.*

Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$354,988.00. Creditor's second deed of trust secures a claim with a balance of approximately \$76,288.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Christopher and Gail Brown ("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 second in priority deed of trust recorded against the real property commonly known as 260 Sumatra Drive, Sacramento, 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 \$202,000.00 and is encumbered by senior liens securing claims in the amount of \$354,988.00, which exceed the value of the Property which is subject to Creditor's lien.

9. 15-23031-E-13 WILLIAM HAMILTON
DPC-1 Marc Caraska

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
4-29-15 [[15](#)]

Tentative Ruling: The Objection to Discharge 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, and Office of the United States Trustee on April 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Discharge 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 Cusick, the Chapter 13 Trustee, filed the instant Objection to Debtor's Discharge on April 29, 2015. Dckt. 15.

The Trustee argues that William Hamilton ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 13 bankruptcy case on June 17, 2014. Case No. 14-26366. The Debtor converted that case to one under Chapter 7 on January 20, 2015 and received a discharge on April 28, 2015. Case No. 14-26366, Dckts. 54 and 83.

The instant case was filed under Chapter 13 on April 14, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on April 28, 2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 14-26366, Dckt. 83. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-23031), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge 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 Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-23031, the case shall be closed without the entry of a discharge.

10. [15-22433-E-13](#) INVINCE/ELIZABETH BAYLON
DPC-1 Stephen Murphy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 6, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor Elizabeth Baylon failed to provide proof of her social security number at the First Meeting of Creditors.
2. It appears that the plan is not the Debtors' best effort. Debtors are over the median income and propose plan payments of \$570.00 for 18 months; \$720.00 for 39 months; then \$780.00 for 3 months with a 0% dividend to unsecured creditors. The Debtors' Form B22C shows a

negative net income. The Debtors admitted at the Meeting of Creditors that they are not currently paying the \$1,500.00 rental expense listed on Schedule J. Debtor Invoice Baylon admitted that he currently lives with his in-laws and is looking for a place to rent, therefore the Debtors have an additional \$1,500.00 per month to pay into the plan.

The Trustee's objections are well-taken. Pursuant to 11 U.S.C. § 1325(a)(1), the Debtors must comply with the provisions of the Bankruptcy Code for a plan to be confirmed. One of the requirements is to provide proof of social security number. The Debtor has failed to meet this requirement.

Secondly, the Debtors' plan does not appear to be their best efforts. The Debtors admitted at the Meeting of Creditors that there is potentially \$1,500.00 in additional income that may be applied to plan payments. The Debtors have not provided any supplemental papers explaining whether they have found a new rental property or remain living with the in-laws with no rent expense. As such, the Debtors' plan fails to provide for all of their disposable income and fails 11 U.S.C. § 1325(b).

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. [15-21839](#)-E-13 ROBERT REED AND MARIA
DPC-1 BARTLOW-REED
Nekesha Batty

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[29](#)]

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 and Debtor's Attorney on April 29, 2015. 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 Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtor Robert Reed failed to appear and be examined at the First Meeting of Creditors held on April 23, 2015. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting was continued and Debtor appeared at the continued meeting.
2. Debtors plan may not be the Debtors' best effort under 11 U.S.C.

§ 1325(b). Debtors are above median income according to the Statement of Current Monthly Income, Form 22C. A review of Debtors 2014 federal and state income tax returns indicate that Debtors received refunds totaling \$8,516.00. Future tax refunds are not being paid into the plan for the benefit of creditors.

3. Debtors' tax returns indicate business income from Cosmetics/Art & Jewelry Sales, Energy Conservation Consulting, and Certified Life Coach, Facilitator & Mentor. Debtor failed to disclose any business income in the Statement of Financial Affairs and failed to disclose these business in the Statement of Financial Affairs. No business income is listed on Schedule I.

According to the Trustee's report, Debtor Robert Reed appeared at the continued Meeting of Creditors held on May 22, 2015. Therefore, the Trustee's first objection has been resolved.

However, the Trustee's remaining objections are well-taken. The failure of the Debtors to provide for future tax refunds raises concerns if the information provided in the schedules as well as Form 22C is an accurate reflection of the Debtors' financial reality. Without the plan and schedules reflecting the tax refund income, the court cannot confirm the plan.

Lastly, as to the Trustee's third objection, the Debtors appear to have failed to report an interest in multiple business that may have provided business income. A review of the Debtors' Statement of Financial Affairs, Schedule B, and Schedule I, the Debtors fail to report any income or interest in the businesses that they indicated on their tax returns produced business income. It appears that by failing to provide a full picture of the Debtors' financial reality that the court nor the Trustee can determine the feasibility or viability of the plan. The plan does not appear to be the Debtors' best efforts under 11 U.S.C. § 1325(b).

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

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

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

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

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

12. [15-22139](#)-E-13 NANCY/DANIEL BALAGUY
BF-5 Richard Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR BANK OF
AMERICA, N.A.
5-5-15 [[37](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Chapter 13 Trustee on May 5, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Bank of America, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full pre-petition arrearage for the Creditor. The Creditor states that the plan provides for repayment of only \$9,929.05 to Creditor, but the pre-petition arrears owed totals \$12,536.87.

The Creditor holds a deed of trust secured by the Debtor's residence. However, the Creditor has not filed a Proof of Claim. While the Creditor states that the Debtor owes more in pre-petition arrears than that which is stated on the proposed plan, the Creditor has failed to provide any competent evidence showing the actual amount of pre-petition arrearage due. Without any proof of

claim filed or any declaration or evidence supporting the Creditor's claim of arrears, 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.

Therefore, 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, Bank of America N.A. 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.

13. [15-22139-E-13](#) NANCY/DANIEL BALAGUY
DPC-1 Richard Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-15 [[40](#)]

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 and Debtor's Attorney on May 6, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor has not filed a domestic support obligation checklist. The Debtors list a deduction of \$652.00 on Schedule I for Domestic Support Obligation but has failed to provide the required checklist.
2. The Debtors' plan provides that \$3,000.00 has been paid to the attorney of record and \$1,000.00 is due through the plan. However, the Rights and Responsibilities and Disclosure of Compensation of Attorney for Debtor reflect that \$0.00 has been paid to the attorney of record.

3. The Debtors have failed to provide year to date income for 2015 on the Statement of Financial Affairs. However, Debtors' Schedule I reflects that both Debtors are currently employed. Furthermore, the Statement of Financial Affairs reflects income from Bright Star for 2014 in the amount of \$21,092.00. However, based on the W2 provided from Bright Star for 2014, the income reflects \$36,816.00.

The Trustee's objections are well-taken. The Debtors have failed to provide the required Domestic Support Obligation Checklist. Without this information, the court nor the Trustee can determine whether any proposed plan is feasible or viable. Therefore, for failing to file the necessary paperwork, the objections is sustained.

As to the second objection, the Trustee is correct in noting the discrepancy in the proposed plan with the Rights and Responsibilities and Disclosure of Compensation of Attorney for Debtor concerning the pre-petition amounts paid to the Debtors' attorney. Once again, without the Debtors providing accurate and correct information as to the Debtors' financials, the court is unable nor willing to confirm a plan that may or may not properly reflect the Debtors' financial reality. There is potentially \$3,000.00 that should be dedicated to the plan or which have already been paid but the court nor the Trustee can determine that given the Debtors are giving conflicting accounting as to the attorneys' fees.

Lastly, the Debtors' Statement of Financial Affairs is not properly completed. A review of the Statement of Financial Affairs shows that the Debtors have failed to list the year to date income on question 1. The instant case was filed on March 18, 2015. The Debtors' Schedule I indicates that both Debtors are employed and receiving income. The court questions why the Debtors, who have previously filed a Chapter 13 which was dismissed due to the Debtors failing to confirm a plan (Case no. 14-28542, Dckt. 52), have not properly completed the Statement of Financial Affairs. This raises concerns not only to the Debtors' candidness and truthfulness but also whether any plan is feasible or viable. This concern is only exacerbated by the \$15,724.00 discrepancy in the reported income from 2014 from Bright Star on Statement of Financial Affairs and the income listed on the Debtors' W2. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The court is justifiably concerned that the proposed plan is not the Debtors' best efforts, in light of the glaring failures and discrepancies in both the plan and the schedules.

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.

14. [15-22139-E-13](#) **NANCY/DANIEL BALAGUY** **OBJECTION TO CONFIRMATION OF**
RTD-1 **Richard Sturdevant** **PLAN BY SCHOOLS FINANCIAL**
CREDIT UNION
5-7-15 [44]

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, Chapter 13 Trustee, and Office of the United States Trustee on May 7, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Schools Financial Credit Union ("Creditor") opposes confirmation of the Plan on the basis that:

1. The proposed plan was not filed in good faith. The Creditor asserts

that the Debtors have not provide complete or accurate information regarding their earnings. Mainly, Creditor asserts that the Debtors have failed to report all of the income both Debtors received for the past three years, failing to list the mileage reimbursements and the gross income rather than the taxable income. The Creditor also argues that the Debtors fail to accurately list the household size, the domestic support obligations, the arrears owed to the holder of the first deed of trust, as well as other inconsistencies. The Creditor also argues that the Debtors fail to list the refund from the prior Chapter 13 Trustee and the mailing matrix in the instant case does not reflect the same number of creditors from the previous case.

