

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 14, 2016 at 3:00 p.m.

1.	16-22100 -E-13	DAVID/DEANNA TIBBETT Matthew DeCaminada	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-11-16 [33]
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Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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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 failed to appear at the First Meeting of Creditors held on May 5, 2016.
2. The plan exceeds 60 months. Based on the Trustee's calculation, Debtor's plan will complete in 113 months due to the calculation of the unsecured claims being paid through the plan. The Debtor's plan proposes to pay 100% to general unsecured claims, with the exception of the student loans which are to be paid outside the plan. The unsecured claims included \$37,693.73 on Schedule F, plus \$49,115.00 unsecured portion of Debtor's Chase Second Deed and \$3,636.52 from the unsecured portion of the 2006 Trail Lite fifth wheel trailer for a total of \$90,445.25.
3. The Debtor's plan is not the Debtor's best efforts. The Debtor is above median income. Form 122C-2 shows the Debtor's monthly disposable income, with a net excess income of - \$330.33. The Debtor deducts \$2,000.00 for "debtor returns to work in or about July, 2016 with decreased income". The Trustee is unable to determine the validity of this deduction of what the actual amount of Debtor's income will be upon returning to work. If the Debtor is denied this deduction, there would be a positive \$1,669.67.

On Schedule J, Debtor's net disposable income totals \$2,248.84. Debtor fails to propose to pay in all disposable income over the life of the plan. If Debtor contributed all disposable income into the plan, Debtor's plan would complete within 60 months at the 100% dividend proposed. Debtor also deducts on line #21 \$644.00 per month for tax deferral for disability income. Debtor anticipates returning to work in July, 2106, meaning this deduction will no longer be necessary after July 2016.

The Trustee's objections are well-taken.

The basis for the Trustee's 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).

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 113 months due to the Debtor having more unsecured claims than that listed on the plan. Based on the subsequent valuations in the case, the Debtor's unsecured claims have increased. Under the current proposed terms, it would require the Debtor to nearly double to allowed time. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

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

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

The Debtor appears to take deductions that may or may not be proper which makes determining whether the plan as proposed is the Debtor's best efforts. The Debtor appears to have additional income that should be included in the proposed plan payments, especially in light of the additional unsecured claims that the Debtor's plan does not accurately provide. The amount of the proposed payments, and the amount of the Debtor's surplus and the Debtor's employment history, ability to earn, and the likelihood of future increase in income all support the conclusion that the plan is not the Debtor's best efforts. Thus, the court may not approve the plan.

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

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

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

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

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

2. [15-25401-E-13](#) MICHAEL KYALWAZI
MS-2 Mark Shmorgan

MOTION TO AVOID LIEN OF
SACRAMENTO COUNTY TAX COLLECTOR
5-13-16 [[58](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Sacramento County Tax Collector ("Creditor") against property of Michael Kyalwazi ("Debtor") commonly known as 5100 Parque Vista Way, Carmichael, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,495.58. An abstract of judgment was recorded with **Sacramento** County on August 29, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$375,351.00 as of the date of the petition. The unavoidable consensual liens total \$378,981.14 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 27, 2016. Dckt. 70. The Trustee states that he has no basis for opposition. The Debtor filed a secured claim in the amount of \$1,613.44 on behalf of the Creditor (Proof of Claim No. 10). The claim was filed May 12, 2016 and was filed within 60 days of service of the Notice of Filed Claims filed March 15, 2016 pursuant to Local Bankr. R. 3004-1.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Sacramento County Tax Collector, California Superior Court for Sacramento County Case No. T 11000194, recorded on August 29, 2011, Book 20110829 and Page 0512 with the Sacramento County Recorder, against the real property commonly known as 5100 Parque Vista Way, Carmichael, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. [15-25401-E-13](#) MICHAEL KYALWAZI
MS-3 Mark Shmorgan

MOTION TO AVOID LIEN OF
SACRAMENTO COUNTY TAX COLLECTOR
5-13-16 [[63](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee,, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Sacramento County Tax Collector ("Creditor") against property of Michael Kyalwazi ("Debtor") commonly known as 5100 Parque Vista Way Carmichael, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,495.58. An abstract of judgment was recorded with **Sacramento** County on August 29, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$375,351.00 as of the date of the petition. The unavoidable consensual liens total \$383,307.34 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 27, 2016. Dckt. 72. The Trustee states that he has no basis for opposition. The Debtor filed a secured claim in the amount of \$1,495.58 on behalf of the Creditor (Proof of Claim No. 11). The claim was filed May 12, 2016 and was

filed within 60 days of service of the Notice of Filed Claims filed March 15, 2016 pursuant to Local Bankr. R. 3004-1.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Sacramento County Tax Collector, California Superior Court for Sacramento County Case No. T 11000194, recorded on August 29, 2011, Book 20110829, Page 0512 with the Sacramento County Recorder, against the real property commonly known as 5100 Parque Vista Way Carmichael, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. [15-27101-E-13](#) PEDRO/MARISSA FERNANDES MOTION TO MODIFY PLAN
SNM-2 Stephen Murphy 4-26-16 [[40](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2016. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

Pedero and Marissa Fernandes ("Debtor") filed the instant Motion to Modify Plan on April 26, 2016. Dckt. 40.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on May 31, 2016. Dckt. 45. The Trustee states that the order confirming the prior plan reflects balance of attorney fees \$2,350.00 to be paid through the plan and the proposed plan lists balance of attorney fees \$2,750.00 to be paid through the plan. The Trustee has no opposition to this matter being addressed in the order confirming.

DISCUSSION

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

The Trustee's response is well-taken. A review of the prior order confirming states that "The balance of \$2,350.00, provided that the attorney and Debtor have complied with Local Bankruptcy Rule 2016-1(c), shall be paid by the trustee from plan payments at the rate specified in the confirmed plan."

It appears that the Debtor or Debtor's counsel inadvertently listed an inaccurate number in the plan concerning the remaining attorney fees. This appearing to be a scrivener's error, the order confirming can correct this error.

Therefore, after the order confirming correctly states the remaining attorney's fees to be paid, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 26, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following language,

The balance of \$2,350.00, provided that the attorney and Debtor have complied with Local Bankruptcy Rule 2016-1(c), shall be paid by the trustee from plan payments at the rate specified in the confirmed 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.

5. 16-21102-E-13 LARRY VINCELLI
BB-1 Bonnie Baker

MOTION TO VALUE COLLATERAL OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT
5-24-16 [[43](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 24, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of State of California Economic Development Department ("Creditor") against property of Larry D. Vincelli ("Debtor") commonly known as 130 Oleander Circle, Redding, California (the "Property"). FN.1.

FN.1. The Motion is improperly titled "Motion to Value Real and Personal Property RE Judgement Lien of EDD." When reviewing the Motion, it is clear that this is a Motion to Avoid the Lien of EDD pursuant to 11 U.S.C. § 522(f). The Debtor's counsel uses language that is customarily reserved for Motions to Value the Collateral of a Creditor pursuant to 11 U.S.C.

§ 506(a). However, it appears that this is a scrivener's error and does not change the substance of the Motion served on Creditor.

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,279.70. An abstract of judgment was recorded with Shasta County on December 18, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$168,000.00 as of the date of the petition. The unavoidable consensual liens total \$153,138.40 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$14,861.60 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of State of California Economic Development Department, California Superior Court for Sacramento County Case No. 34-2014-90034017, recorded on December 18, 2014, Document No. 2014-0033942 with the Shasta County Recorder, against the real property commonly known as 130 Oleander Circle, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. [12-41404-E-13](#) CARRIE WILSON
JLB-4 James Brunello

MOTION TO APPROVE LOAN
MODIFICATION
5-12-16 [[59](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 12, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Carrie Wilson ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America ("Creditor").

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 31, 2016.

In her Declaration, Debtor states that she has been offered a home loan modification by a person known as Bank of America Home Loans. Declaration ¶ 2, Dckt. 61. Debtor has also filed Exhibits A and B in support of the Motion. Dckt. 62. Exhibit A is titled "Loan Modification Clarity Commitment." *Id.* It thanks the Debtor for working with "Bank of America, N.A." In the upper right hand corner of the document is a logo

stating, "**Bank of America** [flag symbol] Home Loans." This does not appear to be a statement of an entity's name, but a logo.

The Loan Modification Agreement identifies the person with whom Debtor is modifying the loan as "Bank of America, N.A." The Loan Modification Agreement is to be signed by Bank of America, N.A. as one of the parties. Exhibit B, *Id.*

NON-SPECIFIC PARTY IDENTIFIED IN MOTION

The Motion only names a person identified as "Bank of America" as the person with whom the court is to authorize the financing. It may be surmised that "everyone knows" that there is only one "Bank of America" in the world, and that is "Bank of America, N.A." Such assumption is mistaken.

The FDIC identifies four currently active federally insured entities (not counting the fifty-eight other entities not currently insured which are listed by the FDIC) with the words "Bank of America" in their names. <https://research.fdic.gov/bankfind/results.html?name=bank+of+america&fdic=&address=&city=&state=&zip=>. The California Secretary of State lists two other corporations and one other limited liability company with the words "Bank of America" in their names. <http://kepler.sos.ca.gov/>.

The first problem is that the Motion does not identify the correct person against or with whom relief is sought. Secondly, Debtor does not appear to know with whom she is contracting, requesting authorization to enter into financing with an entity whose name is not listed by either the FDIC or the Secretary of State.

The court will not issue an order granting relief with respect to a non-specific entity.

FAILURE TO PROPERLY PLEAD PURSUANT TO FED. R. BANKR. P. 9013

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. Debtor filed a voluntary petition under Chapter 13 on December 13, 2012.
- B. Debtors' plan was confirmed on July 3, 2013.
- C. The debtor was offered a Home Affordable Modification Agreement proposal for the mortgage loan through Bank of America. A copy of the Home Affordable Modification Agreement is attached to this motion. Debtor has filed an amended Schedule J listing the monthly payment provided for in the loan modification. The monthly payment is \$1,492.35.
- D. Debtors requested this loan modification and their lender agreed.

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 a modification was offered. 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."

FAILURE TO PROPERLY SERVE CREDITOR

If the intention is to obtain relief which is enforceable against Bank of America, N.A., which is a federally insured financial institution, the service of the pleadings was not sufficient. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Bank of America, N.A., including at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve any of the addresses by certified mail to an officer as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

Therefore, due to the failure to properly state with particularity the grounds for the relief sought and failure to properly serve Bank of America, N.A., the Motion is denied without prejudice.

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

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

The Motion to Approve the Loan Modification filed by Carrie Wilson 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.

7. [15-28605-E-13](#) JODY/JOY SILVA
CA-5 Michael Croddy

MOTION TO CONFIRM PLAN
4-13-16 [[62](#)]

DEBTOR DISMISSED:

04/21/2016

JOINT DEBTOR DISMISSED:

04/21/2016

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

8. [16-21607-E-13](#) NICOLE HARRISON
DPC-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-4-16 [[22](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 4, 2016. By the court's calculation, 41 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 plan relies on the Motion to Value Collateral of Toyota Motor Credit Corp.

On May 23, 2016, the Trustee filed a Notice of Dismissal of Trustee's Objection, stating that the order granting the stipulation between the Debtor and Creditor resolved the Trustee's objection. Dckt. 33.

Therefore, in light of the Trustee withdrawing with Objection, 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 March 16, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. [16-21607](#)-E-13 NICOLE HARRISON OBJECTION TO CONFIRMATION OF
MDE-1 Mohammad Mokarram PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
4-22-16 [[14](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

The Toyota Motor Credit Corporation 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 was dismissed without prejudice, and the matter is
removed from the calendar.**

10. [15-23008-E-13](#) JUAN LOPEZ
PGM-2 Peter Macaluso

OBJECTION TO CLAIM OF PERSOLVE,
LLC, CLAIM NUMBER 18
4-22-16 [[42](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, Debtor, and Office of the United States Trustee on April 22, 2016. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim number 18 of Persolve, LLC is sustained and the claim is disallowed in its entirety.

Juan Lopez ("Debtor") requests that the court disallow the claim of Persolve, LLC ("Creditor"), Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$11,344.40. Debtor asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. The Debtor states that according to the Proof of Claim, the last pay date is June 4, 2010 and a charge off date of July 31, 2010.

Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is August 12, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

DISCUSSION

Objection

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

The deadline for filing a Proof of Claim in this matter was August 12, 2015. The Creditor's Proof of Claim was filed December 28, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extension of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

(c) Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 18 does not list the Debtor's last payment but does affirmatively state July 31, 2010 as the "charge off date." The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental of credit transactions is commonly known by both creditors and consumers alike.)

Thus, the four year statute of limitations expired on July 31, 2014.

This bankruptcy case was filed on April 14, 2015. But it is after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Here, the Trustee disbursed \$839.01 to the Creditor prior to the instant Objection. The Trustee, and the Debtor, request that the claim be disallowed in excess of this amount.