2. The proposed plan does not comply with 11 U.S.C. § 1325(b)(1)(B). The Creditor asserts that the Debtors improperly calculated their disposable income on Form 22C and that there is sufficient monies to pay unsecured claimants 100%.
3. The proposed plan is not the Debtors' best efforts. The Creditor asserts that at the Meeting of Creditors, the Debtors admitted that the domestic support obligation will end in 2017. The Creditor states that the proposed plan does not provide for a step up in plan payments after the completion of the support obligation and thus the instant plan is not the Debtors' best efforts.
4. The Debtors failed to properly notice creditors of the proposed plan and the Debtors failed to list creditors who were listed in the previous case.

The Creditor's objections are well-taken. The crux of all the Creditor's objections resolves around the accuracy and truthfulness of the information submitted by the Debtors. Even before delving into the specifics of the information listed, the Debtors have failed to complete all the forms. For instant, the Debtors do not provide any year to date income on Statement of Financial Affairs nor do the Debtors provide the Domestic Support Checklist. These failures compound, raising serious concerns over whether the instant case has been filed in good faith and whether the information provided is in fact the Debtors' financial reality.

Using the Statement of Financial Affairs as an example, the Debtors have failed to list the year to date income on question 1. The instant case was filed on March 18, 2015. The Debtors' Schedule I indicates that both Debtors are employed and receiving income. The court questions why the Debtors, who have previously filed a Chapter 13 which was dismissed due to the Debtors failing to confirm a plan (Case no. 14-28542, Dckt. 52), have not properly completed the Statement of Financial Affairs. This raises concerns not only to the Debtors' candidness and truthfulness but also whether any plan is feasible or viable. This concern is only exasperated by the \$15,724.00 discrepancy in the reported income from 2014 from Bright Star on Statement of Financial Affairs and the income listed on the Debtors' W2.

Furthermore, the Creditor's objection over the failure of the Debtors to disclose that their domestic support obligation will terminate in 2017 and provide for those funds into the plan further underscores that the Debtors may not be proposing a plan with their best efforts.

A review of the Creditor's proposed Form 22C amendments to properly calculate the Debtors' disposable income for plan payments highlights that there is a potential for substantial differences in what the plan payments should be. Under the Creditor's calculation, the Debtors have sufficient income to pay 100% to Class 7 claimants. However, the proposed plan only provides for a minimum of a 6% dividend to Class 7 claimants. This 94% differential arises from whether the Debtors have fully reported their income and whether the expenses, whether it be the number of dependents or other expenses, are accurate or inflated.

The Debtors have failed to respond to the instant Objection or to the Objection to Confirmation filed by the Chapter 13 Trustee. There appears to be fundamental concerns over whether the instant case has been filed in good faith and whether, under the penalty of perjury, the Debtors have truthfully disclosed their finances.

Therefore, in light of the Debtors failure to complete all necessary documents and to report all income as well as concerns over whether the instant plan is the Debtors' best efforts, 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 Schools Financial Credit Union 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.

15. [13-32741-E-13](#) JULIA CARLISLE
CA-1 Michael Croddy

MOTION FOR COMPENSATION FOR
MICHAEL DAVID CRODDY, DEBTORS
ATTORNEY(S)

5-11-15 [[21](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees 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 11, 2015. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

Michael Croddy, the Attorney ("Applicant") for Julia Carlisle, the Chapter 13 ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 15, 2013 through June 2, 2015. Applicant requests fees in the amount of \$4,050.00 and costs in the amount of \$372.41.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 12, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget*

Sound Plywood, Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign 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 general case administration, preparing and filing petition and schedules and attending Meeting of Creditors. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

New Client Meeting: Applicant spent 3.4 hours in this category. Applicant assisted Client with initial client meeting, discussed necessary information and bankruptcy process, and met with Debtor to discuss his individual case.

Data Acquisition and Input: Applicant spent 12.2 hours in this category. Applicant inputted Client's financial information into petition program, preformed calculations of Client's income and expenses, followed up with Debtor on subsequent questions, and met with Client to sign petition and schedules.

Meeting of Creditors: Applicant spent 1.5 hours in this category. Applicant discussed Meeting of Creditors with Client and attended the Meeting of Creditors.

Motion for Compensation: Applicant spent 2.3 hours in this category. Applicant prepared the instant Motion for Compensation and attended hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael Croddy, Esq.	8.8	\$375.00	\$3,300.00
Georgianna Wells, Paralegal	6.0	\$125.00	\$750.00
Total Fees For Period of Application			\$4,050.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$372.41 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing Fee of petition and schedules		\$281.00
Filing Fee of instant Motion for Compensation		\$91.41
Total Costs Requested in Application		\$372.41

The Applicant states in the Motion that he has received \$725.00 from the Client pre-filing as a retainer as well as \$281.00 for the filing fee of the case.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$4,050.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved. The Applicant is authorized to apply the \$725.00 pre-filing retainer to the approved \$4,050.00 fees and the remaining \$3,325.00 is authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The First Costs in the amount of \$372.41 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved. The Applicant is authorized to apply the \$281.00 pre-filing costs advance to the approved

\$372.41 and the remaining \$91.41 is authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$4,050.00
Costs and Expenses	\$372.41

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Michael Croddy ("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 Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$4,050.00
Expenses in the amount of \$372.41,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. The Applicant shall first apply the \$725.00 pre-filing retainer to the authorized fees and costs, and the Trustee is authorized to pay the remaining balance from funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

16. [15-21641](#)-E-13 GANESH RAJAPPAN
DPC-1 Jeremy Heebner

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

Final Ruling: No appearance at the June 2, 2015 hearing is required.

The case having previously been converted to a Chapter 7 on May 22, 2015, the Objection is overruled 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 converted to a Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been converted to one under Chapter 7.

17. [14-30249-E-13](#) JOHN/JESSIE HEINRICHS
MAC-1 Marc Caraska

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

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

TRUSTEE'S OBJECTIONS

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

1. It appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors' Plan proposes to increase the plan payments from \$322.40 to \$438.14 in month 13 without any explanation on how the Debtors can afford the increase. The projected monthly income on Schedule J is \$338.54. The Debtors' amended Schedule I

states that Debtor John Heinrichs owns a business. In the original Schedule I, the Debtors' net income from the business was \$2,936.00. However, on the amended Schedule I, the Debtors changed the income to \$2,083.33 under gross wages on line 2.

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

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

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

DEBTORS' SUPPLEMENTAL DECLARATION

The Debtors filed a supplemental declaration on May 2, 2015. Dckt. 60. The Debtors state that the difference between the gross income on Schedule I and the proposed budget is primarily due to payroll taxes incurred as an employee now that Debtor John Heinrichs is a salaried employee. As to the other increases in expenses, the Debtors provide the following explanation:

1. Property insurance increased \$123.00 due to an error on the original Schedule J.
2. Home maintenance increased \$40.00 due to the need to paint the exterior of the home this year.
3. Food increased \$95.00 due to the rising cost of groceries.

4. Personal care increased by \$60.00 due to the fact Schedule J only included expenses for one of the Debtors.
5. Medical expenses increase by \$68.00 due to the additional prescriptions since filing.
6. Transportation increased by \$155.00 due to the increase in fuel prices.
7. Health insurance increased \$714.60 due to the Debtors' new health insurance plan.
8. Vehicle insurance increased \$98.00 due to the increase in policy due to two recent accidents.

The Debtors further note that the step up in plan payments in month 13 is possible because the required capital expenditures for Debtor John Heinrichs' business will be complete which will result in an increase in revenue.

MAY 5, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 2, 2015. Dckt. 62.

TRUSTEE'S STATUS REPORT

The Trustee filed a status report on May 19, 2015. Dckt. 66. The Trustee states that the Debtors' supplemental declaration has not resolved all of the Trustee's objections. Namely, the Trustee still objects dues to:

- (1) changes in income not explained and
- (2) the Internal Revenue Service's claim is not properly provided for in the plan.

DISCUSSION

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

While the Debtors' supplemental declaration explains the increase in expenses, the Debtors still have not explained the change in income of Debtor John Heinrich. The Debtors state that the difference in Schedule I and the proposed budget is due to the Debtor becoming a salaried employee rather than self-employed. However, this does not sufficiently explain the \$852.67 deduction outside of the statement the decrease is due to "payroll taxes incurred as an employee." The court agrees with the Trustee that this is not a sufficient explanation as to the change in income.

Moving from being self-employed to an employee should result in a reduction of "payroll taxes." Being self-employed, Debtor had the burden of paying all of his employment taxes. Now, his employer pays half-of his employment taxes. For the other expenses, the statements that (1) one of the Debtor's personal expenses were "forgotten," (2) food expenses have increased, and (3) fuel expenses have increased do not sound credible. No explanation is

given how Debtors "remembered" to include one of their personal expenses but "forgot" the other. The contention that fuel costs have risen is inconsistent with the consumer market. (Possibly fuel costs have temporarily gone up due to the switch in California from winter to summer blend of fuel, but that cost goes down again in the fall. Presumably the Debtors' prior statement under penalty of perjury took in account such predictable swings in fuel price.)

These statements of "increased costs" sound more in the nature of "manufactured expenses" to improperly exhaust projected disposable income which should be going to pay creditors rather than actual bona fide expenses.

It is also curious that on Original Schedule I Debtor lists income from his business (not wages), listing his "employer" as QC Design Art, Inc. Debtor does not list any business as an asset on Schedule B. Dckt. 1. No expenses for taxes are listed on either Schedule I or Schedule J. *Id.* However, in response to Question 18 on the Statement of Financial Affairs, Debtor states under penalty of perjury that his business is QC Design Art, Inc. *Id.*

Debtor does not explain how, under penalty of perjury they listed a corporation as a business of Debtor, but failed to list any stock in such corporation. Further, Debtor does not explain how no provision was made payment of taxes on Original Schedules I and J.

The court notes that the California Secretary of State reports that a corporation with the name QC Design Art, Inc. (Entity No. C3542515) is an active corporation California. FN.1. John Gilbert Heinrichs is listed as the agent for service of process by the Secretary of State. The business address for this corporation is the same as the residence address given by Debtor on the petition filed in this bankruptcy case. A LEXIS-NEXIS search reports that John Gilbert Heinrichs is the President of QC Design Art, Inc.

FN.1. [http://kepler.sos.ca.gov/.](http://kepler.sos.ca.gov/)

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

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

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

- (3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

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

Here, the Debtor provides for the claim, but improperly classifies it as unsecured, ignoring the creditor's collateral. The Debtors failed to address this objection in their supplemental declaration. Therefore, the plan is not confirmable.

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

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

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

Declaration ¶ 10, Dckt. 45. This appears to state that (1) Debtor has no personal knowledge of their assets and liabilities, (2) Debtor cannot testify that they meet the "best interests of creditors test," and (3) their attorney desires to waive the attorney client privilege and testify in this case. If a debtor cannot testify as to their assets and liabilities, based upon the information they have provided under penalty of perjury in the schedules, the claims stated under penalty of perjury, and the claims filed, then someone else has to provide such testimony. Merely recycling hearsay statements from their attorney is not sufficient.

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

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

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

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

18. [15-21852-E-13](#) SUZAN MORGAN
DPC-1 Dale Orthner

OBJECTION TO DEBTORS 11 U.S.C.
SEC. 1328 CERTIFICATION BY
DAVID P. CUSICK
4-20-15 [[13](#)]

Tentative Ruling: The Objection to Discharge 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, and Office of the United States Trustee on April 20, 2015. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Objection to Discharge 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 Cusick, the Chapter 13 Trustee, filed the instant Objection to Debtor's Discharge on April 20, 2015. Dckt. 13.

The Trustee argues that Suzan Morgan ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on March 15, 2012. Case No. 12-25042. The Debtor received a discharge on June 29, 2012. Case No. 14-26366, Dckt. 13.

The instant case was filed under Chapter 13 on March 9, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on June 29, 2012, which is less than four-years preceding the date of the filing of the instant case. Case No. 14-26366, Dckt. 13. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-21852), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge 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 Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-23031, the case shall be closed without the entry of a discharge.

19. [12-35654-E-13](#) RICHARD/MARTA MARTINSON
RAC-5 Richard Chan

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH UNITED STATES
AUTOMOBILE ASSOCIATION
4-22-15 [[64](#)]

Tentative Ruling: The Motion to Approve Compromise 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 - 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 22, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise 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 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 for Approval of Compromise is granted.

Richard and Marta Martinson, the Chapter 13 Debtors, ("Movants") requests that the court approve a compromise and settle competing claims and defenses with United States Automobile Association ("Settlor"). The claims and disputes

to be resolved by the proposed settlement are in connection with an under insured motorist claim arising out of an action of personal injury. The Movants are plaintiffs in an action in the Superior Court of California, County of Sacramento arising from an automobile accident. On June 5, 2012, the Movants filed the state court action alleging personal injury, property damage, and negligence per se. Movants state that they previously settled their claims against the third party for the limits of her insurance policy in the amount of \$15,000.00, after approval of the settlement. Dckt. 54. Among the personal injury claims, the Movants sought recovery from the Settlor.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 67):

- A. Settlor shall pay the Movant \$75,000.00
- B. Settlor shall be released and forever discharged from any and all liability under Movants' policy providing benefits on account of bodily injuries or death, caused by an underinsured motorist and resulting from an accident which occurred on or about June 15, 2010, in the county of Sacramento.

The Movants propose the following disbursement of the settlement:

1. Movants' attorney would receive \$35,000.00 per the signed retainer agreement. Dckt. 67, Exhibit B.
2. An additional \$1,833.46 would be paid to Loyal Miner, Attorney at Law, for costs advanced. Dckt. 67, Exhibit C.
3. Trover Solutions for Kaiser Permanente would receive \$15,645.77 for medical liens, compromised down from \$29,043.20. Dckt. 67, Exhibit D.
4. De. David Dame would receive \$4,132.75 for medical lien. Dckt. 67, Exhibit E.
5. Movants would receive \$22,075.00, per their claimed exemption on Schedule C, pursuant to California Code of Civil Procedure § 703.140(b)(11)(D).
6. A lump sum payment of \$11,313.02 would be made to the Trustee for disbursement to creditors representing all remaining funds from the settlement.

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

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT*

Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

The Movants argue that while they are confident they would be successful in litigation, the Movants argue that difficulty of the claim would be time consuming and would cause an undue delay and expense.

Difficulties in Collection

The Movants state that this factor is neutral since the Movants do not anticipate any difficulties in collection from Settlor in the event of a successful judgment.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs which are projected based on the unsettled nature of the claim. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a greater recovery for the Estate than if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

REVIEW OF TERMS TO SETTLE PERSONAL INJURY LITIGATION

A review of the proposed settlement appears to be in the best interest of the Movants, creditors, and the estate. The settlement allows for the payment of 75% of the Movants' insurance policy to pay the medical expenses incurred in connection with the car accident as well a benefit to the creditors under the plan. The settlement allows for the parties to avoid the cost of litigation which would likely diminish the overall total that the Movants would receive.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the

Estate. The motion is granted.

COMPENSATION OF PROFESSIONALS

Through this Settlement Debtor also seeks to obtain an order authorizing the payment of \$35,000.00 in fees and \$1,833.46 in expenses to Loyal Miner, Debtor's attorney for the state court litigation. However, the court cannot identify any order having been obtained to authorize the employment of such professional as required by 11 U.S.C. § 327. It appears that this attorney, for whom Debtor failed to obtain authorization to employ, has been working on the state court action for almost 3 years during this bankruptcy case. It is well established that such a professional cannot be paid any compensation if the employment was not authorized by the court. *Atkins v. Wain*, 69 F.3d 970, 973-74 (9th Cir. 1995). Fortunately for state court counsel, the court may, under proper circumstances, retroactively authorize the employment and "save" an attorney not professing to be an expert on bankruptcy law but being engaged by a debtor as the fiduciary a Chapter 13 case, debtor in possession, or trustee. *Okamoto v. THC Financial Corporation (In re The Fin. Corp.)*, 837 F.2d 389, 392 (9th Cir. 1987).

The court cannot authorize the payment of \$35,000.00 in professional fees to Loyal Miner at this time. Therefore, the court orders that the \$35,000.00 be disbursed to the Chapter 13 Trustee, which monies shall be held pending further order of the court. All lien rights and other interests which Loyal Miner which exist in the \$35,000.00 of settlement proceeds shall continue in full force and effect while the proceeds are held by the Chapter 13 Trustee. FN.1.

FN.1. The court is cognizant that non-bankruptcy attorneys provide very valuable services to fiduciaries of bankruptcy estates and need to be fairly compensated (which can include contingent fees). However, the court cannot ignore the requirements of the Bankruptcy Code for authorization to be obtained to employ professionals and that such professional fees and expenses must be approved by the court pursuant to 11 U.S.C. §§ 330 and 331.

Debtor's bankruptcy counsel should, as part of his duties to the estate, be able to assist in the Debtor not only obtaining authorization to employ Loyal Miner, but also the preparation and prosecution of an appropriate motion to obtain an order allowing the fees.