Therefore, based on the evidence before the court, the Creditor's claim is disallowed in its entirety, due to the statute of limitations expiring prior to the filing of the case and the claim being untimely filed. The Objection to the Proof of Claim is sustained.

Attorney's Fees

Debtor seek attorney fees pursuant to Civil Code Section 1717(a), which provides for attorney fees where the contract specifically provides attorney's fees, which are incurred to enforce the contract, to the prevailing party.

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court.

California Civil Code section 1717(a) provides:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Here, Debtor states that the underlying contract has an attorney fees provision that, pursuant to § 1717(a), is reciprocal. Unfortunately, the Debtor failed to provide evidence of the contract provision nor does the Debtor submit a properly authenticated contract. This precludes the court from determining, at this hearing, that there is a contractual attorneys' fees provision upon which fees may be ordered in this Contested Matter.

While the Plaintiff-Debtor's counsel has also provided a billing statement, showing approximately 3 hours working on the instant Objection, the failure to provide a copy of the contract makes it impossible for the court to grant the relief requested.

Though one might think that the court could take "judicial notice" that almost every note and deed of trust used by an institutional lender has an attorneys' fees provision, it is a fact specific issue. It is possible that while there may be an attorneys' fee provision, it is narrowly drawn and does not relate to title issues.

Therefore, the Plaintiff-Debtor's request for attorney's fees based on a contractual provision shall be the subject of a separate post judgement (an order being defined as a judgment under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure) 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 Claim of Persolve, LLC, Creditor filed in this case by Juan Lopez, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 18 of Persolve, LLC is sustained and the claim is disallowed in its entirety.

IT IS FURTHER ORDERED that the request for attorney's fees and costs, if any, shall be filed and served on or before June 28, 2016, as a post judgment motion.

11. [15-29616-E-13](#) KRISTIN CRISTE
MET-1 Mary Ellen Terranella

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Motion filed by Kristin Criste ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Altima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,425.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 6, 2014, which is less than 910 days prior to filing of the petition.

Debtor is requesting that the loan held by Creditor be determined to be secured in the amount of \$21,398.00 and that the optional service contract in the amount of \$2,495.00 be determined to be an unsecured claim.

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

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

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

CREDITOR'S OPPOSITION

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

DISCUSSION

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

The definition of a "purchase money security interest is determined by state law. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S. Ct. 108 (2011).

Cal. Comm. Code § 9103 "does not provide a precise definition of a purchase money security interest, but rather a string of connected definitions." *In re Penrod*, 611 F.3d at 1161; Cal. Comm. Code § 9103.

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

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

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

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

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

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

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

Purchase of Used Nissan Altima	Source Document - Retail Installment Sale Contract. Proof of Claim No. 8
--------------------------------	--

Purchase Price of Vehicle (Cash Price Day of Sale)	\$18,988.00	Price of Collateral
Document Processing	\$80.00	Documentation as part of purchase of vehicle
Theft Deterrent Device (Optional)	\$199.00	
Emissions Testing Charge	\$50.00	
Sales Tax	\$1,545.36	Though This is Not a Tax Which the Purchaser is Obligated to Pay, but a Tax Which the Seller is Obligated to Pay, the Court includes it as part of the actual necessary cost in buying the vehicle. FN.1.
Electric Vehicle Registration	\$29.00	Cost with above purchase price.
Vehicle License	\$123.00	Estimated cost with above purchase price.
Registration	\$100.00	Estimated cost with above purchase.
Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$21,114.36	

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

In addition to the credit extended for the purchase of the vehicle, the Creditor extended further creditor to purchase or finance these additional items:

Item	Source Document - Retail Installment Sale Contract. Proof of Claim No. 8
------	--

Service Contract Protective	\$2,495.00	This is a form of optional "insurance," in which the insurer is obligated to provide payments during a specified period for repairs required to the vehicle.
Total obligation incurred not as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$2,495.00	

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money financial and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations which would be so protected.

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

MAY 10, 2016 HEARING

At the hearing, based on the objection of the Creditor, the court continued the hearing to 3:00 p.m. on June 14, 2016 to allow the parties to work out the issues. Dckt. 47.

JUNE 14, 2016 HEARING

To date, no supplemental papers have been filed in connection with the instant Motion nor any other.

Therefore, based on the foregoing, creditor's secured claim is determined to be in the amount of \$21,398.00. See 11 U.S.C. § 506(a). The remaining \$5,754.81 is determined to be a general unsecured claim arising from the service contract. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance ("Creditor") secured by an asset described as 2014 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of \$21,398.00. This is the amount of the secured claim which pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a) [the unnumbered paragraph following § 1325(a)(9)], and the balance of the claim, \$2,645.12, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$14,425.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. 15-29616-E-13 KRISTIN CRISTE CONTINUED MOTION TO CONFIRM
MET-2 Mary Ellen Terranella PLAN
4-6-16 [26]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

TRUSTEE'S NON-OPPOSITION

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

CREDITOR'S OPPOSITION

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

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

MAY 24, 2016 HEARING

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

In light of the two Motions being interconnected, the court continued the instant Motion to 3:00 p.m. on June 14, 2016. Dckt. 48.

DISCUSSION

On June 14, 2016, the court granted the Debtor's Motion to Value Collateral of Creditor.

Therefore, the Creditor's opposition is overruled, the plan properly providing for the secured and unsecured portion of the Creditor's claim.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

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

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

13. [16-21919-E-13](#) THERON CONNELLY
DPC-1 Rupert Corkill

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[22](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor has failed to provide the Trustee with Business Documents including: questionnaire, 6 months of profit and loss statements, proof of license and insurance or written statement that no such documentation exists.
2. The Plan contains errors and omissions:

- a. The Debtor's proposed payments offers conflicting information as to where the income is being derived from, how much is intended to be paid and to whom, and fails to list another Class 4 debt.
 - b. Terry Waters is listed twice on the plan, once as a Class 1 ongoing mortgage with arrears and a Class 4 direct pay. These are inconsistent.
 - c. The plan fails to list the total unsecured debt and the percentage to be paid to unsecured creditors.
 - d. The plan indicates additional provisions but none are provided.
3. The plan may not be able to complete within 60 months because the plan is silent as to unsecured claims and proposed dividend.
 4. The Debtor's plan does not provide for the secured debts of (1) Navajo Capital; (2) Shasta County Treasurer; (3) Ville Holdings, Inc; and (4) the secured portion of Internal Revenue Service claim.
 5. The plan fails the Liquidation asset because the Debtor has \$77,074.00 in non-exempt equity in real and personal property but fails to propose a dividend.
 6. Debtor's Schedule I is incomplete.
 7. The Debtor's plan may not be the Debtor's best efforts. The Debtor is an above median income debtor:
 - a. Debtor's Schedule J contains defects like duplicative mortgage payments, payment to creditor that is not listed on the schedules, and misstates the Debtor's net income.
 8. The Debtor's Statement of Current Monthly income is incomplete and improperly lists business expenses or have left lines blank.

The Trustee's objections are well-taken.

The crux of the majority of the Trustee's objections is that the Debtor's fails to give accurate, truthful, complete financial information to the Trustee, court, and any other parties in interest which makes it impossible for the court to confirm the plan.

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.

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

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

The Debtor has failed to timely provide the Trustee with business documents. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has non-exempt equity in both real and personal property while failing to provide a dividend to unsecured claims. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to an unstated dividend when there may be upwards of \$77,074.00 in non-exempt equity.

In sum, and upon considering the scope of the Trustee's objection as well as review of the papers filed by the Debtor, the Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor's plan facially provides for conflicting treatment of a creditor for mortgage payments, fails to provide proposed dividend to unsecured claimants, fails to fully fill out all schedules and statements, fails to provide all necessary income and expenses for both the Debtor and Debtor's business, etc. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the 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.

14. [11-32021-E-13](#) RAYMOND LITTLE
PGM-6 Peter Macaluso

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

No Tentative Ruling: The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

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

The Objection to Notice of Mortgage Payment Change is ~~XXXX~~

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

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

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

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

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

REVIEW OF MORTGAGE PAYMENT CHANGE AT ISSUE

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

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

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

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

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

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

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

TRUSTEE'S RESPONSE

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

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

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

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

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

CLAIM HISTORY

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

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

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

GMAC Mortgage, LLC filed a Notice of Mortgage Payment Change on February 27, 2013 due to an escrow account payment adjustment from \$282.81 to \$246.49 (\$161.84 escrow plus \$84.65 Surplus/Shortage). Based on this Notice, Debtor's mortgage payment effective May 1, 2013 was \$1,572.68 (**\$1,326.19 principal and interest** plus escrow) and the Trustee adjusted Debtor's mortgage payment accordingly.

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

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

APPLICABLE LAW

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

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

DISCUSSION

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

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

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

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

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

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

AWARD OF ATTORNEYS' FEES

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

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

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

CONTINUED HEARING

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

- A. Residential Credit Solns., Inc.
P.O. Box 163889
Fort Worth, Tx 76161

- B. Residential Credit Solutions, Inc.
C/O Nichole L. Glowin, Esq.
4665 MacArthur Court, Suite 280
Newport Beach, CA 92660

Cert. of Service, Dckt. 110.

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

What is not clear is that Residential Credit Solutions, Inc. has been provided with adequate notice. It appears that one address used is for a post office box in Fort Worth, Texas. Service upon a post office box is not adequate. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457

(Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

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

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

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

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

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

The court continued the hearing to 3:00 p.m. on June 14, 2016. Written oppositions were ordered to be filed and served on or before May 27, 2016, and replies, if any, on or before June 2, 2016.

JUNE 14, 2016 HEARING

To date, no supplemental papers have been filed in connection with the instant Objection.

At the hearing, xxxxx

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

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

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

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

IT IS FURTHER ORDERED that **xxx**

15. [16-22325-E-13](#) RONALD/CONNIE WHITMAN
DPC-1 David Brady

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[17](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 18, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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 plan relies on a Motion to Value Collateral of Ally Financial which was not filed.
2. There is a negative cash flow on the rental property.
3. No business income disclosed, if there is any.
4. Not Debtor's best efforts.

On June 1, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for July 19, 2016. Motion and Notice, Dckts. 24 and 25.

The filing of an amended plan is a *de facto* withdrawal of the current plan to which the objection was filed.

In light of the Debtor filing an amended Chapter 13 plan, the Objection is sustained.

Upon review of the now proposed plan, it appears to facially comply with the requirements of Fed. R. Bankr. P. 9013 and 11 U.S.C. §§ 1322, 1325(a), and 1323.

Therefore, the Plan filed April 13, 2016 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed filed on April 13, 2016 Chapter 13 Plan is not confirmed.

16. [16-22325-E-13](#) RONALD/CONNIE WHITMAN
SW-1 David Brady

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL
5-6-16 [[13](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 6, 2016. By the court's calculation, 39 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. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The court's decision is to sustain the Objection.

Ally Financial ("Creditor"), opposes confirmation of the Plan on the basis that:

1. The plan fails to provide the present value of the Creditor's claim.

The Debtor filed a response to the Creditor's objection. Dckt. 22. The Debtor states that due to an error in the software used to prepare petition, the wrong value was entered. The Debtor's intention was always to pay off the full amount of the loan held by Creditor. The Debtor states that they will be filing an amended plan and accompanying Motion.

On June 1, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for July 19, 2016. Motion and Notice, Dckts. 24 and 25.

The filing of an amended plan is a *de facto* withdrawal of the current plan to which the objection was filed.

In light of the Debtor filing an amended Chapter 13 plan, the Objection is sustained.

Upon review of the now proposed plan, it appears to facially comply with the requirements of Fed. R. Bankr. P. 9013 and 11 U.S.C. §§ 1322, 1325(a), and 1323.

Therefore, the Plan filed April 13, 2016 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed filed on April 13, 2016 Chapter 13 Plan is not confirmed.

17. [16-20626-E-13](#) JOSEPH AXTELL MOTION TO CONFIRM PLAN
RAH-1 Richard Hall 4-22-16 [[24](#)]

DEBTOR DISMISSED: 05/23/2016

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

18. [16-22227-E-13](#) JEFFREY FUCHS
DPC-1 James Keenan

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[13](#)]

DEBTOR DISMISSED:
05/23/2016
WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

19. [16-22328-E-13](#) MARIA COLEMAN
DPC-1 Scott Shumaker

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[21](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 4, 2016. By the court's calculation, 41 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 Santander Consumer USA.

On May 23, 2016, the Trustee filed a Notice of Dismissal of Trustee's Objection, stating that the order granting the Motion to Value Collateral of Santander Consumer USA resolved the Trustee's objection. Dckt. 25.

Therefore, in light of the Trustee withdrawing with Objection, 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 April 14, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

20. [16-22530](#)-E-13 MARCIA CLARK
BLG-2 Paul Bains

MOTION TO VALUE COLLATERAL OF
GATEWAY ONE LENDING AND FINANCE
5-13-16 [[27](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Gateway One Lending & Finance ("Creditor") is granted, and the court determines that the vehicle has a value of \$10,775.00.