OTHER PROPOSED DISTRIBUTION OF SETTLEMENT PROCEEDS

Furthermore, the proposed disbursement of the settlement proceeds, other than to state court counsel, appear to be a fair and equitable distribution. Therefore, the court approves the proposed distribution of the settlement funds as described supra.

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 Compromise filed by Richard and Marta Martinson, the Chapter 13 Debtor, ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and United States Automobile Association ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 67).

IT IS FURTHER ORDERED that the settlement proceeds of \$75,000.00 shall be disbursed as follows:

1. \$15,645.77 disbursed to Trover Solutions for Kaiser Permanente for medical liens, in satisfaction of the claim compromised down from \$29,043.20.
2. \$4,132.75 disbursed to Dr. David Dame for payment in full of his claim.
3. \$22,075.00 disbursed to Debtors, jointly, for their exemption in the Settlement Proceeds claimed pursuant to California Code of Civil Procedure § 703.140(b)(11)(D).
4. \$11,313.02 disbursed to the Chapter 13 Trustee to be paid through the Chapter 13 Plan to creditors.

IT IS FURTHER ORDERED that \$36,833.46 of the settlement proceeds, which represents the amount of attorneys' fees and expenses claimed by Loyal Miner as counsel for Debtors, be disbursed to the Chapter 13 Trustee, which monies shall be held pending further order of the court. All lien rights and other interests which Loyal Miner, as counsel for Debtors, which exist in the \$36,833.46 of settlement proceeds held by the Trustee shall continue in full force and effect while the proceeds are held by the Chapter 13 Trustee.

IT IS FURTHER ORDERED that a Motion for Authorization for Debtors to employ Loyal Miner and Motion for Approval of Compensation of Loyal Miner, if such compensation is sought by Loyal Miner, shall be filed and served on or before June 30, 2015. The court authorizes the combining of the request for employment and request for approval of compensation in one motion for this limited purposes only.

20. [15-21855-E-13](#) DEAN/SARILEE MARKS
DPC-1 Kustin Kuney

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[28](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

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

The court has granted Debtors' ex parte motion to dismiss this Chapter 13 case. The Debtors have no prior bankruptcy filings within the eight years preceding the filing of this case. One of the Trustee's objection to confirmation of the proposed plan in this case is that Debtor's exceed the debt limits imposed on Congress in Chapter 13 cases pursuant to 11 U.S.C. § 109(e). Chapter 13 eligibility is limited to individuals with regular income who owe, "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525." The Proof of Claim No. 2 filed by the State Board of Equalization disqualifies the Debtor from relief under Chapter 13 under 11 U.S.C. § 109(e). Additionally, the Debtors have failed to provide the amounts owed to other unsecured Debtors which just further exacerbates the fact that Debtors are over the debt limits of 11 U.S.C. § 109(e).

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 overruled as moot, the case having been dismissed.

21. [15-21855](#)-E-13 DEAN/SARILEE MARKS
WOL-1 Justin Kuney

OBJECTION TO CONFIRMATION OF
PLAN BY PLATTE RIVER INSURANCE
COMPANY AND/OR MOTION TO
DISMISS CASE , MOTION TO
CONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
4-30-15 [[32](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

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

22. [15-21163-E-13](#) GIANNE/RUBY-ROSE APURADO
NBL-2 Julius Engel

OBJECTION TO CONFIRMATION OF
PLAN BY MARRIOTT OWNERSHIP
RESORTS, INC.
5-12-15 [[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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 12, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Marriott Ownership Resorts, Inc. ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtors' plan mischaracterizes Creditor's claim as a Class 2 creditor. The Creditor asserts its claim does not mature until after the completion of the plan and is owed pre-petition arrearage. As such, the Creditor argues it is a Class 1 claimant.

2. The Debtors' plan attempts to improperly modify its claim by reducing the contractual interest rate of 15.49% per annum to a rate of 0.00% per annum under the plan.
3. Debtors' plan attempts to value Creditor's collateral. The Debtors on Schedule B and D list the value of the timeshare collateral at \$0.00.

The Creditor's objections are well-taken. The Creditor filed Proof of Claim No. 5 on April 10, 2015. The Proof of Claim lists total secured claim in the amount of \$13,966.90 with an arrearage amount of \$5,086.90. The Proof of Claim also states that the interest rate is a fixed 15.49% annually. The proposed plan lists Creditor as a Class 2 claim, listing the amount claimed as \$12,271.11 and an interest rate of 0.00%. A review of the court's docket shows that no Motion to Value the secured claim of Creditor has been filed.

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 Creditor has a secured claim, as described in the Proof of Claim No. 5. The Debtor has not filed a Motion to Value Creditor's secured claim. Therefore, since the Creditor's claim does not mature until after completion of the plan and there being no court order modifying the terms of the secured claim, the Debtor improperly classifies Creditor as a Class 2 claimant and improperly modifies the interest rate of Creditor's claim. As such, the plan does not comply with 11 U.S.C. § 1325(a)(5).

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 Marriott Ownership Resorts, Inc. 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.

23. [13-32964-E-13](#) LAURIE/JOSEPH MADDEN
MOH-2 Michael O'Dowd Hays

MOTION FOR SUBSTITUTION OF
JOSEPH E. MADDEN AS
REPRESENTATIVE OR SUCCESSOR TO
THE DECEASES, LAURIE L. MADDEN
AND/OR MOTION FOR WAIVER OF THE
CERTIFICATION REQUIREMENTS FOR
ENTRY OF DISCHARGE FOR THE
DECEASED DEBTOR, LAURIE L.
MADDEN
4-30-15 [[32](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Substitution of Joseph E. Madden as Representative is denied without prejudice.</p>
--

Joseph Madden ("Debtor") filed the instant "Debtors' Notice of Death and Motion for Substitution of Joseph r. Madden as the Representative or Successor to the Deceased, Laurie L. Madden, in Debtors' Bankruptcy Case, Continued

Administration of the Case under Chapter 13, and Waiver of the Certification Requirements for Entry of Discharge for the Deceased Debtor, Laurie L. Madden" on April 30, 2015. Dckt. 32.

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on May 18, 2015. Dckt. 36. The Trustee states that the Debtor failed to provide evidence to support the Motion, namely the Debtor failed to provide a declaration or a current Schedule I and J since the passing of the Debtor's wife.

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

- A. The Debtor, Joseph R. Madden, respectfully requests the above relief under Local Bankr. R. 1016-1, due to the fact that his wife, Laurie L. Madden, the codebtor in the case, passed away on 12/24/14. A copy of the CERTIFICATE OF DEATH, issued on 1/2/15 will be filed as Exhibit A in support of the motion and is incorporated herein.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the codebtor passed away and for relief under Local Bankr. R. 1016-1 without discussing any of the considerations for the substitution of the Debtor as the representative. This is not sufficient.

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

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

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

motions rather than the "short and plain statement" standard for a complaint.

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

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

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

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

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

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

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

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments

and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

REVIEW OF MOTION AND PLEADINGS

As set forth above, the "Motion" merely states that one Debtor has passed away. No information is provided as to whether there is a probate proceeding or some other person has, or has not, been appointed as the representative of the deceased Debtor's rights and interests. No information is provided as to how or why the surviving Debtor is a proper representative for the deceased Co-Debtor's interest. Additionally, no evidence (declaration or properly authenticated exhibits) have been filed in support of the Motion.

The Trustee filed an opposition to the current Motion, identifying the following issues which have not been addressed by the surviving Debtor:

- A. if there are significant changes in the budget or expenses after the death of his spouse, or how he is able to continue the administration of the case. Ms. Madden appeared to be employed as a medical assistant at the time of her death, with her gross income \$2,843.00.
- B. if any life insurance proceeds were received due to the death of Laurie L. Madden. No life insurance was disclosed on Schedules Band C filed October 4, 2013 (Court Docket # 1, pages 13-17) nor was a life insurance expense listed on Schedules I and J filed October 4, 2013 (Court Document #1, pages 25-27).
- C. if the surviving Debtor is still supporting the 19 year old daughter originally scheduled or if the daughter is now contributing to the household expenses.

Therefore, because the Movant has not stated with particularity the grounds for relief in the Motion as required by Fed. R. Bankr. P. 9013 and has requested multiple forms of relief in violation of Fed. R. Civ. P. 18, 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 Substitution of Joseph E. Madden as Representative 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 denied without prejudice..

24. [15-22166-E-13](#) MARK/MARY TAYLOR MOTION TO VALUE COLLATERAL OF
JJC-1 Julius Cherry KIA MOTORS FINANCE
4-22-15 [[20](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Kia Motors Finance, and Office of the United States Trustee on April 22, 2015. By the court's calculation, 41 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 Kia Motors Finance ("Creditor") is granted and the secured claim is determined to have a value of \$19,088.00.

The Motion filed by Mark S. Taylor and Mary M. Taylor ("Debtors") to value the secured claim of Kia Motors Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Kia Optima SX, VIN 7443 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$19,088.00 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 on June 21, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,136.02.

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 \$19,088.00. 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 Mark S. Taylor and Mary M. Taylor ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Kia Motors Finance("Creditor") secured by an asset described as 2012 Kia Optima SXT, VIN 7443 ("Vehicle") is determined to be a secured claim in the amount of \$19,088.00 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 \$19,088.00 and is encumbered by liens securing claims which exceed the value of the asset.

25. [15-22166-E-13](#) MARK/MARY TAYLOR
JJC-3 Julius Cherry

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
5-1-15 [[29](#)]

IN LIGHT OF THE FAILURE OF EVIDENCE, THE COURT IS NOT INCLINED TO MERELY CONTINUE THE HEARING. THE PARTIES CAN CONDUCT THEIR APPRAISALS AND PROVIDE EVIDENCE OF THE RELEVANT VALUE FOR A NEW MOTION, IF SUCH MOTION IS NECESSARY

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 1, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") is granted and the secured claim is denied without prejudice.

The Motion filed by Mark and Mary Taylor ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Dodge Charger, VIN ending in 8111 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,701.00 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).

Debtor's testimony of value consists of:

- A. "To determine the reasonable replacement value of the Vehicle we rely on our own knowledge of the condition of the vehicle and the Kelley Blue Book value guide."
- B. "The website for the Kelley Blue Book value guide describes a Private Party Value as, 'what a buyer can expect to pay when buying a used car from a private party. It may also represent the value you might expect to receive when selling your own used car to another private party. The Private Party Value assumes the vehicle is sold 'As Is' and carries no warranty (other than the continuing factory warranty). The final sale price may vary depending on the vehicle's actual condition and local market conditions.'"
- C. "We believe the Kelley Blue Book condition of Good Condition most accurately describes Vehicle."
- D. "Attached hereto as Exhibit 3 is the Kelley Blue Book value report for Vehicle at the time of filing of herein described petition sold to a Private Party and in Good Condition."
- E. "Pursuant to the condition of Vehicle, the value of Vehicle based upon the Kelley Blue Book valuation system, and our own belief as to the value of Vehicle, we believe and assert that the reasonable replacement value of the Vehicle is \$ 12,701.00."

Declaration, Dckt. 31.

The court first notes that Debtor fails to provide any testimony as to the actual condition of the vehicle. The testimony merely consists of Debtor's "personal finding of fact" that Debtor concludes the condition to be "Kelley Blue Book good."

Second, the value given using Kelley Blue Book is for a "private sale." That is not consistent with the requirements of the Bankruptcy Code, which provide:

"(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, **replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.**"

11 U.S.C. § 506(a)(2) [emphasis added]. Debtor has not provided evidence of the retail value (taking into account the actual condition and costs of getting the vehicle to retail sale value).

OPPOSITION

Creditor filed an opposition to the instant Motion on May 19, 2015. Dckt. 38. The Creditor argues that the proper valuation of the Vehicle should be \$14,475.00. In support, the Creditor provided a copy of the NADA Valuation Report for Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). According to the NADA report, the Clean Retail value of the Vehicle is \$14,475.00. However, this value does not take into account the actual condition of the vehicle.

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 Mark and Mary Taylor ("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.

26. [15-22166-E-13](#) MARK/MARY TAYLOR
APN-1 Julius Cherry

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
4-14-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 14, 2015. By the court's calculation, 49 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 continue the hearing on the
Objection to 3:00 p.m. on June 30, 2015.**

Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Creditor") opposes confirmation of the Plan on the basis that the plan improperly values the Creditor's claim at \$12,701.00. The Creditor argues that the Debtors' valuation will severely diminish the Creditor's security interest. Also, Creditor asserts that based on this valuation, the plan does not pay the Creditor the present value of its claim. The Creditor argues that the \$267.84 monthly adequate protection payments under the plan are sufficient and that the

payments should not be less than \$271.51 per month.

DEBTOR'S REPLY

The Debtors filed a reply to the instant Objection on May 13, 2015. Dckt. 37. The Debtor states that there is a Motion to Value Collateral of the Creditor which explains the valuation discrepancy between the Creditor's valuation of the collateral and the Debtor's valuation.

The Debtor further argues that the Creditor's argument that the proposed plan does not adequately protect the Creditor is not correct. The Debtor asserts that the Creditor offers no evidence as to why the \$3.67 per month difference in the adequate protection payments would protect the Creditor. The Debtor points out that under the proposed plan, the Creditor would receive more than \$271.51 a month for the majority of the plan.

DISCUSSION

The court denied the Motion to Value without prejudice due to the failure to provide the court with relevant evidence. Rather than denying this Objection and diverting the attention of Debtor from the value of the vehicle, the court continues the hearing on this Motion.

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 Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection is continued to 3:00 p.m. on June 30, 2015.

27. [15-22166-E-13](#) MARK/MARY TAYLOR OBJECTION TO CONFIRMATION OF
DPC-1 Julius Cherry PLAN BY DAVID P. CUSICK
4-29-15 [[25](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation is overruled without prejudice, and the matter is removed from the calendar.**

28. [15-21869-E-13](#) ELIAS OLGUIN OBJECTION TO CONFIRMATION OF
DPC-1 Stephen Murphy PLAN BY DAVID P. CUSICK
4-29-15 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. 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 delinquent in plan payments in the amount of \$85.00.
2. Debtor has failed to provide the Trustee with a tax transcript or a copy of his tax return for the most recent pre-petition tax year.
3. Debtor fails to disclose debts owed to the Internal Revenue Service and Wells Fargo on his schedules and may not be able to make the plan payments.
4. The Statement of Financial Affairs is not complete because it does not disclose business income for 2013 and 2014 nor does it list the return of the 2013 Nissan Frontier.
5. The plan is not filed in good faith because Debtor is not making a good faith attempt at reorganization. The Debtor stated at the First Meeting of Creditors that he filed the case to stop the foreclosure on his residence and to give himself enough time to relocate to Mexico.

DEBTOR'S RESPONSE

The Debtor filed a response on May 19, 2015. Dckt. 31. The Debtor responds as follows:

1. The Debtor is making an effort to bring payments current prior to hearing date.
2. The 2014 tax returns were prepared on May 14, 2015 and a copy has been provided to the Trustee.
3. The Debtor was uncertain of the origin or existence of the tax debt so did not list it until verified. The same is true for the Wells Fargo debt.
4. The Statement of Financial Affairs was amended on May 1, 2015 and is now complete.
5. Debtor asserts that once he moves to Mexico, it will be easier to fulfill his debt obligations with a Chapter 13 plan than dealing with each creditor individually.
6. There is a cash offer for a short sale of Debtor's residence.

TRUSTEE'S RESPONSE

The Trustee filed a response on May 26, 2015. Dckt. 34. The Trustee responds as follows:

1. The Debtor is now current under the plan.
2. The Trustee received a copy of the Debtor's 2014 state and federal taxes. The federal return indicates tax debt of \$8,900.00 where no tax debt was scheduled. Additionally, there appears to be a \$9,179.00 tax debt for 2013.
3. Debtor's plan fails to provide for the payment of the Internal Revenue Service claim. Because of the failure of the Debtor's plan to provide the claim of the Internal Revenue Service, the plan is not feasible.
4. The Trustee agrees that the Statement of Financial Affairs is now complete.
5. While there may be an offer for a short sale, there is no Motion for Short Sale pending presently in front of the court.

DISCUSSION

The Trustee's objections are well-taken. While the Debtor is no longer delinquent under the plan, the 2014 tax returns have been filed and provided to the Trustee, and the Statement of Financial Affairs now complete, the plan still fails to provide for the Internal Revenue Service claim. Failing to provide for the priority claim of the Internal Revenue Service raises concerns over whether the plan is feasible or viable without it providing for the claim. At a minimum, it appears that the Debtor owes \$8,900.00 for 2014. The Debtor has not stated whether the Internal Revenue Service's claim for 2013 has been satisfied or also needs to be added to the plan. Without the Internal Revenue Service claim, the Debtor appears to be unable to make plan payments as required by 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

29. [15-22069-E-13](#) KARA MORA
PGM-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
TOYOTA MOTOR CREDIT CORPORATION
4-28-15 [[25](#)]

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on April 28, 2015. By the court's calculation, 35 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 Toyota Motor Credit Corporation ("Creditor") is continued to 3:00 p.m. on July 21, 2015.

The Motion filed by Kara L. Mora ("Debtor") to value the secured claim of Toyota Motor Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Camry, VIN ending in 5731 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,100.00 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).

CREDITOR'S OPPOSITION

Creditor filed an opposition to the instant Motion on May 15, 2015. Dckt. 34. Creditor filed its Proof of Claim in the amount of \$11,654.43, including arrearage in the amount of \$7,115.71. The Creditor argues that the Debtor did not provide evidence to support the value provided. Creditor has provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The Report values the Vehicle at \$10,900.00. Dckt. 36, Exhibit 1.