The Motion filed by Marcia Clark ("Debtor") to value the secured claim of Gateway One Lending & Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Porsche Cayenne

("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,058.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,090.00.

CREDITOR'S OPPOSITION

The Creditor filed an opposition on June 2, 2016. Dckt. 37. The Creditor objects to the \$6,058.00 valuation allocated to its secured collateral under Debtor's Motion to Value. Creditor claims the property is in Clean Retail condition and has a replacement value of \$10,775.00 based upon information derived from the automated NADA guide, which was properly authenticated by Nina Storey's declaration. Dckt. 39.

The Creditor requests that the Motion either be denied or its secured claim be valued at \$10,775.00. If not, the Creditor requests that the matter be set for an evidentiary hearing.

DISCUSSION

While Debtor has provided her opinion as to value, she provides no information about the condition of the vehicle or required maintenance. Debtor fails to provide the court with any basis for reducing the value as stated in the NADA.

Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$10,775.00. 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 Marcia Clark ("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 Gateway One Lending & Finance ("Creditor") secured by an asset described as 2004 Porsche Cayenne ("Vehicle") is determined to be a secured claim in the amount of \$6,058.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is

\$10,775.00 and is encumbered by liens securing claims which exceed the value of the asset.

21. [16-22530-E-13](#) MARCIA CLARK
PLG-3 Paul Bains

MOTION TO VALUE COLLATERAL OF
WHEELS FINANCIAL GROUP, LLC
5-13-16 [[31](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Wheels Financial Group, LLC ("Creditor") is granted and the secured claim is determined to have a value of \$9,218.00.

The Motion filed by Marcia Clark ("Debtor") to value the secured claim of Wheels Financial Group, LLC dba 1-800LOANMART ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Range Rover Sport, vin number SALSH234X6A957288 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,218.00 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 non-purchase-money title loan incurred in June 28, 2013, which is more than one prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,324.17. 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 \$9,218.00. 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 Marcia Clark("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 Wheels Financial Group, LLC dba 1-800LOANMART ("Creditor") secured by an asset described as a 2006 Range Rover Sport, vin number SALSH234X6A957288 ("Vehicle") is determined to be a secured claim in the amount of \$9,128.00, 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 \$9,218.00 and is encumbered by liens securing claims which exceed the value of the asset.

22. 16-20734-E-13 EUGENE SPENCER
MAS-1 Mohammad Mokarram

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEBTOR'S REPLY

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

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

CREDITOR'S RESPONSE

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

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

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

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

APPLICABLE LAW

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

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

(1) First:

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

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

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses

of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

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

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

DISCUSSION

The Creditor's objections raise significant issues.

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

On the second grounds, the Creditor is correct that the plan does not properly provide for the priority claim of the Creditor. But Creditor and Debtor have entered into a Stipulation clarifying this point and resolving the objection. Stipulation, Dckt. 44. The parties provide that the earnings withholding orders for past due and current child support shall continue in full force and effect, with the payments to continue outside of the plan.

STIPULATION

On May 31, 2016, the Debtor and Creditor filed a stipulation. Dckt. 44. The parties have reached an agreement for confirmation of the plan with certain modifications and agree as follows:

1. The plan shall be confirmed provided that the Plan is modified as set forth below.
2. Debtor agrees and acknowledges that Creditor has filed a valid and non-objectionable proof of claim for back child support which is entitled to priority under 11 U.S.C. § 507(a)(1)(A).
3. Current payroll deductions in the amount of \$1,310.00 per month shall continue to be paid through the California Department of Child and Support Services. Specifically, Debtor's obligations to pay current support obligations for one of the children of Debtor and Creditor will expire in

September of 2016. Notwithstanding such child reaching the age of majority, the \$1,310.00 per month payroll deduction payable to the Department of Child and Support Services shall continue unabated and shall thereafter be applied solely to Debtor's back support obligations entitled to priority under 11 U.S.C. § 507(a)(1)(A) as aforesaid together with interest thereon until paid in full.

4. Except as expressly set forth herein, the Plan shall remain unchanged and in full force and effect. Without limiting the generality of the foregoing, the dividend payable to non-priority claimants under the Plan shall remain unchanged.

JUNE 14, 2016 HEARING

The Stipulation resolves the confirmation dispute between Debtor and the major creditor (97% of claims filed) in this case. Debtor and Creditor are returning to the State Court to obtain a determination of their respective contentions that the other violated the fiduciary duty one spouse owes the other. The payment terms of this stipulation shall be set forth in the order confirming the plan as amendments to the plan. As amended, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a), following the stipulated language being added to the order confirming. 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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is Overruled, and the proposed Chapter 13 Plan filed on February 17, 2016, as amended by the Stipulation (Dckt. 44) is confirmed. The amendments stated in the Stipulation shall be stated as amended plan terms in the order confirming the plan. 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.

23. [15-27236-E-13](#) JAMES/KARI BIRDSEYE CONTINUED MOTION TO CONFIRM
RHM-2 Robert McConnell PLAN
2-25-16 [[59](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

<p>The court's decision is to deny the Motion to Confirm the Amended Plan.</p>

James and Kari Birdseye ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 25, 2016. Dckt. 59.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 22, 2016. Dckt. 65. The Trustee opposes confirmation on the grounds that they do not have a current budget. The Debtor's declaration states that Debtor Kari Birdseye obtained a new employment position with Wildaid, Inc. and Debtor James Birdseye income from Media General is subject to a variable due to being on call for hours worked and his employment from New York Life may expire March 31, 2016.

Schedule J currently lists the Debtor's net income in the amount of \$2,950.00. The most recent Schedule J was filed on September 15, 2015. Dckt. 1, pg. 31.

The Trustee indicates that he was informed that Debtor James Birdseye received an oral offer of full time employment from Media General as a contract employee with an anticipated income of \$82,000.00.

The Debtor's attorney provided the Trustee with an earning statement for Debtor Kari Birdseye from Wildaid Inc. Her bi-weekly gross regular pay

for pay period beginning February 16, 2016 and ending February 29, 2016 was \$3,958.33, or approximately \$8,589.57 per month. Her net income as listed on the check was \$2,715.00 or \$5,891.55 monthly.

The Trustee asserts that based on his calculation, and the possible addition of \$82,000.00 per annum it appears the Debtor's current combined net monthly income is \$7,723.35. Currently, it appears the Debtor's monthly net income is approximately \$5,395.50.

APRIL 12, 2016 HEARING

In light of the Trustee's recommendation and good cause appearing, the court continued the instant Motion to 3:00 p.m. on June 14, 2016. The Debtor was ordered to file and serve supplemental Schedules I and J on or before May 17, 2016. Any replies or oppositions were to be filed on or before May 31, 2016.

DISCUSSION

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

On May 25, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for July 5, 2016. Motion and Notice, Dckts. 80 and 81.

The filing of an amended plan is a *de facto* withdrawal of the current plan to which the objection was filed.

In light of the Debtor filing an amended Chapter 13 plan, the Motion is denied without prejudice and the plan filed February 16, 2016 is not confirmed.

Upon review of the now proposed plan, it appears to facially comply with the requirements of Fed. R. Bankr. P. 9013 and 11 U.S.C. §§ 1322, 1325(a), and 1323.

Therefore, the Plan filed February 16, 2016 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied without prejudice 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 without prejudice and the February 16, 2016 Plan is not confirmed.

24. [13-20939-E-13](#) TIMOTHY/TAMARA MENE BROKER MOTION FOR OMNIBUS RELIEF UPON
PGM-1 Peter Macaluso DEATH OF DEBTOR
5-12-16 [[44](#)]

Tentative Ruling: The Motion to Substitute 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, Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 12, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is denied without prejudice.

Joint Debtor, Tamara A. Menebroker, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Timothy C. Menebroker. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on January 25, 2013. On April 15, 2013, the Debtor's Chapter 13 Plan was confirmed. Dckt. 24. On November 12, 2015, Debtor Timothy C. Menebroker passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was

filed on March 15, 2016. Dckt. 43. Joint Debtor is the surviving spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on May 31, 2016. Dckt. 56. The Trustee opposes the Motion on the basis that:

1. The Debtor has not provided sufficient detail or support for the funds spent from insurance and benefit proceeds. The Debtor lists areas of expenditures but does not provide amounts or supporting evidence.

Where the Debtor received and spent \$37,406.87 in additional funds since November 2015, if the Debtor has maintained her bank accounts with the same bank, the Debtor could provide the statements or review them and identify what amounts were spent on each expense.

2. The Debtor fails to cite appropriate legal basis such as Fed. R. Bankr. P. 1016 and Local Bankr. R. 1016-1, which is required under Fed. R. Bankr. P. 9013 and Local Bankr. R. 9014-1(d).

DEBTOR'S REPLY

The Debtor filed a reply on June 7, 2016. Dckt. 59. The Debtor states that she will provide the requested statement "on or before the date of this hearing."

Additionally, the Debtor states that further administration is possible and in the best interest of the parties. The Debtor states that a total of \$47,853.00 has been paid to date and that the Debtor will continue to make timely payments.

The Debtor states that she has two dependant children in college, has paid \$6,688.00 in income taxes from the combination of total of four checks received upon the death of her spouse for a total of \$37,406.87.

The Debtor states that at this time, the Debtor is using the death benefit money to keep making the full payments to the Trustee.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

Local Bankruptcy Rule 1016 requires the Notice of Death of the debtor shall be filed within sixty (60)days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for

substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

See also, Hawkins v. Eads, supra. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Tamara A. Menebroker has not provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Debtor filed a Notice of Amendment but only provided details as to Schedules B and C. The other schedules were filed with this court on January 24, 2013, over 3 years ago.

The Notice of Death was not filed within sixty (60) days specified in Federal Rule of Bankruptcy Procedure 1016. However, the Motion was filed within the 90 day period, specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 43. The Debtor nor Debtor's counsel explains this failure to properly and timely file the Notice of Death within 60 days of the deceased Debtor's death.

As to the concerns over where the benefit money went, the court echos the concerns of the Trustee. The Debtor only provides general expenses without providing an itemized list of how the \$37,406.87 was spent. This failure to provide sufficient information as to expenses and the fact that the Debtor has not explained why the Notice of Death was untimely, the Motion cannot be granted.

Based on the lack of evidence provided, the court cannot determine whether further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Tamara A. Menebroker, as the surviving spouse of the deceased party and as the successor's heir and lawful representative can continue to administer the case on behalf of the deceased debtor, Timothy C. Menebroker. The Motion to Substitute Party 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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

25. [14-30741](#)-E-13 DANIEL/JENNIFER DURAN
SLH-1 Seth Hanson

MOTION APPROVING SHORT SALE OF
REAL PROPERTY
5-12-16 [[30](#)]

Tentative Ruling: The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2016. By the court's calculation, 33 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits the Debtors ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 641 Shanghai Bend Road, Yuba City, California

The proposed purchaser of the Property is Bhupinder Bai and Sukhiat Bai and the terms of the short sale are:

1. Sale Price of \$250,000.00.

2. The sale is a short sale.
3. \$5,000.00 deposit.
4. Federal National Mortgage Association, successor in interest to SunTrust Bank, has approved the terms of the short sale, subject to the court approval.
5. JPMorgan Chase Bank, N.A. also has approved the terms of the short sale, subject to court approval.
6. The sale proceeds will be divided as follows:
 - a. \$224,778.80 to FNMA on the first deed if trust.
 - b. \$6,000.00 to Chase on the second deed of trust in full satisfaction of each of their secured loans.
7. All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds by the title company handling the transaction

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 27, 2016. Dckt. 35. The Trustee states that the Debtor's plan handles both the first and second deeds of trust as a Class 3 as well as property located at 10 Hunter Court, Chico, California. Debtor rental/home ownership expenses is \$2,000.00 per month according to Schedule J.

The Trustee states that he does not oppose the Motion. However, the Trustee states that the Debtor may need to consider modifying their plan, depending on what the Debtor's have done with the \$2,000.00 monthly expense they had projected for rent or home mortgage.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's response on June 2, 2016. Dckt. 37. The Debtor states that they are using that \$2,000.00 scheduled monthly expense to rent the home they are currently residing.

DISCUSSION

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

The Trustee's concern over the \$2,000.00 allocated to rental expense has been resolved, for purposed of this motion only, with the Debtor stating that the Debtor's current rental expense is just over \$2,00.00 per month. With the expenses being approximately the same, it appears that the budget still is accurate and that the plan is still feasible.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed sale is a short sale which will satisfy the claims of the first and second deed of trust holders. The Debtor had previously indicated that she intends to surrender the Property as the creditors are listed in Class 3. The terms of the sale appear to be in the best interests of the Debtor, estate, and parties in interest.