The Creditor requests that the hearing be continued to allow the Creditor to procure an appraisal of the Vehicle.

DISCUSSION

Due to the parties offering conflicting valuations of the Vehicle and the Creditor requesting a continuance to obtain an appraisal of the Vehicle. The court continues the hearing to 3:00 p.m. on June 30, 2015. The Creditor shall file supplemental papers on or before June 16, 2015. Any objections or replies shall be filed on or before June 23, 2015.

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

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

The Motion for Valuation of Collateral filed by Kara L. Mora ("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 July 21, 2015. The Creditor shall file supplemental papers on or before June 23, 2015. (The court expects Creditor's counsel to have provided a copy of the appraisal to Debtor's counsel proper to filing the Supplemental Opposition prior to that date, if possible, for the parties to have a good faith discussion of any difference as to value and whether supplemental pleadings are actually required.) Any Replies by Debtor objections or replies shall be filed on or before July 7, 2015.

30. [15-22069-E-13](#) KARA MORA
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. 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). Opposition has been filed by Debtor.

The court's decision is to continue the Objection to 3:00 p.m. on July 21, 2015 to be heard in conjunction with the Motion to Value.

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

1. The Debtor failed to appear at the First Meeting of Creditors on April 23, 2015. The Trustee notes that Debtor's counsel appeared and stated that the Debtor was not present due to medical reasons. The Meeting was continued to May 21, 2015.
2. The Debtor proposes to value the secured claim of Toyota Financial Services on a 2010 Toyota Camry but has failed to file a Motion to date.
3. Section 2.06 of Debtor's plan indicates that the Debtor paid \$50.00 in attorney fees prior to the filing of the case. The Statement of Financial Affairs indicates the Debtor paid \$500.00 on January 21, 2013 and \$1,000.00 on March 13, 2015. The Disclosure of Compensation and the Rights and Responsibilities all indicate that the Debtor paid \$1,000. The Trustee does not oppose clarifying this in the order confirming.

DEBTOR'S REPLY

The Debtor filed a reply on May 19, 2015. Dckt. 38. The Debtor states that she was unable to attend the Meeting of Creditors due to giving birth. The Debtor further states that Motion to Value is set for hearing on June 2, 2015. Lastly, the Debtor states that she paid the attorney \$1,000.00 prior to filing and will remedy the attorney fees issue in the order confirming.

DISCUSSION

The Motion to Value Collateral of Toyota Financial Services was continued to 3:00 p.m. on July 21, 2015 to allow the Toyota Financial Services to obtain an appraisal value of the subject vehicle. Seeing that the Debtor appeared at the continued Meeting of Creditors and the attorneys' fees discrepancy being able to be corrected in the order confirming, the only remaining objection to the plan is over the Motion to Value.

Therefore, the court continues the hearing to 3:00 p.m. on July 21, 2015 to be heard in conjunction with the Motion to Value.

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 continued to 3:00 p.m. on July 21, 2015.

31. [10-49275-E-13](#) SAMUEL/ETHEL SMITH
PGM-1 Peter Macaluso

CONTINUED MOTION TO MODIFY PLAN
2-10-15 [[64](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court addresses the merits of the motion. Upon review of the Motion and supporting pleadings, opposition having been withdrawn, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

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

TRUSTEE'S OBJECTIONS

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

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors are currently delinquent \$20,960.00 under the terms of the plan confirmed March 8, 2011. Payments under the confirmed plan are \$3,275.00. The Debtors are proposing to increase the plan payment to \$4,515.00 in the modified plan. The Debtors' declaration does not address how or when the delinquent payments of \$25,475.00 were spent. The last payment received from the Debtors was \$4,515.00 posted February 25, 2015.
2. The Proof of Service states that "EXHIBITS IN SUPPORT OF MOTION TO MODIFY PLAN AFTER CONFIRMATION" were served. The court docket did not include the updated Schedule I and supplemental Schedule J. Only the exhibit cover sheet was filed. The Debtors then filed but did not serve the supplemental Schedule I and J on February 12, 2015. Dckt. 70.

3. Section B 2.06 reports attorney was paid \$1,000.00 and that Debtor's attorney will seek court approval. Debtor's original attorney of record was paid \$1,000.00 prior to the filing of the case. An additional \$2,400.00 was paid through the plan pursuant to Local Bankr. R. 2016-1(c). The current attorney fee arrangements should be included in Additional Provisions.

DEBTORS' REPLY

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

MARCH 24, 2015 HEARING

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

DEBTORS' SUPPLEMENTAL REPLY

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

APRIL 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 2, 2015.

TRUSTEE'S WITHDRAWAL

The Trustee filed a Withdrawal of Trustee's Objection on May 18, 2015. Dckt. 82. The Trustee states that the information has been provided to the Trustee which resolves his objections.

DISCUSSION

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

The Debtors have filed evidence in support of confirmation, resolving the Trustee's opposition. The Trustee has filed a withdrawal of his objection and no opposition to the Motion has been filed by creditors. Therefore, 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 February 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [11-44677](#)-E-13 RONALD/MELBA BRINGAS MOTION TO INCUR DEBT
DEF-9 David Foyil 4-23-15 [[84](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

to file a written response or opposition to the motion. At the hearing -----
-----.

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2015 Mazda 3, which the total purchase price is \$21,700.35, with monthly payments of \$386.49.

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

This is Debtors second attempt at seeking court approval to purchase the 2015 Mazda 3. Dckt. 72. The court denied the previous motion because the Debtors did not explain in the motion or declaration the reasonableness of the terms, which was 16.62%, or the need for the replacement vehicle given the Debtors' own four other vehicles. Dckt. 80.

In the instant Motion, the Debtors provide a much more detailed Declaration as well as described the need for the replacement vehicle. The Debtors' Declaration states that, following the previous motion being denied, the Debtors were able to negotiate with the dealer to lower the interest rate down to 10.99%. Dckt. 86. Furthermore, the Debtors' Declaration provides specifics over the status of the other vehicles and the need to purchase the replacement vehicle.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted. FN.1.

FN.1. This motion and the efforts of Debtor are a good example of bankruptcy debtors making the most of their Fresh Start and not merely falling back into old, bad financial habits. It is also a good example of why consumer attorneys have to push their clients to act financially reasonably rather than merely taking the path of least resistance and being a rubber stamp. On February 12, 2015, Debtor filed a declaration testifying under penalty of perjury that the best interest rate he could get for purchasing a brand new auto was "only" 16.625%. Declaration, Dckt. 74. This appears to be a stock declaration in which Debtor provides only that conclusion and no testimony about his efforts to find a reasonable interest rate or purchasing a two or three year old car. The requested 16.62% financing required a \$4,000 down payment and monthly payments of \$395.67 for 72 months.

The motion to authorize the 16.62% interest credit was denied on March

27, 2015. Order, Dckt. 74. Just one month later Debtor filed the current motion for approval to obtain financing with an interest rate of 10.99%. This is for a similarly priced vehicle, with a down payment of \$4,000.00, and monthly payments of \$386.49 for only 60 months.

It appears that after the court denied the prior motion, both Debtor and the auto dealer got serious about finding reasonable financing, rather than the auto dealer and financing company preying on a debtor who, though near the end of a plan, had the need to obtain the car now. Hopefully Debtor takes this experience to heart and never again falls victim to unreasonably high credit charges.

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

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

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

IT IS ORDERED that the Motion is granted and Ronald and Melba Bringas ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 75.

33. [14-30077](#)-E-13 KENNETH/SHARON MELIKIAN
EJS-2 Eric Schwab

CONTINUED MOTION TO CONFIRM
PLAN
3-12-15 [[33](#)]

Final Ruling: No appearance at the June 2, 2015 hearing is required.

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

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

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

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

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

TRUSTEE'S OBJECTION

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

APRIL 28, 2015 HEARING

The court continued the hearing to 3:00 p.m. on June 2, 2015 to allow the Debtor to file supplemental pleadings by May 5, 2015. Dckt. 50. The court further ordered that any replies shall be filed and served by May 12, 2015.

TRUSTEE'S STATUS REPORT

The Trustee filed a status report on May 8, 2015 noting that the Debtor has failed to file any additional pleadings and the Trustee's objection remains unresolved. Dckt. 51.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtors filed a supplemental declaration of Debtor Kenneth Melikian on May 11, 2015. Dckt. 54. The Debtor states that he and his brother are the only beneficiaries of his father's estate. On February 25, 2015, a probate case was filed in the Contra Costa County Superior Court, Case No. P15-00233. The only assets being probated are stocks with a total approximate value of \$180,000.00 of which the Debtor states he is entitled to half. The Debtor states he is under the belief that these assets will be available in the early part of 2015 after probate is complete.