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 Sell Property filed by Daniel and Jennifer Duran 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 the Daniel and Jennifer Duran, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Bhupinder Bai and Sukhiat Bai or nominee ("Buyer"), the Property commonly known as 641 Shanghai Bend Road, Yuba City, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$250,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 33, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

26. [16-22741](#)-E-13 RICHARD/GLENNA VIOLETTE
SNM-1 Stephen Murphy

MOTION TO VALUE COLLATERAL OF
WILSHIRE CONSUMER CREDIT
5-10-16 [[14](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. 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). 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 Wilshire Consumer Credit A.K.A. Wilshire Commercial Capital L.L.C. ("Creditor") is granted and the secured claim is determined to have a value of \$0.00.

The Motion filed by Richard J. Violette, Jr. and Glenna Sue Violette ("Debtor") to value the secured claim of Wilshire Consumer Credit A.K.A. Wilshire Commercial Capital L.L.C. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 GMC Sierra 2500 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

On December 31, 2015 the lien-holder and the debtor entered into an agreement whereby the lien-holder was granted a non-purchase money lien against the Vehicle in exchange for a loan of \$20,020.90 at 62.46% interest. The lien did not secure a purchase-money loan therefore it is not subject to the 910 day requirement set forth in the hanging paragraph of 11 U.S.C. § 1325 (a)(9). The Internal Revenue Service is the holder of \$102,881.39 in

unavoidable tax liens against the Vehicle senior to the lien of the Creditor. 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 \$0.00. 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 Richard J. Violette, Jr. And Glenna Sue Violette ("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 Wilshire Consumer Credit A.K.A. Wilshire Commercial Capital L.L.C. ("Creditor") secured by an asset described as 2005 GMC Sierra 2500 ("Vehicle") 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 Vehicle is \$10,000 and is encumbered by liens securing claims which exceed the value of the asset

27. [16-22942-E-13](#) TRACI HAMILTON
RJ-2 Richard Jare

MOTION TO VALUE COLLATERAL OF
QUALITY FIRST HOME IMPROVEMENT
INC.
5-31-16 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 31, 2016. By the court's calculation, 13 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 -----
-----.

**"Motion to Value Collateral of Quality First Home Improvement"
is denied without prejudice**

Tracie Fay Hamilton ("Debtor") filed the instant "Motion to Value Collateral of Quality First Home Improvement" on May 31, 2016. Dckt. 23.

The Motion, facially, causes many concerns for the court.

REVIEW OF THE MOTION

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. Debtor "moves the court to Value the Collateral securing her Indebtedness to Qualify First Home Improvement Inc., to wit a : a "Mechanic's Lien recorded on January 7th, 2015 (which has not been expunged yet)' plus an ' Abstract of Judgment recorded on September 28, 2015 (which presumably perfects the mechanic's lien)' as against real property located at 1253 Alderwood Way Vacaville, CA 95687.
- B. "This motion seeks to establish that the secured claim is \$0.00 after taking into account Senior [sic] liens."
- C. "On the petition date, the value of Real Property securing the claim is \$300,000.00."
- D. "Greenleaf Mortgage & Loan, LLC holds the 2nd Deed of Trust against realty at 1253 Alderwood Way Vacaville, CA 95687. The senior, 1st, Deed of Trust, held or serviced by : Caliber Home Loans, (Cit Fin Serv.), secures an obligation in the amount of for [sic] \$427,952.00 as of the petition date, See Declaration of Debtor, filed herewith."
- E. "Quality First Home Improvement Inc. Holds a junior obligation currently in the amount of approximately \$9,000.00."
- F. "The Subordinate lien is entirely Undersecured.
- G. "Deficiency with reference to any allowed proof of claim is to be allowed as an unsecured claim (unless already paid by the trustee as a secured claim)."
- H. "Debtor's Declaration in support of this motion is filed and served herewith."
- I. "Wherefore, the Debtor prays that the court issue an order valuing the residence at \$300,000.00 and defining the secured claim of respondent's subordinate Mechanic's Lien and Abstract of Judgment to be \$0."

Failure to Provide Legal Authority and Evidence

Pursuant to Local Bankr. R. 9014-1(d), a motion is required to have:

- (6) Legal Authority. Each motion, opposition, and reply shall cite the legal authority relied upon by the filing party.
- (7) Evidence. Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e).

Here, Movant fails to provide any reference in the Motion to the legal basis for the relief sought, such as 11 U.S.C. § 506(a), nor does Movant provide Plaintiff with a points and authorities addressing the legal issues, including those relating to mechanics' liens.

The evidence submitted begins with Debtor's Declaration. Dckt. 25. She, as the owner, states that her opinion of value of the property securing Creditor's claim is \$300,000.00. Debtor goes further, stating her opinion as to the amount owed to creditors holding claims secured by senior liens. Debtor does not state a basis for Debtor having this statement or how she computes such amount.

Debtor goes further, and provides testimony under penalty of perjury that she has reviewed the exhibit which is a screen shot of Solono County Recorder's website, and then provides her "opinion" that it accurately reflects the placement of the mechanic's lien on the Property.

This last referenced testimony by Debtor causes the court great concern and puts into doubt the credibility of the balance of her testimony. First, the court has no basis for Debtor providing her opinion that some exhibit, obtained by some unnamed person, from the internet is an accurate statement of the real property record relating to Creditor's lien. Rather, it appears that she is merely saying, by signing the Declaration, whatever her attorneys tell her will mean she can "win."

Debtor then provides her "legal opinion" that she concludes Creditor's lien is "subordinate" to the other creditors' liens. While Debtor may have her beliefs, and want to dictate the law to the court, legal and factual conclusions are the burden of the court, which obligation cannot be usurped by a party.

While Debtor may seek to state her conclusions as to the amount of the other liens against the property, no reference is made to any proofs of claim filed in this case. However, this case having been only recently filed, it is not unexpected that proofs of claim have not yet been filed.

In toto, Debtor's Motion and Declaration tell a tale, but only a tale. They do not state grounds upon which relief with particularity is requested (Fed. R. Bankr. P. 9013), nor does the evidence credibly support any relief, if the court were to surmise what relief is actually sought.

MERITS

Avoiding Lien

To the extent that the Motion seeks to avoid the lien pursuant to 11 U.S.C. § 522(f)(1)(A), which allows avoidance of "judicial" liens, it is denied without prejudice. A judicial lien is "obtained by judgment, levy, sequestration or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). Here, Debtors seek to avoid a statutory lien for a Mechanic's Lien. A statutory lien is a "lien arising solely by force of a statute on specified circumstances or conditions...." 11 U.S.C. § 101(53). The California Constitution states: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of

such labor done and material furnished; and the legislature shall provide, by law, for the speedy and efficient enforcement of such liens." Cal. Const., Art. XIV § 3. Statutory liens are not subject to avoidance under 11 U.S.C. § 522(f)(1)(A). 4 COLLIER ON BANKRUPTCY ¶ 522.11[2] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The Debtor has failed to provide any argument as to how this judicial lien (the Mechanic lien) can be avoided under 11 U.S.C. § 522(f) and relevant state law.

Motion to Value Secured Claim

To the extent that Debtor is seeking relief pursuant to 11 U.S.C. § 506(a), then the Debtor has failed to properly identify that the Creditor, who originally had an mechanics lien, has an "allowed claim of a creditor secured by a lien on property in which the estate has an interest." 11 U.S.C. § 506(a). The only evidence provided by the Debtor is a screenshot of the county recorder's office. This is facially insufficient both on a procedural and substantive level

Therefore, the Motion is denied without prejudice.

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

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

The "Motion to Value Collateral of Quality First Home Improvement" filed by Tracie Faye Hamilton aka Traci Hamilton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Tentative Ruling: The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2016. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 Sell Property is denied without prejudice.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 9497 White Horse Way, Elk Grove, California

Unfortunately, the Debtor did not provide sufficient notice for the instant Motion. Pursuant to Fed. R. Bankr. P. 2002(a)(2), for Motions to Sell, a minimum of 21-days notice is required. Here, the Debtor only provided 14-days notice. This is insufficient.

Therefore, due to insufficient notice, the Motion is denied without prejudice.

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

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

The Motion to Sell Property filed by Allen Carter 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 the Motion is denied without prejudice.

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

ALTERNATIVE RULING

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 9497 White Horse Way, Elk Grove, California

The proposed purchaser of the Property is Pamela Potillor-Williams and Todd Williams and the terms of the sale are:

1. Purchase price of \$482,000.00.
2. All cash purchase.
3. After deducting costs and paying all encumbering lien holders claims, the Debtor is due at closing \$152,590.79.

The Debtor requests that the court order the Trustee to submit a demand to escrow for the amount necessary to pay 100% of all general unsecured claims.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on June 7, 2016. Dckt. 58. The Trustee states that the Debtor is to receive proceeds of \$152,590.79 from sale of property and request that the Trustee demand amount necessary to pay 100% to all general unsecured claims.

The Trustee is not opposed to the transaction.

DISCUSSION

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed sale allows for the Debtor to sell the Property while paying in full the encumbrances on the Property. Additionally, there will be sufficient funds after satisfying the liens on the Property to pay 100% of the general unsecured claims.

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 Sell Property filed by Allen Carter 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 the Allen Carter, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pamela Potillor-Williams and Todd Williams or nominee ("Buyer"), the Property commonly known as 9497 White Horse Way, Elk Grove, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$482,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 56, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. After payment of the above liens and authorized expenses, the sales proceeds shall next be distributed to the Chapter 13 Trustee directly from escrow in the amount necessary to provide for payment in full of the claims in this case. The Chapter 13 Trustee shall submit a written demand for payment, upon which the escrow may rely on as to amount for disbursement pursuant to this order.
5. After disbursement directly from escrow to the Chapter 13 Trustee, all remaining proceeds from the sale may be disbursed directly to the Chapter 13 Debtor.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) May 18, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David 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.
2. Debtor is \$75.00 delinquent in plan payments. The Debtor has made \$0.00 in payments to date.
3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return.

4. Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.
5. The plan contains the following defects:
 - a. Nationstar Mortgage is improperly classified as a Class 6. The Trustee states that it appears that the claim is a secured claim and should be treated in Class 1 or Class 4.
 - b. The plan fails to list the total amount of unsecured debts and omits the proposed percentage dividend to unsecured.
 - c. Section 6 of the plan fails to indicate if additional provisions are appended to the plan, though none appear to be attached.
6. Schedule D fails to list any secured debts. The debt of Nationstar Mortgage has been listed as unsecured on Schedule E/F. Schedule E/F does not list any other unsecured debts. However, Capital One Bank has filed a proof of claim. Lastly, Debtor's Schedule J lists an expense of \$111.00 for a student loan on line 21. No student loans are disclosed in the Schedules.
7. The Statement of Current Monthly Income is not correct or complete. The Debtor's monthly income is listed on line 2 as \$7,000.00 (\$84,000.00 annually). Line 16c lists the median income as \$97,800.00 for a household of 3. The correct median income for 3 persons is \$70,732.00 according to the Census Bureau Median Family Income table. Therefore, the Debtor is over the median income.

The Trustee's objections are well-taken.

The basis for the Trustee's 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).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The basis for the Trustee's objection is that the Debtor is \$75.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the any secured claims but improperly classifies what appears to be a secured claim, raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

As to the Trustee's remaining objections, the court concurs that the plan cannot be confirmed when the Debtor has facially failed to provide all necessary and accurate financial information. The fact that the Debtor fails to list any unsecured creditors on the Schedules when a creditor has filed a proof of claim, and the fact that the Debtor's plan fails to state a dividend to unsecured, and the fact that the plan improperly classifies a secured claim in Class 6, and the fact the Debtor is above median income, and the fact that the Debtor failed to disclose student loan debts, the court nor any other party in interest can determine if the plan is feasible or viable. In fact, the failure to completely and accurately fill out the schedules and petition raises concern whether the Debtor even qualifies.

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.

30. [16-21943-E-13](#) IRINA RILEY
MDE-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
5-19-16 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

U.S. Bank National Association, as Trustee for GSAA Home Equity Trust 2006-20, Asset-Backed Certificates, Series 2006-20 ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor's plan fails to provide for the Creditor's pre-petition arrears.
2. The plan improperly lists the Creditor's claim as Class 6 when it is a secured claim.

The Creditor's objections are well-taken.

The creditor first alleges that the plan is not feasible, See 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because does not properly provide for the Creditor's claim, which is secured by the Debtor's residence.

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

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

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

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

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

Here, the Debtor improperly lists the Creditor as a Class 6 claim and does not provide for the full claim of the Creditor. In fact, the Debtor is only proposing to pay approximately 1% of the Creditor's overall claim. This is grounds to deny confirmation.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$207,973.85 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

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

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

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

31. [16-21446-E-13](#) ANGELA SEIBERT
DAO-3 Dale Orthner

MOTION TO VALUE COLLATERAL OF
PERITUS PORTFOLIO SERVICES II
5-31-16 [[49](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 31, 2016. By the court's calculation, 14 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Peritus Portfolio Services II ("Creditor") is granted and the secured claim is determined to have a value of \$5,000.00.

The Motion filed by Angela Seibert ("Debtor") to value the secured claim of Peritus Portfolio Services II ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Kia Sportage ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$5,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701;

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

The lien on the Vehicle's title secures a purchase-money loan incurred in September, 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 \$13,734.44. 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 \$5,000.00. 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 Angela Seibert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Peritus Portfolio Services II ("Creditor") secured by an asset described as 2007 Kia Sportage ("Vehicle") is determined to be a secured claim in the amount of \$5,000.00, 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 \$5,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

32. [11-28851-E-13](#) ROBERT CHESNER AND JUDY MOTION TO REFINANCE
PLG-3 VAN NOY-CHESNER 5-10-16 [[69](#)]
Rabin Pournazarian

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. By the court's calculation, 35 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 refinance the terms of an existing secured loan held by CitiMortgage against the real property commonly known as 8201 Eversley Court, Sacramento, California ("Property"). The proposed refinancing is with Paramount Equity Mortgage, LLC ("Creditor"). The proposed refinancing shall consist of:

1. Modified loan amount of \$207,221.00
2. Modified Term: 360 months

3. Modified Interest Rate: 2.875%
4. The monthly mortgage payments will be \$1,344.92 from \$1,689.00.

The Debtor states that the refinance will not affect the Chapter 13 Plan because the Debtor has just completed their Chapter 13 plan.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on June 1, 2016.

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

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

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

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

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

IT IS ORDERED that the Motion is granted and Robert Chesner and Judy Kathleen Van Noy-Chesner ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit 1, Dckt. 72.

33. 16-20951-E-13 FELICIA MARTINEZ
DPC-1 Thomas Gillis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-6-16 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 6, 2016. By the court's calculation, 17 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. Debtor stated opposition.

The Objection to the Plan is ~~XXXXXXXX~~.

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

1. It is not clear if the Debtor can make the payments under the plan.
 - a. The Debtor is delinquent \$1,775.00. To date, the Trustee has not received any payments when one has come due.

Trustee confirmed at the hearing Debtor is current.

- b. The Debtor admitted at the Meeting of Creditors that she is not sure if she can make the plan payments of \$1,775.00. The Debtor stated she was concerned with her budget as it was filed.
 - c. On Schedule I, the Debtor lists \$213.00 per month as other monthly income from "Tax over-withholding." Based on the amount listed on Schedule B in Debtor's bank accounts, the Debtor does not appear to have the \$213.00 additional monthly income.
2. The Debtor's plan may not be the Debtor's best efforts. The Debtor's monthly net income listed on Schedule J totals \$3,783.00. Debtor is proposing on \$1,775.00 in monthly payments.

DEBTOR'S RESPONSE

The Debtor filed a response on April 12, 2016. Dckt. 23. The Debtor states that, at the Meeting of Creditors, the Debtor was confused by the Trustee's question as to the ability to make plan payments. The Debtor has suffered two strokes. The Debtor states that she will be able to adjust the over-withholding per month to help with her payments, if needed.

MAY 3, 2016 HEARING

At the hearing, the Trustee consented, as this is a L.B.R. 9014-1(f)(2) proceeding, to Debtor's request to continue the hearing and set a briefing schedule. The court sets the following dates and deadlines:

- A. The hearing is continued to June 14, 2016 at 3:00 p.m.
- B. Debtor shall file and serve the Opposition on or before May 27, 2016.
- C. Reply, if any, to the Opposition shall be filed and served on or before June 3, 2016.

DEBTOR'S PROPOSED AMENDED PLAN TERMS

The Debtor filed a proposed amended plan terms on May 27, 2016. Dckt. 30. The Debtor proposes the following language in the order confirming:

The approved unsecured creditors shall be paid 100% of their claim. The scheduled unsecured debt is \$9,185. Approved creditors shall be paid in the plan over a period of 36 months.

The plan payment shall be \$1,775 for months 1-3. For months 4-36 the payment shall be \$1,891.34. For months 37-60 the plan payment shall be \$1,621.92. The unsecured creditors shall receive 5% annual interest on their unpaid balance.

The Debtor also states that, as to the calculations of payment to unsecured creditors, payments at \$1,775.00 has been made during the first three months. The balance after three months payment to scheduled unsecured creditors total \$8,726.00. For 33 months, \$8,726.00 divided by 44 equals \$278.33 per month. The Trustee's fee has already been included in the prior plan calculations. The estimated interest is at \$5.00 per month. However, the sum of \$153.08 was already included in the original proposed payment of \$1,765.00. Therefore, the unsecured will receive \$125.25 more during the 36 months, plus interest of \$5.00.

The plan payment then in the 33 month period will be: \$1,775 + \$264.42 - \$153.08 + \$5.00 = \$1,891.34.

TRUSTEE'S RESPONSE

The Trustee filed a response on June 3, 2016. Dckt. 32. The Trustee states that he does not oppose the amended term that calls for unsecured to be paid 100% at 5% interest.

However, the Trustee states it is uncertain if the Debtor is also proposing to shorten the plan from 60 months to 36 months. Where the changed terms were not served on creditors, the bar dates to timely file claims have not yet passed, and not all creditors have filed claims, it is not clear to the Trustee if it is appropriate to shorten the plan.

The proposal as filed has conflicting language as to the duration of the plan, the beginning indicating 60 months and the conclusion indicating 36 months.

Additionally, the Trustee states that the proposal indicates that only one claim of \$2,716.36 has been filed since the case was filed three months ago. The bar dates for non-governmental units and governmental units to file proofs of claim have not yet passed.

Based on the Debtor's responses and another review of employment showing on Schedule I, the Trustee states he no longer questions the Debtor's ability to make the plan payments.

DISCUSSION

The Trustee's objections are well-taken.

It appears that the only remaining issue, after taking into consideration the proposed amendment, is the length of the proposed plan and the apparent limitation on claims proposed in the amendments. Namely, the way the proposed amendment is presented suggests that no other unsecured claims would be allowed due to the Debtor proposing a condensed pay off.

The court's review of the proposed amendments highlight the Trustee's concern. The court's own reading indicates that there is a conflict in the length of time proposed for the plan. While the Debtor initially indicates that it will be a 60 month plan, the language in the conclusion indicates that the Debtor is proposing to condense it to a 36-month plan.

It appears that the thirty-six month payment period is for the Class 7 general unsecured claims, with the Debtor needing the full sixty months to cure the Class 1 arrearage. At the hearing, ~~xxxxxx~~

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 ~~xxxx~~

34. [16-21854-E-13](#) KENNETH TABOR
SNM-2 Stephen Murphy

MOTION TO CONFIRM PLAN
4-25-16 [[25](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2016. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

<p>The Motion to Confirm the Amended Plan is continued to 3:00 p.m. June 28, 2016.</p>

Kenneth Tabor ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 25, 2016. Dckt. 25.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 27, 2016. Dckt. 32. The Trustee objects on the following grounds:

1. The Debtor appeared at the Meeting of Creditors but failed to timely file the necessary documents to review. The Trustee has received an itemized list of vehicles that the Debtor listed on Schedule A/B as 87 vehicles worth \$20,000.00. The Trustee is seeking additional information.
2. The Debtor failed to provide business documents.
3. The Debtor lists Seterus as a Class 2 debt. However, the Debtor's Schedule D indicates that the loan is secured by Debtor's residence. It appears that this debt should be provided for in Class 1 or that the debt should be provided for in the Additional Provisions to clarify that the Debtor is accelerating this debt to pay in full over the plan. (The Trustee does not otherwise object to the acceleration of the debt).
4. The Debtor testified at the Meeting of Creditors that he owns a collection of about 100 vehicles that he restores as a hobby. These vehicles are not individually listed and may not

be properly valued. The plan proposes to pay unsecured creditors in full but does not propose interest, which may cause the Debtor to fail Chapter 7 Liquidation.

DEBTOR'S REPLY

The Debtor filed a reply on June 7, 2016. Dckt. 35. The Debtor states that the Debtor has provided his 2015 tax return.

As to the monthly breakdown for the Debtor's 6 month profit and loss statement, the Debtor states that he does not have a bank account or know how to operate a computer - he hand tallied handwritten notes and receipts. The Debtor's girlfriend is currently hospitalized and the Debtor has been spending spare time with her which is why it has taken the Debtor longer to complete (and the fact that the Debtor is handwriting the calculations).

The Debtor states that the Seterus mortgage loan is modified by the plan and is therefore correctly classified as a Class 2 debt.

Lastly, the Debtor states that the cars he works on are non-operable. None of them are running and many of them are rusted out or have no engine at all. The Debtor asserts that there is no market value on any of the vehicles.

TRUSTEE'S REPLY

The Trustee filed a reply on June 9, 2016. Dckt. 40. The Trustee states that the Meeting of Creditors was concluded on June 2, 2016. The Trustee states that the Debtor has supplied details regarding his business with the exception of profit and loss statement, which the Debtor state he will soon provide.

The Trustee states that due to there being no unsecured claims and the plan proposing to pay 100% of unsecured, the Trustee does not object to the Seterus claim being listed as a Class 2 claim.

As to the disclosure of property, the Trustee requests the court continue the current Motion to June 28, 2016 to allow the Debtor the opportunity to file the appropriate amendments and to provide the profit and loss statement.

DISCUSSION

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

In light of the Trustee's reply and the unique facts of the case, the court concurs with the Trustee that additional time to file and complete all necessary paperwork. Therefore, the Motion is continued to 3:00 p.m. on June 28, 2016.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to 3:00 p.m. on June 28, 2016.

35. [16-21256-E-13](#) HEATHER WRIGHT
BLG-2 Paul Bains

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

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Value secured claim of Citibank, N.A. ("Creditor") is granted and the secured claim is determined to have a value of \$750.00

The Motion filed by Heather Wright ("Debtor") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration.

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

The default of Citibank, N.A. is entered, no opposition to the Motion having been filed.

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

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

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

The hearing was continued to afford Debtor the Opportunity to provide additional evidence with respect to when the obligation was incurred and the security interest granted.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on May 27, 2016. Dckt. 32. The Debtor states that based on the information and the credit report she was able to pull, the debt was incurred on March 1, 2014.

DISCUSSION

The lien on the Asset's title secures a purchase-money loan incurred in March 1, 2014, which is more than 1-year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$2,478.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$750.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. ("Creditor") secured by an asset described as (1) Car Radio; (2) Laptop; and (3) Refrigerator ("Asset") is determined to be a secured claim in the amount of \$750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Asset is \$750.00 and is encumbered by liens securing claims which exceed the value of the asset.

36. [12-24258-E-13](#) **DARRELL WILLIAMS** **MOTION TO APPROVE LOAN**
FF-7 **Brian Turner** **MODIFICATION**
5-12-16 [129]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 12, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Darrell Williams ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in

Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,028.00 a month to \$806.67 a month. The modification will not change the rate of interest. The principle amount owed will change from \$96,207.44 to \$96,735.91.

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

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on May 31, 2016. Dckt. 135.

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

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

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

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

IT IS ORDERED that the court authorizes Darrell Williams ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 3633 Lankershim Way, North Highlands, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 132.

37. [15-23558-E-13](#) STEVEN/SHERRY MORRIS
PGM-2 Peter Macaluso

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 4
4-25-16 [[54](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, Debtor, and Office of the United States Trustee on April 22, 2016. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim number 4 of Cavalry SPV I, LLC as assignee of TD Auto Finance, LLC/Chrysler Financial, N.A. is sustained and the claim is disallowed in its entirety.

Steven and Sherry Morris ("Debtor") requests that the court disallow the claim of Cavalry SPV I, LLC as assignee of TD Auto Finance, LLC/Chrysler Financial, N.A. ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$15,026.21. Debtor asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last

payment was made under the contract. The Debtor states that according to the Proof of Claim, the charge off date of December 18, 2006.

DISCUSSION

Objection

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

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extension of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

(c) Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) **30 days after notice of the termination or expiration of the stay under section 362, 922, 1201,**

or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 4 does not list the Debtor's last payment but does affirmatively state December 18, 2006 as the "charge off date." The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental of credit transactions is commonly known by both creditors and consumers alike.)

Thus, the four year statute of limitations expired on December 18, 2010.

This bankruptcy case was filed on April 30, 2015. But it is after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Therefore, based on the evidence before the court, the Creditor's claim is disallowed in its entirety, due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

Attorney's Fees

Debtor seek attorney fees pursuant to Civil Code Section 1717(a), which provides for attorney fees where the contract specifically provides attorney's fees, which are incurred to enforce the contract, to the prevailing party.

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court.

California Civil Code section 1717(a) provides:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Here, Debtor states that the underlying contract has an attorney fees provision that, pursuant to § 1717(a), is reciprocal. Unfortunately, the Debtor failed to provide evidence of the contract provision nor does the Debtor submit a properly authenticated contract.

While the Plaintiff-Debtor's counsel has also provided a billing statement, showing approximately 2.5 hours working on the instant Objection,

the failure to provide a copy of the contract makes it impossible for the court to grant the relief requested.

Though one might think that the court could take "judicial notice" that almost every note and deed of trust used by an institutional lender has an attorneys' fees provision, it is a fact specific issue. It is possible that while there may be an attorneys' fee provision, it is narrowly drawn and does not relate to title issues.