Another one of the specific assets of the trust is the father's house commonly known as 2131 Wilmington Drive, Walnut Creek, California. The Debtor states that the house is currently being rented to a private party for \$2,500.00 per month. The Debtor states that his brother is collecting the rent on behalf of the estate and using that money to pay the existing mortgage. The mortgage on the house is approximately \$15,000.00. The Debtor states that he has "been informed by a real estate agent" that the house is worth approximately \$660,000.00. The Debtor states that he and his brother have not decided whether or not to sell the property.

The Debtor states that the remainder of the trust assets are liquid cash and securities, including life insurance proceeds and an IRA. The Debtor states his half of these assets, excluding the house, has a total approximate value of \$350,000.00.

For the IRA, the Debtor states he is entitled to receive approximately \$41,000.00. The Debtor has been informed that if he claims the full amount now there will be tax consequences so has elected to take an annual distribution. In regards to the life insurance proceeds, the Debtor states he is entitled to approximately \$33,000.00.

The official distribution date of the assets held in trust is currently scheduled to occur on or about August 2, 2015. The value of the liquid assets held in trust is more than sufficient to pay the allowed claims in full.

TRUSTEE'S WITHDRAWAL

The Trustee filed a Notice of Withdrawal of Trustee's Objection on May 12, 2015. Dckt. 57.

DISCUSSION

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 which satisfies the Trustee's objections. No opposition to the Motion has been filed by creditors.

While the court notes that the Debtors failed to file a supplemental

declaration by the May 8, 2015 deadline set by the court and failed to address why they did not comply with a court-set deadline, the court waives this failure in light of the response resolving the Trustee's objection.

Therefore, the amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. [15-21878-E-13](#) MELY CHENG
ASW-1 Mark Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
4-30-15 [[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, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 33 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.

The Bank of New York Mellon ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtor's plan does not provide for the Creditor's pre-petition arrearage in the amount of \$4,260.70. The Creditor claims that the pre-petition arrearage comprises of:
 - a. \$3,059.45 in missed mortgage payments.

- b. \$116.17 in uncollected late charges.
- c. \$1,084.54 in escrow shortage

A review of the filed Proof of Claims shows that the Creditor has yet to file a Proof of Claim. Furthermore, the Creditor has failed to file a declaration in support of the Objection and has only filed the Note, Deed of Trust, and Assignment to support the Objection.

The Creditor has failed to provide any evidence as to the alleged pre-petition arrearages owed to the Creditor. While the Creditor states they are in the process of preparing a Proof of Claim, no such proof of claim has been filed. The Creditor appears to want the court to take the Creditor's word at the arrearage amount without providing any proof or information as to such arrearages. Without any competent evidence, the court will not deny confirmation on arrearages that may or may not end up being accurate.

Therefore, without any evidence to support the Creditor's objection, the objection is overruled. 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.

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 Bank of New York Mellon 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.

35. 14-27179-E-13 MARK HECKERT
CA-2 Michael Croddy

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CRODDY &
ASSOCIATES FOR MICHAEL D.
CRODDY, DEBTORS ATTORNEY(S)
5-9-15 [[44](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees 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, and Office of the United States Trustee on May 9, 2015. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

Michael D. Croddy, the Attorney ("Applicant") for Mark D. Heckert, the Chapter 13 ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 11, 2014 through June 02, 2015. Applicant requests fees in the amount of \$5,625.00 and costs in the amount of \$472.49.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 12, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget*

Sound Plywood, Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign 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 general case administration, preparing and filing petition and schedules, attending Meeting of Creditors, and preparing and prosecuting Motion to Value. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

New Client Meeting: Applicant spent 6 hours in this category. Applicant assisted Client with initial client meeting, discussed necessary information and bankruptcy process, and met with Client to discuss his individual case.

Data Acquisition and Input: Applicant spent 8.3 hours in this category. Applicant inputted Client's information into petition program, performed calculations of Client's income and expenses, followed up with Client on subsequent questions, and met with client to sign petition and schedules.

Motion to Value: Applicant spent 2.1 hours in this category. Applicant prepared and filed Motion to Value, and attended hearing.

Meeting of Creditors: Applicant spent 1.5 hours in this category. Applicant discussed the nature of the Meeting of Creditors with Client, and attended the Meeting of Creditors.

Motion for Compensation: Applicant spent 3 hours in this category. Applicant prepared and filed instant Motion for Compensation, and attended hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael D. Croddy, Esq.	15	\$375.00	\$5,625.00
Total Fees For Period of Application			\$5,625.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$472.49 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing Fee of petition and schedules		\$310.00
Mailing Fee of Motion to Value		\$35.07
Mailing Fee of instant Motion for Compensation		\$127.42
Total Costs Requested in Application		\$472.49

The Applicant states in the Motion that he has received \$1,500.00 from the Client pre-filing as a retainer, as well as \$310.00 for the filing fee of the case.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$5,625.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved. The Applicant is authorized to apply the \$1,500.00 pre-filing retainer to the approved \$5,625.00 fees and the remaining \$4,125.00 is authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The First Interim Costs in the amount of \$472.49 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved. The Applicant is authorized to apply the \$310.00 pre-filing costs advance to the approved \$472.49 and the remaining \$162.49 is authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$ 5,625.00
Costs and Expenses	\$ 472.49

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Michael D. Croddy ("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 Michael D. Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael D. Croddy, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$ 5,625.00
Expenses in the amount of \$ 472.49,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Applicant is authorized to apply the \$310.00 pre-filing retainer to the authorized fees and expenses, and the Trustee is authorized to pay the remaining balance from funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

36. [15-21779-E-13](#) HARRY ANDREWS
DPC-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-15 [[24](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. 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 failed to appear at the First Meeting of Creditors held on April 23, 2015. The Meeting was continued to June 18, 2015.
2. Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal income Tax Return for the most recent pre-petition tax year.
3. The Debtor has failed to provide the Trustee with Business documents including:

- a. Questionnaire
- b. Two years of tax returns
- c. Six months of profit and loss statements
- d. Six months of bank statements
- e. Proof of license and insurance

4. The Debtor is \$525.00 delinquent in plan payments to date. The Debtor has paid \$0.00 into the plan to date.

The Trustee's objections are well-taken. The Trustee's first objection is that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee's second and third objection concern the Debtor's failure to provide required documentation. 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 as well as business documents. These are required seven days before the First Meeting of Creditors. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Pursuant to 11 U.S.C. § 1325(a)(1), this is grounds to deny confirmation.

Lastly, the Debtor's delinquency in plan payments is evidence that the Debtor is unable to comply with the terms of the proposed plan. Pursuant to 11 U.S.C. § 1325(a)(6), this is also grounds to deny confirmation.

The Debtor has not filed any supplemental papers stating that the Trustee's objections have been resolved or explaining the failure to file the necessary documents and make the required plan payments.

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

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

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

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

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

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 10, 2015. By the court's calculation, 53 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.

Garry and Beverly Drake ("Debtors") filed the instant Motion to Confirm the Modified Plan on April 10, 2015. Dckt. 61.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on May 18, 2015. Dckt. 67. The Trustee objects on the following grounds:

1. The Trustee questions the sudden decrease in co-debtor's gross income. The Debtors' Supplemental Schedule I filed on January 15, 2015 lists co-Debtor's gross income as \$4,306.25. Dckt. 44. On April 10, 2015, the Debtors filed another Supplemental Schedule I which lists co-Debtor's gross income as \$4,009.40. Dckt. 60. The Debtors fail to explain the decrease.

2. The Debtors are proposing plan payments to increase in July 2015 to \$600.00. According to Schedule J filed on April 10, 2015, the Debtors' monthly net income is \$471.44. The Debtors do not provide an explanation on how they will be able to make the increased plan payments.
3. The Debtors' proposed timeline differs from the Trustee's records. The proposed plan lists the plan payments in Section 6.02. The additional provision states that March 2015 is month 41. However, the Trustee states that the first payment was due on October 25, 2011, which makes March 2015 the 42nd month of the 60 month plan.
4. The Trustee requests Debtor to provide letter from the Employment Development Department proving that Debtor Garry Drake lost his unemployment income of \$1,850.00 per month.

DISCUSSION

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

The Trustee's objections are well-taken. While the Trustee's third objection appears to have been a mere scrivener's error that could typically be corrected in the order confirming, the Trustee's other objections raise doubts over whether the plan is confirmable.

The Trustee's first two objections address whether the Debtors will be able to afford the plan payments given the unexplained reduction in income as well as the failure of the Debtors to provide explanation as to how they can afford a step-up in plan payments. A review of the Debtors' most recent Schedule I shows that the Debtors cannot afford the step-up payments in July 2015 and do not explain the \$296.85 reduction in co-Debtor's income. Absent explanation from the Debtors as to how he proposes to achieve this step up in plan payments given the unexplained decrease in co-Debtor's income, the court does not believe the plan is feasible. This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Trustee's fourth objection also addresses the Debtors' failure to explain the decrease in income. The Debtors state in their declaration that Debtor Garry Drake lost his unemployment income. However, the Debtors provide no evidence to support this claim, which further exasperates that concerns of the court over the feasibility and viability of the proposed plan.

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

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

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

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

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

38. [15-22281](#)-E-13 JAMES NOLEN
DPC-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-15 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is \$1,800.00 delinquent in plan payments to date. The Debtor has paid \$0.00 into the plan to date.

2. The Debtor failed to appear at the First Meeting of Creditors held on April 30, 2015. The Meeting has been continued to June 25, 2015.
3. The Debtor proposes, in section 6 of the plan, adequate protection payment of \$1,500.00 per month to apply first to post-petition interest accruing and then principal or as specified in a loan modification. The plan nor Schedule J make provisions for property taxes or insurance. The Debtor has scheduled the secured claim for \$951,864.00 and while the plan proposes a payment of \$1,500.00 as an adequate protection payment, the Debtor provides no evidence as to why this is adequate and the burden of proof as to the issue is on the Debtor.
4. The plan exceeds 60 months. According the Trustee's calculations, the plan completes in 77 months.
5. The plan is not the Debtor's best effort. The Debtor is over the median income and proposes plan payments of \$1,800.00 for 60 months with a 0% dividend to general unsecured. According to the Trustee's review of Form B22C, the Debtor has improperly deducted expenses and misstated his income. The Trustee argues that the Form B22C should reflect a monthly disposable income of \$2,336.00.
6. The Debtor failed to provide the Trustee with 2013 and 2014 Corporate income tax returns, profit and loss statements, six months of bank statements, and a business questionnaire.

The Trustee's objections are well-taken.

First, the Debtor's delinquency in plan payments is evidence that the Debtor cannot comply with the terms of the plan as required by 11 U.S.C. § 1325(a)(6). This is an independent ground to deny confirmation.

Second, the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Third, the Debtor's plan does not provide enough information for the court or the Trustee to determine if the adequate protection payments proposed in Section 6 of the plan are viable. The Debtor does not indicate whether it includes property tax and insurance nor does the Debtor provide evidence that on a \$951,864.00 secured claim how \$1,500.00 in adequate protection payment is sufficient. The court cannot determine if the plan provides for the secured claim as required by 11 U.S.C. § 1325(a)(5).

Fourth, based on the debts proposed to be paid in the plan with a \$1,800.00 plan payment, the plan would take 77 months to complete. Pursuant to 11 U.S.C. § 1325(d), the maximum allowable plan term is 60 months. Therefore, the plan is not confirmable.

Fifth, a review of the Debtor's Schedules I and J as well as the Debtor's Form B22C shows that the plan may not be the Debtor's best efforts. It appears

that the Debtor has improperly deducted excess amounts for Nationstar Mortgage when the plan proposes adequate protection payments of \$1,500.00. Additionally, it appears that the Debtor makes more money monthly than what is reported. These discrepancies without any explanation from the Debtor raise concerns with the court that the plan is not, in fact, the Debtor's best efforts.

Lastly, the Debtor has failed to provide all necessary documentation to the Trustee concerning the Debtor's business. This information is necessary and essential for the Trustee and the court to determine the full financial reality of the Debtor. Without this information, the court cannot determine if the plan is feasible, viable, or an accurate reflection of the Debtor's finances. Failure to provide these documents is grounds for denying confirmation.

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

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

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

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

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

39. [15-20684-E-13](#) PAUL/DONNA CRITTENDON
DPC-1 Nekesha Batty

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-11-15 [[17](#)]

Final Ruling: No appearance at the June 2, 2015 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, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2015. 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 overrule the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to complete Form B22C. The Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line #5, the Debtor's listed ordinary and necessary business expenses of \$1,119.00. Debtor has failed to properly complete boxes 5 through 46 on Form B22C.

Additionally, adding the business expenses of \$1,119.00 back into the calculation, the Trustee calculated an annualized increase of \$13,656.00, which brings line 20b to \$72,636.00, exceeding the applicable median family income of \$63,745.00 found on line 20c.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 2, 2015. Dckt. 22. The court ordered that supplemental pleadings shall be filed and served by Debtor on or before May 15, 2015 and replies, if any, filed and served on or before May 22, 2015.

DEBTOR'S RESPONSE

The Debtor filed a response on May 15, 2015. Dckt. 28. The Debtor states that they are in the process of amending their Form B22C and Schedules to address the Trustee's concerns.

On May 15, 2015, the Debtor filed supplemental Schedules I and J and Form B22C.

TRUSTEE'S WITHDRAWAL

The Trustee filed a Notice of Withdrawal of the Trustee's Objection on May 18, 2015. Dckt. 32.

DISCUSSION

The Trustee having filed a Notice of Withdrawal of the instant Objection and no creditor filing objection to the proposed plan, the Debtor's supplemental filings appears to address and clarify the Trustee's and court's concern on the viability and feasibility of the plan. With no pending objections and for good cause, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on January 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. 15-22489-E-13 JACK DUMIN
RJ-2 Richard Jare

MOTION TO VALUE COLLATERAL OF
CLEARSPRING LOAN SERVICES INC.
5-8-15 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 8, 2015. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of ClearSpring Loan Services, Inc. ("Creditor") is denied without prejudice.

The Motion to Value filed by Jack Dumin ("Debtor") to value the secured claim of ClearSpring Loan Services, Inc. ("Servicer") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2893 Candido Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$155,700.00 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 "ClearSpring Loan Services, Inc." However, 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 Debtor does not provide any evidence that the Servicer is in fact the holder of a note secured by a deed of trust.

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.

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 identifying the actual creditor.

Correctly identifying the party against whom relief is requested is not merely an academic exercise. It goes to the very core of federal court jurisdiction and exercise of federal judicial power. Article III, Section 2 of the U.S. Constitution allows for the exercise of federal judicial power over parties who have an actual case or controversy of their rights and interests. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

On a more practical basis, merely maintaining an order against a "doe" defendant does not gain anything for a debtor. With no in personam jurisdiction against the actual creditor, any order valuing a claim will be void. A poor debtor may perform for five years under a Chapter 13 plan, thinking that at the end he or she will own the property free and clear of a lien for the valued secured claim. If the actual creditor is not a party to

such a motion to value, the poor debtor (and poor debtor's counsel) will learn that the lien is still on the property, which most likely has increased in value.

When the court conducted an internet search for the name "ClearSpring Loan Services, Inc.," the following information (whether true or not the court does not determine at this time):

- A. ClearSpring Loan Services, Inc. provides loan servicing for its clients. http://clearspringls.com/about_us.php.
- B. ClearSpring Loan Services, Inc. has advisors who assist consumers who have difficulty paying their mortgage due creditors. *Id.*
- C. ClearSpring Loan Services, Inc. does not originate loan and "Its current activities are limited to residential mortgage loan servicing and collections. Legal & Licensing Information link, <http://clearspringls.com/sitemap.php>.
- D. ClearSpring Loan Services, Inc. provides mortgage loan services. <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=113734909>.

It appears that ClearSpring Loan Services, Inc. is "only" the loan servicer for the actual creditor. As with Ocwen Loan Servicing, LLC, Specialized Loan Servicing, LLC, and several other regular "service providers" to creditors, ClearSpring Loan Services, Inc. does not appear to be the actual creditor whose claim is to be valued pursuant to 11 U.S.C. § 506(a).

Therefore, because the court cannot determine if the Creditor is an actual holder of a deed of trust and no evidence being provided as to whose secured claim is to be valued, 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 Jack Dumin ("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.

41. [15-22798-E-13](#) PARKER/DONNA PUGH
DPC-1 Nekesha Batty

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
4-28-15 [[23](#)]

Tentative Ruling: The Objection to Discharge 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, and Office of the United States Trustee on April 28, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Discharge 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 Cusick, the Chapter 13 Trustee, filed the instant Objection to Debtor's Discharge on April 28, 2015. Dckt. 23.

The Trustee argues that Parker and Donna Pugh ("Debtors") are not entitled to a discharge in the instant bankruptcy case because the Debtors previously received a discharge in a Chapter 7 case.

The Debtors filed a Chapter 13 bankruptcy case on July 3, 2012. Case No. 12-32447. The Debtor converted that case to one under Chapter 7 on November 20, 2012 and received a discharge on February 22, 2013. Case No. 12-32447, Dckts. 41 and 63.

The instant case was filed under Chapter 13 on April 6, 2015.

The Debtors filed a response to the instant Objection on May 19, 2015. Dckt. 32. The Debtors state that have no basis to object to the instant Objection.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtors received a discharge under 11 U.S.C. § 727 on February 22, 2013, which is less than four-years preceding the date of the filing of the instant case. Case No. 12-32447, Dckt. 63. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtors are not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-22798), the case shall be closed without the entry of a discharge and Debtors shall receive no discharge in the instant case.

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

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

The Objection to Discharge 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 Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-22798, the case shall be closed without the entry of a discharge.