Therefore, the Plaintiff-Debtor's request for attorney's fees based on a contractual provision 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 Objection to Claim of Cavalry SPV I, LLC as assignee of TD Auto Finance, LLC/Chrysler Financial, N.A., Creditor filed in this case by Steven and Sherry Morris, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 4 of Cavalry SPV I, LLC as assignee of TD Auto Finance, LLC/Chrysler Financial, N.A. is sustained and the claim is disallowed in its entirety.

IT IS FURTHER ORDERED that the request for attorney's fees is denied without prejudice.

38. [16-20361](#)-E-13 DANIEL MASSEY
ALF-1 Corrina Roy

MOTION TO CONFIRM PLAN
4-17-16 [[33](#)]

Final Ruling: No appearance at the June 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 21, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

1. The Debtor is delinquent \$3,775.00 in plan payments. The Debtor has paid \$0.00 into the plan to date.
2. The Debtor failed to appear at the First Meeting of Creditors.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is \$3,775.00 delinquent in plan payments. The Debtor has failed to make any plan payments to date. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The basis for the Trustee's 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).

The continued meeting of creditors was held on March 26, 2016, and the Trustee's Report indicates the Debtor appeared. The Trustee has filed nothing further, and the court therefore determines the Debtor's appearance has resolved his objection.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

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

Kurt and Barbara Delacampa filed a Motion to Confirm the Amended Plan on April 19, 2016. Dckt. 42.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 25, 2016. Dckt. 54. The Trustee opposes confirmation on the ground that the Plan appears to fail the Chapter 7 Liquidation Analysis. The Debtor has not provided any specific evidence as to the total amount of non-exempt equity they have so that the Debtor has not proven that the unsecured creditors will receive at least what they would receive in the event of a Chapter 7.

On May 3, 2016, the court sustained an Objection to Debtor's Claim of Exemptions as to the Oregon Property. Schedule C filed April 19, 2016 shows the Debtors have utilized exemption under claim of homestead exemption

under California Code of Civil Procedure § 704.730 in the Oregon Property, which appears to be the same property as the one previously disallowed the exemption.

The Debtor's non-exempt equity based on the Trustee's review totals \$67,806.00. The Debtor's only propose to pay the unsecured creditors a 25% dividend, or approximately \$37,600.75.

DISCUSSION

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

The Trustee's objection is well-taken.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has supplied insufficient information relating to the real property and assets, to assist the Trustee in determining the value of the non-exempt equity. Even more concerning is the fact that the Debtor appears to claim the same exemption in the Oregon Property that was previously disallowed. The Debtor is proposing a 25% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 25% dividend when there may be upwards of \$67,806.00 in non-exempt equity.

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

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

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

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

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

41. [16-21675](#)-E-13 CHIN WONG
AP-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
5-5-16 [[36](#)]

DEBTOR DISMISSED: 05/20/2016

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

42. [16-21675-E-13](#) CHIN WONG
DPC-1 Pro Se

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
5-4-16 [[32](#)]

DEBTOR DISMISSED: 05/20/2016

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

43. [10-50178-E-13](#) MARIA DE LA GARZA
TJW-4 Timothy Walsh

MOTION TO MODIFY PLAN
4-14-16 [[64](#)]

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 61 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 ~~xxxxx~~ the Motion to Confirm the Modified Plan.

Maria De La Garza ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2016. Dckt. 64.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 31, 2016. Dckt. 73. The Trustee objects on the following grounds:

1. The Debtor fails to provide treatment for priority creditor Internal Revenue Service. The Internal Revenue Service filed Proof of Claim No. 1 for a total of \$2,233.29. The claim indicates that the priority portion of the claim is \$1,316.46 which is not listed in the plan.

2. The months paid in stated in the Debtor's proposed plan payments differ from the Trustee's records. The Debtor has listed the proposed plan payments as "\$1,800.00 per month for 2 months, \$2,150.76 per month for 22 months, \$100.00 per month for 2 months, \$280.00 per month for 34 months" in the additional provisions. The total proposed amount paid in should total \$60,636.72 to complete the plan.

According to the Trustee's records, Debtor has paid in \$60,916.72 through month 61, which is December 2015. Where this case was filed on November 16, 2010 so the first payment was due on December 25, 2010.

DEBTOR'S REPLY

The Debtor filed a reply on June 9, 2016. Dckt. 76. The Debtor states that she reads the Trustee's opposition stating two issues:

1. The amount of priority claim for Internal Revenue Service in the amount of \$1,316.46.
2. The Debtor's total proposed is \$60,636.72 whereas the Debtor has actually paid \$60,916.72. It appears that the Debtor has overpaid \$280.00.

The Debtor states that she believes that this can be corrected in the order confirming and have it provide a small payment to cover the priority of \$1,326.56, in part with the extra \$280.00, leaving \$1,036.46, to complete the project.

DISCUSSION

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

The Trustee's objections are well-taken.

Trustee objects on the ground that Debtor is unable to make plan payments under 11 U.S.C. § 1325(a)(6) because the priority claimed filed by the Internal Revenue Service is not fully accounted for in the Plan. The priority claim is valued at \$1,316.46. Claim 1. However, the Plan fails to provide for a priority amount.

Additionally, it appears that the Trustee is objecting on the basis that the plan: (1) takes longer than 60 months to complete and (2) that the plan inaccurately lists the amounts paid to date.

While the Debtor attempts to frame the issue as one merely of inaccurate accounting that can be corrected in the order confirming, the larger concern is the fact that the plan will extend past the permitted 60 months and that the priority claim of the Internal Revenue Service is not provided for.

The Debtor appears to believe that "we can work out the actual math." However, the Debtor does not provide any proposed language to correct the facial errors. Instead, the Debtor appears to shift that burden to the court and to the Trustee. That is improper.

At the hearing, ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~.

~~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.~~

44. [10-50178-E-13](#) MARIA DE LA GARZA
DPC-2 Timothy Walsh

CONTINUED MOTION TO DISMISS
CASE
3-18-16 [[56](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 18. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is ~~xxxxxxx~~.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$560.00 delinquent in plan payments, which represents multiple months of the \$280.00 plan payment.

DEBTOR'S OPPOSITION

On March 30, 2016, Debtor filed an opposition to the instant motion. Dckt. 60. Debtor states that she believes she is current, and completed her plan with her month 60 payment. Debtor further explains that payments have stopped because the court stopped automatic withdrawals after month 60. Debtor is conferring with Trustee to determine what error, if any, exists.

TRUSTEE'S REPLY

Trustee filed a reply on April 5, 2016, adding that Debtor is overextended because her plan will complete in 124 months. Dckt. 62. Debtor's Amended Plan increased the unsecured creditor dividend to 27%, but to date each claim has only been paid 6.09%. Trustee also adds that the Internal Revenue Service filed a priority claim for the amount of \$1,316.46, which has not been provided for. Trustee continues to assert that while 60 months have passed, Debtor has missed more than one payment.

APRIL 20, 2016 HEARING

Debtor has filed a Motion to Modify the Plan. In light of this case having been filed in 2010 and the Debtor investing five years into it, the court continued the hearing on this motion to the time and date of the hearing on the Motion to Confirm at 3:00 p.m. on June 15, 2016.

DISCUSSION

At the hearing, xxxxx

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

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

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

IT IS ORDERED that the Motion to Dismiss is xxxxx

45. [15-27379-E-13](#) MARCELLO FREIRE
MMM-3 Mohammad Mokarram

MOTION TO APPROVE LOAN
MODIFICATION
5-27-16 [[47](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2016. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Marcello Freire ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$2,435.25 a month for principal, escrow, and interest payment. The interest rate shall be 5.75%.

The court previously approved the trial loan period on March 22, 2016. Dckt. 40. The Debtor now seeks to have the permanent modification approved.

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

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

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

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

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

IT IS ORDERED that the court authorizes Marcello Freire ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 6306 Old Orchard Way, Orangevale, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 50.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 9609 Tessara Court, Elk Grove, California

The proposed purchaser of the Property is Caleb and Sandra Stone and the terms of the sale are:

1. Purchase price of \$449,000.00
2. Through the sale all liens of record will be paid in full or in amount agreed to by the lenders.

- a. Wells Fargo: \$373,281.12
 - b. Springleaf Financial: \$184,352.43
3. Despite the facts that there is no equity in the property, Debtor will be receiving \$5,000.00 for "Relocation assistance" from the sale of the property.
 4. All costs of sale such as escrow fees, title insurance, and brokers commissions will be paid in full from the sale proceeds.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on May 31, 2016. Dckt. 43. The Trustee is not opposed to the transaction. However, the Trustee states it is uncertain if the sale will proceed since the deadline of Springleaf's Letter of Guarantee settling the account at \$30,000.00 has passed. Springleaf's guarantee was depended on funds being receive by April 18, 2016.

CREDITOR'S RESPONSE

The Bank of New York Mellon f/k/a The Bank of New York, as successor in interest to JPMorgan Chase Bank, N.A. f/k/a JPMorgan Chase Bank, as Trustee for GSR Mortgage Loan Trust 2003-10, Mortgage Pass-Through Certificates, Series 2003-10, as serviced by Wells Fargo Bank, N.A. ("Creditor") filed the instant response on May 31, 2016. Dckt. 45.

The proposed purchase price appears to provide for Creditor's lien in full. However, the Motion is fashioned as a short sale. If it is a short sale, such sale cannot go forward for anything less than the full payoff of lien without acceptance by the lienholder.

Creditor does not oppose the instant Motion but requests that the Order granting the Motion that " Wells Fargo Bank, N.A. will either be paid in full subject to a proper pay-off quote, or that any sale short of full payoff will be subject to Creditor's final approval."

SUPPLEMENTAL EXHIBIT

On June 10, 2016, the Debtor filed a Letter of Guarantee from Springleaf Financial Services. Dckt. 40.

DISCUSSION

First, to address the response of Creditor, the Creditor is stating, in essence, that it demands additional language to be added to order in order for the Creditor to consent to the sale. This added language is pregnant with implications. First, it is clear that the present Motion is not one to sell the Property free and clear of liens pursuant to 11 U.S.C. § 363(f). Thus, by "admitting" that additional language to the order is required, Creditor implies that every other sale order which does not contain the demanded additional language does in fact work a sale free and clear of the Creditor's lien. This is not only incorrect, but likely not an

"admission" that Creditor sought to make for all of the bankruptcy cases in which it is a creditor with a secured claim.

Additionally, the Creditor is stating that the sale should only be authorized if it is paid the "proper pay off quote" or that Creditor give "final approval." To first address the "proper payoff quote," the Creditor does not provide this quote nor any indication of how it will be calculated or what is "proper." The court will not add language that, in effect, gives the Creditor the power to demand, and state that the court has so ordered, payment of any payment amount. As with every other creditor with a lien, Wells Fargo Bank, N.A. may submit its demand and lien release into the sale escrow and be properly paid. If it demands an improper amount, the Debtor and buyer may seek relief from the court.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. After reviewing the purchase agreement, the sale price appears to be reasonable and fair and will result in the benefit to the Debtor, Estate, and creditors. The sale will result in the pay-off of the two liens on the property and allow the Debtor to have relocation funds.

As such, the Motion is granted.

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

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

The Motion to Sell Property filed by Ruth Austin 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 the Ruth Austin the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Caleb and Sandra Stone or nominee ("Buyer"), the Property commonly known as 9609 Tessara Court, Elk Grove, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$449,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 40, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor, except for no more than \$5,000.00 which is stated to be a relocation expense in the escrow instructions.
5. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold, paying the fees and costs as allowed by this order, or the not more than \$5,000.00 relocation expense provided in the escrow instructions, shall be disbursed to the Chapter 13 Trustee directly from escrow.

47. [16-21581](#)-E-13 GWENDOLYN WILSON
DPC-1 Candace Brooks

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

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation is dismissed without prejudice and the plan is confirmed.

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

1. The plan fails to provide for the secured portion of the claim filed by the Internal Revenue Service in the amount of \$25,239.00. This would result in the plan taking longer than 60 months to complete.
2. The Debtor has not provided tax returns and business documents for GOALS for Women to the Trustee.
3. The Debtor cannot make the plan payments. The Debtor admitted at the Meeting of Creditors that the Debtor failed to list an expense of \$274.00 per month for auto insurance on Schedule J.
4. The Debtor admitted at the First Meeting of Creditors that she has a possible cause of action with the Internal Revenue Service that was not disclosed by the Debtor in the schedules or Statement of Financial Affairs.
5. The Debtor is \$2,400.00 delinquent in plan payments.

DEBTOR'S RESPONSE

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

1. The Debtor is in discussion with the Internal Revenue Service on a stipulation to allow the Debtor to pay the secured portion after the completion of the plan. A stipulation has been forwarded to the Internal Revenue Service for consideration.
2. The Debtor was initially uncomfortable with providing internal business documents for the non-profit as she did not want the entity to be impacted by her personal bankruptcy. The business documents have been provided to the best of her ability.
3. The Debtor has amended Schedule J to include the monthly insurance payment of \$71.83. Debtor also decreased her home repairs until she has an increase in her salary. She has been making her automobile insurance payment with Mercury Insurance.
4. The Debtor states that at the Meeting of Creditors she believes that she may have a claim against the Internal Revenue Service for an \$800.00 off-set of a state tax refund and a possible abatement for penalties and interest that is currently owed on the subject tax liability.
5. The Debtor states that she made her payment on April 25, 2016.

MAY 24, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 14, 2016 in light of the parties attempting to settle the claims.

TRUSTEE'S EX PARTE MOTION TO DISMISS THE OBJECTION

The Chapter 13 Trustee filed 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. The Trustee states that in light of the Stipulation with the Internal Revenue Service and the amended Schedules A, B and C, the Trustee no longer objects to the plan.

DISCUSSION

The ex parte motion and order thereon being consistent with the opposition filed to the Motion, and good cause appearing, the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.

Therefore, with no outstanding objections, 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 Objection to confirmation the Plan is dismissed without prejudice.

IT IS ORDERED that the Debtor's Chapter 13 Plan filed on March 15, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

48. [15-22182-E-13](#) RUTH CLARK
PGM-3 Peter Macaluso

CONTINUED MOTION TO CONFIRM
PLAN
2-11-16 [[135](#)]

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is ~~xxxxxxx~~.

Ruth Clark ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 11, 2016. Dckt. 135.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 16, 2016. Dckt. 147. The Trustee opposes confirmation on the following grounds:

1. Debtor has failed to file a declaration in support of the Motion setting forth all the requirements of 11 U.S.C. § 1325(a).

2. The Declaration filed by Tom Carey does not offer any evidence of the source of the \$810.00 income or why he is making this income available to the Debtor. Mr. Carey's prior declaration stated that he would contribute up to \$400.00 per month. Dckt. 68. There is no explanation as to why the amount has been increased to \$810.00.
3. Debtor's stated living expenses are not reasonable. The Debtor lists food and housekeeping expenses at \$200.00, clothing/laundry/dry cleaning at \$5.00, and personal care at \$5.00. The Internal Revenue Service allowable living expense for one person as \$585.00 per month. The Debtor also lists total utilities at \$289.00 while the local housing and utilities standard is \$529.00 per month.
4. The plan indicates that there are additional provisions but none are attached.
5. It appears that the Debtor has improperly altered the Form Plan by explicitly stating that the additional provisions are appended when they are not.
6. Debtor cannot confirm a plan. This case was filed March 19, 2015. A full year has elapsed since the filing. Four plans have been proposed but none have been confirmed. The Trustee does not believe the Debtor can confirm a plan.

EL DORADO SAVINGS BANK'S JOINDER

El Dorado Savings Bank filed a joinder in the Chapter 13 Trustee's Opposition. Dckt. 150.

RESPONSE OF RUTH CLARK

The Debtor first responds, that because the Chapter 13 Trustee and Creditor objected, she has now filed her declaration. Additionally, a supplemental declaration of Tom Carey is provided. The Debtor believes that in her declaration she adequately addresses the issues relating to her stated living expenses.

In her Declaration, Dckt. 153, Debtor testimony includes the following:

- A. As of March 24, 2016, Debtor has paid \$12,809.09 to the Chapter 13 Trustee over 11 months. (Which averages \$1,164 a month.)
- B. Beginning with the March 2016 payment, Debtor will begin making payments of \$1,560.00.
- C. Telling the court that she "filed for protection under the bankruptcy code because my home was being foreclosed upon." [emphasis in original]
- D. The source of income to fund the plan will be from:

1. Social Security (in an unstated amount);
 2. Annuity from Worker's Compensation (in an unstated amount);
 3. Food Stamps (\$120 a month); and
 4. Assistance from Tom Carey (in an unstated amount).
- E. That the Debtor does not lie.
- F. Because Debtor does not live in the city, people like her who live in the country use less money to live than those in the city.
- G. Debtor is happy with her lifestyle.
- H. Debtor seeks no social acceptance, as she is satisfied with herself.
- I. Debtor follows the counsel of the Elders of her Church (unnamed).

In additional testimony of Tom Carey in his Supplemental Declaration, Dckt. 154, includes:

- A. He is the Debtor's
1. Friend,
 2. Parishioner, and
 3. Family Member.
- B. His source of income is:
1. State of California Retirement (in unstated amount);
 2. Chevron/Texaco Retirement (in unstated amount);
 3. Social Security;
 4. His Investment Account Mandatory Withdrawals;
 5. Wife's Retirement (in unstated amount);
 6. Wife's Social Security; and
 7. Wife's Investment Account Mandatory Withdrawals.
- C. That Mr. Carey is providing the assistance because the Debtor is disabled and in recovery. Further, someday the Debtor will be gainfully employed and not need Mr. Carey's assistance.

APRIL 5, 2016 HEARING

At the hearing, the court issued the following order:

IT IS ORDERED that the hearing for the Motion to Confirm the Amended Plan to 3:00 p.m. on June 14, 2016. Debtor shall file and serve supplemental pleadings on or before May 6, 2016, and Replies, if any, shall be filed and served on or before May 20, 2016.

Dckt. 158.

SUPPLEMENTAL DECLARATION OF THOMAS L. CAREY

Thomas L. Carey, a friend of the Debtor, filed a declaration on May 6, 2016. Dckt. 159. Mr. Clark states that after the Debtor was shot seventeen times, the Debtor requested that Mr. Carey be her Power of Attorney which Mr. Carey accepted. Debtor also requested that Mr. Carey be the Debtor's Durable Power, which Mr. Carey also accepted.

Since November 20, 2013, Mr. Carey states he has willingly helped the Debtor meet some of her financial obligations, including some of the Debtor's utility bills and medicine. Mr. Carey states that he has provided transportation for the Debtor and has taken Debtor to the food banks twice a week where she receives free food. Mr. Carey declares that Debtor "spends \$200 per month, or less, to supplement what she receives from the food banks."

Mr. Carey states that he will continue to assist Debtor until she is self-sufficient. Mr. Carey states that he does not have any verbal or written agreements for the repayment of any time or expenditures spent on her.

Mr. Carey declares that he will "send a bank check in the amount of \$1,560.00 to the Trustee by the 25th day of each month, which is the amount in [Debtor's] bankruptcy plan." Dckt. 159.

TRUSTEE'S RESPONSE

The Trustee filed a response on May 11, 2016. Dckt. 161. The Trustee states that after reviewing the Declarations of Debtor (Dckt. 153) and of Mr. Carey (Dckts. 154 and 159) that he is satisfied on the matters of Debtor's low living expenses and the reason for the financial assistance.

The Trustee requests that the reference to additional provisions in Section 6 of the Third Amended Plan be stricken in the Order Confirming Plan.

The Trustee agrees that the Debtor is current under the plan at this time and the Trustee no longer opposes confirmation of the Debtor's plan.

DISCUSSION

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

The Trustee's objections are well-taken.

Adequate Facts Withheld From the Court

Only after having her "back to the wall," was the Debtor willing (or forced) to provide a declaration to support the relief she was requesting. Such begrudging providing of the minimal evidence and prosecution of her case is not indicative of a debtor who commenced the case and is proposing the Chapter 13 Plan in good faith.

Once again, the declaration of Tom Carey fails to provide sufficient evidence as to how and why Mr. Carey is committing \$810.00 per month to the Debtor. This is especially worrisome when Mr. Carey's previous declaration indicated a contribution of only \$400.00. The one-page declaration filed by Mr. Carey does not address why the contributions has doubled or where and how Mr. Carey is able to provide this substantial assistance. When a plan relies on the contribution of a third party, the Debtor must provide competent evidence that the third party is pledging these funds in order to determine that the plan is feasible. The declaration as filed does not provide this assurance.

In his Supplemental Declaration Mr. Carey does not provide any economic specifics, but that he intends to fund the \$810.00 gift (over \$40,000.00) from both his income and his wife's income. Mr. Carey's wife does not provide her declaration, though it now appears that her income is part of the funding.

Debtor's Unreasonable Statement of Expenses

As to the Trustee's third objection, the court also find these expenses unreasonably low. The Debtor is proposing a budget that is nearly half of what the Internal Revenue Service proposes for a single-person household. The Debtor, not having filed a declaration, does not provide any explanation at how this dramatic reduction in expenses is possible. Absent explanation from the Debtor as to how he proposes to achieve this drastic decrease in expenses, the court does not believe the Debtor's projection is in good faith. This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3).

Other than saying that the Debtor is happy with her "country lifestyle," Debtor offers no explanation as to how she can maintain at least a subsistence standard of living for the five years of the Plan. The court takes judicial notice that even persons living in the country need: food, clothing, personal care products, insurance, transportation, health supplies, medical treatment, household goods, and home maintenance.

The Debtor's latest financial information purports to state her expenses to be:

Expense	February 12, 2016 Amended Schedule J; Dckt. 142	May 6, 2015 Amended Schedule J; Dckt. 57	Original Schedule J; Dckt. 19
Property Ins.	\$60	\$60	\$60
Home Maintenance	\$100	\$100	\$100
Electricity/Gas	\$165	\$165	\$165
Water, Sewer, Garbage	\$44	\$44	\$44
Phone, Internet, Cable	\$80	\$80	\$80
Food and Housekeeping Supplies	\$200	\$200	\$250
Clothing, Laundry	\$5	\$5	\$0
Personal Care Products	\$5	\$5	\$20
Medical, Dental	\$100	\$100	\$160
Transportation	\$130	\$180	\$0
Entertainment	\$7	\$7	\$0
Charitable	\$0	\$0	\$0
Health Ins	\$105	\$105	\$105
Total Expenses	\$1,001	\$1,051	\$984

What the Debtor has shown through the incarnations of Schedule J is that her expenses are not based on what her expenses are, but only what needs to be the bottom line number to show that she can "afford" to make the monthly mortgage payment.

The glaring deficiencies are for:

- A. Food - Debtor dropping from \$250.00 a month to \$200.00, without showing that such represents her real, three meals a day, food bill and housekeeping supplies expenses. If the court assumes only \$25.00 a month for housekeeping supplies, that would leave \$175.00 a month for food.

Assuming a thirty-day month and three meals a day, Debtor must pay for food for 90 meals. With \$175.00 a month for food, that allows for \$1.94 per meal. The Debtor makes no showing that she can properly provide for herself and put basic, low cost meals on the table for five years at \$1.94 per meal.

- B. Clothing/Laundry - Here, Debtor provides the court with no evidence of how she will cloth herself for five years, spending on average \$5.00 per month.
- C. Debtor does not explain her \$130.00 transportation expense. Debtor no owing a vehicle, it may be for taxis, Uber, or bus fare. However, the Debtor fails (or is unwilling) to disclose such information to the court.

From the Debtor's declaration it is clear that she has made the determination that this is her Plan and that is shall be confirmed. Debtor has drawn her conclusions and states them to the court. In substance, Debtor is withholding actual facts from the court, and instead is dictating the conclusions of law and findings of fact to the court.

This court has many "country folk" who seek relief in this court and successfully either reorganize or obtain a fresh start through a Chapter 7 discharge. Those "country folk" do not come to this court purporting to spend \$1.94 per meal for food and \$5 a month for clothing. Even someone living in the country needs more than that to scratch out even a basic survival lifestyle.

Inconsistent Statements in Plan

The Trustee's third and fourth objection also deal with the improper and incomplete form of the instant proposed plan. The plan, in Section 6, modified the plan form to explicitly and clearly state "Additional Provisions are appended to this plan." Dckt. 139. However, no such provisions are attached. The court nor any party in interest can determine the viability and feasibility of a plan when the plan, as filed, does not have all the terms.

The Debtor does address this in her Reply, seeking the court to allow this to be corrected as a clerical error in the order confirming.

Benefactor's Incorrect Premise

In his Supplemental Declaration, Tom Carey states under penalty of perjury his opinion that, "Some day, she [Debtor] will be gainfully employed and will no longer need my assistance." Declaration, p. 2:6.5-7.5; Dckt. 154. This statement conflicts with Debtor's repeated statements under penalty of perjury that she is "Retired/Disabled." Second Amended Schedule I, Dckt. 142 at 4; First Amended Schedule I, Dckt. 57 at 10; and Original Schedule I; Dckt. 19 at 18 (stating occupation as "Retired/Disabled RN," employer as "SSDI," and having been "employed" for 18 years).

It appears that Mr. Carey's statement that the Debtor will not need his assistance because "someday" she will be gainfully employed conflicts

with the statements by Debtor under penalty of perjury that she is retired (age 59, Debtor's Declaration ¶ 6; Dckt. 152) and disabled.

Consideration of Additional Financial Information

On the Original Statement of Financial Affairs Debtor stated under penalty of perjury that she had no income in 2015, 2014, or 2013. Statement of Financial Affairs Questions 1 and 2, Dckt. 1; filed by Debtor in pro se. This was corrected in May 2016, with the assistance of counsel, in which Debtor reported the total gross income for each of the three years:

	2015 YTD of March 19, 2015 Filing	2014	2013
Statement of Financial Affairs Question 1	\$0	\$0	\$0
Statement of Financial Affairs Question 2	\$5,400	\$21,004	\$21,000
Total	\$5,400	\$21,004	\$21,000
Average Per Month (3 months)	\$1,800	n/a	n/a
Average Per Month (12 months)	n/a	\$1,750	\$1,750

FURTHER AMENDED FINANCIAL INFORMATION

Amended Statement of Financial Affairs, Question 1 and 2; Dckt. 57 at 17.

Based on this information, it appears that the Debtor's Annuity, SSI income, and the utility credit (as reported on the Amended Statement of Financial Affairs) average out to be income of \$1,800.00 a month.

In Debtor's latest Amended Schedule I (Dckt. 142 at 4-5), in which Debtor states that she is "Retired/Disabled," she states that she has SSI, Utilities Discount, and Worker's Compensation benefits totaling \$1,750 a month.

Buried in paragraph 17 of Debtor's late filed Declaration, she states under penalty of perjury that she now receives \$120 a month in food stamp benefits. Adding that to the \$1,750 stated by Debtor, she has \$1,870 a month in income.

Even adding in all of her benefits (in case Debtor was listing a food expense net of the food stamp benefits), the stated expenses do not make economic sense.

Debtor's Inability to Confirm a Plan

The Trustee's last objection is a summation of the concern the Trustee and the court has had with the instant case. In the year since the

instant case has been filed, the Debtor has been unable to confirm a plan. The Debtor either does not properly provide sufficient explanation and evidence to support confirmation.

RULING

The Chapter 13 Trustee has become convinced that the Debtor, with the support of Mr. Carey, will have the ability to perform the Chapter 13 Plan. Usually, the court gives great deference to such a determination by the Chapter 13 Trustee. However, in this case, the court is not convinced that such deference can be given.

The Chapter 13 Debtor in this case, Mr. Carey, and the Debtor's very experienced consumer counsel have been reluctant to provide financial information - doing so only when pushed by creditors and the Trustee. It was only belatedly told that Mr. Carey was not merely a "friend," but is a fiduciary exercising a power of attorney for Debtor. Debtor affirmatively misrepresented that she was paying all of her expenses and living on her income and the assistance provided by Mr. Carey. But when the court concluded that her "expenses" were unreasonably, unrealistically, and illogically low, she and Mr. Carey then (after the possible source of assistance was mentioned by the court) stated that, "yes, Mr. Carey takes the Debtor to the food closet to obtain free food."

To assuage the court's concerns, the Debtor testifies under penalty of perjury,

"14. I was taught by my parents and elder relatives to always tell the Truth, especially concerning legal matters. actually, speaking, I don't posses the mental capacity to keep track of lies as they other stack upon each other. Therefore, I tell the truth to minimize the stress of trying to falsify events of my life. I personally understand what the National Average has determined for living expenses."

Declaration, 153. In reading the statements under penalty of perjury by the Debtor in this case, and the above paragraph particularly, the court is reminded of the famous quote from Hamlet, "The lady doth protest too much, methinks." The court does not find the Debtor's statement above to be credible. She has repeatedly withheld information, provided selective information, and provide inaccurate information concerning her finances. This was done by the Debtor because the Debtor wanted what she wanted, and would say whatever she thought was necessary to get what she wanted - irrespective of the legal accuracy of what she stated.

Mr. Carey has also provided qualified, incomplete statements to the court. The most recent is (with the assistance of Debtor's counsel), that "8. I will continue to assist Clark until she is self sufficient." Declaration, Dckt. 159. While this could be charitably read as Mr. Carey stating that he will be in it for the long-haul, there is a darker side to it. If Mr. Carey's other testimony that the Debtor is permanently disabled (based on the description of the Debtor's travails), then she will never be self-sufficient. Therefore, the statement could well indicate that Mr. Carey will provide the support only to when he concludes that the Debtor is self sufficient, then he will cut off the support, and if the Debtor fails

to provide for her expenses, will then use the power of attorney to deal with Debtor's property.

Debtor's attorney, surprisingly, has been complicit in these inaccurate, incomplete, and qualified statements. This is surprising, and may well be grounded in overly empathizing with his client.

The Debtor's precarious financial and emotional state warrant the court being overly cautious before confirming the plan.

At a minimum, given the qualified commitment in the declaration by Mr. Carey (which declaration was prepared by Debtor's counsel) any order confirming the plan must also include an express mandatory injunction ordering Mr. Care to make the support payment of \$1,560.00 to the Chapter 13 Trustee for each month of the Plan, when payment must be made until further order of the 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 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 ~~XXXXXXXXXXXXXXXXXXXX~~.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

Nicholas Righter ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 29, 2016. Dckt. 83.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on May 31, 2016. Dckt. 88. The Trustee opposes confirmation on the following grounds:

1. The Debtor's plan is not the Debtor's best efforts. The Debtor is above median income. The Debtor's monthly disposable income is \$3,020.45. Based on the applicable commitment period of 60 months, the unsecured creditors would be entitled to \$180,227.00. Debtor is currently proposing a

36 month plan at 100% to general unsecured creditors but does not propose to pay interest to unsecured claims.

- a. Debtor fails to propose to pay in all of his net disposable income monthly. The Debtor's pay stubs show that he earns approximately \$8,978.00 gross per month. Debtor's Schedule I reports monthly income of \$4,998.80 gross and approximately \$5,681.24 net. Debtor has failed to report his current income. On April 15, 2016, Debtor also received \$1,500.00 auto allowance.
- b. The Debtor claims that there will be changes in expenses:
 - i. Debtor explains any excess income will be necessary because effective April 30, 2016, he will be moving out of his living arrangement and moving out on his own. The Debtor lists a number of expenses expected to increase when moves out. However, the Debtor has failed to provide evidence that the Debtor has in fact moved to a new location.
 - ii. Debtor claims the excess income will be necessary due to his current automobile, a 2000 Jaguar S Type, which is in bad condition and will not run much longer. This information was presented at the court on November 17, 2015 when Debtor's Motion to Avoid Wage Garnishment was heard. The Debtor at that time said the garnishment should be returned so Debtor can purchase a 2012 Jeep Grand Cherokee. The Debtor's motion was granted and he received the levied \$19,242.16. Dckt. 67.
 - iii. Debtor indicates that he may not have employment in the next three to four months due to a DUI he got in June 2016. Debtor may lose his driver's license which may cause him to lose his job. The Trustee states that this is too speculative.
 - iv. The Debtor indicates that new expenses relating to the DUI charge are expected. Debtor already paid attorney fees of \$1,600.00.
 - v. The Debtor states that rather than paying creditors, he has been spending the money to start his own business. The Debtor admits to spending \$7,500.00 on website design and plans to spend at least an additional \$30,000.00 in startup expenses.

DISCUSSION

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

The Trustee's objection is well-taken. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

When a plan proposes plan payments of \$9557.00 per month when the Debtor's disposable income appears to be \$2,951.50 while not proposing to pay unsecured claims interest raise legitimate concern over whether the plan is the Debtor's best efforts.

In fact, in the Debtor's declaration, the Debtor admits to such. The Debtor states that he plans to use the excess monies to repair a car (that the court had previously authorized him to replace). Then the Debtor continues to highlight that the difference in plan payment amount and disposable income is for speculative expenses that may or may not arise in the future. The Debtor further convolutes the reason for the difference in income vs. plan payment by stating that he may be losing his license which may cause him to lose his job. Mere speculation does not create a factual scenario in which the court will confirm a plan.

The Debtor's declaration raises more questions than answers. Rather, it appears that the plan is not, in fact, the Debtor's best efforts.

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

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

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

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

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

50. [16-21885-E-13](#) SUSAN REICHARD
DPC-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-5-16 [[18](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 5, 2016. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The court's decision is to xxxx the Objection.

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

1. It is not clear if the Debtor can make the payments under the plan. The Debtor no longer appears to own her house. The Debtor admitted in her Declaration in support of the Motion to Value that the creditor Wang Yan Enterprises had already executed a foreclosure sale on the Debtor's property on March 11, 2016. Dckt. 12, pg. 2. If does not appear that the Debtor will be able to make payments where the Debtor no longer owns her house and presumably the owner of the Property will enforce their ownership interest.

2. The Debtor's plan is not the Debtor's best efforts. The Debtor is under median income and proposes payments of \$135.00 for 36 months, with a 2.90% dividend to unsecured creditors.

- a. Schedule J lists \$340.00 for Transportation costs.
- b. Schedule J lists car maintenance for \$200.00 per month.
- c. Schedule B lists the Debtor's vehicle as a 1997 Saturn SL@. The Debtor has failed to provide the Trustee with proof of monthly auto expenses totaling \$540.00 per months or \$6,480.00 annually.
- d. Schedule J also lists a storage fee for \$130.00 per month. The Debtor admitted at the Meeting of Creditors that she had two storage unites. One of the units contains leftover stock of "street gliders" from Debtor's prior business. The business equipment is valued on Schedule B in the amount of \$2,00.00. The Debtor admitted she has not sold any of the business equipment in a couple of years.

The Debtor testified the other unit contains household units. The Debtor proposes to pay a total of \$4,680.00 for storage fees for the duration of her plan. The Debtors plan calls for a total of \$4,860.00 in plan payments.

- e. The Debtor failed to list her prior case no. 15-27051. An order dismissing the case was entered on February 24, 2016 for failure to confirm a plan, but the case has not been closed so a stay may still exist as to the estate property of the prior case and the Debtor may still have an ownership interest in their real property.

DEBTOR'S RESPONSE

The Debtor filed a response on May 26, 2016. Dckt. 38. The Debtor states that the property belongs to the Debtor. The Debtor is paying on the obligations secured by the First Deed of Trust. Although the junior lien assert that it foreclosed, the Debtor argues that they did so "without notice with no provision to pay subject to the 1st Deed of Trust." Id. at lines 12-14.

The Debtor states that she has agreed to pay \$50.00 a month which may satisfy the Trustee's best effort objection. The Debtor also states that she submitted proof of payment to auto repair services totaling over \$1,000.00 in two months.

The Debtor also states that the petition has been amended to show the prior case.

TRUSTEE'S REPLY

The Trustee filed a reply on June 3, 2016. Dckt. 44. The Trustee states that he has been provided documentation regarding automobile expenses.

The Trustee states that an increase in plan payments in the amount of \$50.00 per month is agreeable.

The Trustee no longer opposes confirmation on the basis of best efforts, as long as the order confirming plan states the Debtor's plan payments will increase by \$50.00 per month, from \$135.00 to \$185.00.

However, the Trustee state he is not certain whether the Debtor can make the payments under the plan based on the current status of the Debtor's residence, with it appearing that the Debtor no longer owns the property.

DISCUSSION

In light of the Trustee's response and the Debtor's amendment to the petition, it appears that the only remaining objection is whether the Debtor can make the plan payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1326(a)(6) due to the contention over which party holds an interest in the property.

There is a more fundamental problem with the Chapter 13 Plan. Debtor disputes that Wang Yang Enterprises LLC ("WYE") foreclosed on her property, that the WYE merely as a general unsecured claim, the secured claim having been valued at \$0.00 pursuant to 11 U.S.C. § 506(a).

The court addressed this issue in connection with the WYE motion for relief from stay. Civil Minutes, Dckt. 35. The court has granted relief from the stay to allow WYE to assert its rights to obtain possession of the property it asserts that it foreclosed on. The proposed Chapter 13 Plan does not address this ownership dispute, does not propose to have Debtor litigate her asserted rights, does not provide for obtaining an injunction in a state court for federal court action, and does not provide for a bond or cash fund to provide for damages caused by the automatic stay being used in lieu of a bond.

WYE has filed a separate objection to confirmation, which is set for hearing on June 28, 2016.

At the hearing, **xxxx**

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 xxxxx

51. [16-23186-E-13](#) STEPHEN/LESLEY SAWYER
NSV-1 Nima Vokshori

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
5-19-16 [9]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 19, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Springleaf Financial Services ("Creditor") is granted and the secured claim is determined to have a value of \$6,200.00.

The Motion filed by Stephen Allan Sawyer and Lesly Annette Sawyer ("Debtors") to value the secured claim of Springleaf Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Toyota RAV4 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,200.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in January 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 \$10,699.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,200.00. 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 Allan Sawyer and Lesly Annette Sawyer ("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 Springleaf Financial Services ("Creditor") secured by an asset described as a 2009 Toyota RAV4 ("Vehicle") is determined to be a secured claim in the amount of \$6,200.00, 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 \$6,200.00 and is encumbered by liens securing claims which exceed the value of the asset.

52. [12-37390-E-13](#) STACY MORRISON
PGM-2 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
5-3-16 [[106](#)]

Final Ruling: No appearance at the June 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 3, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Stacey M. Morrison the Chapter 13 Debtor("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 15, 2015 through April 5, 2016. The order of the court approving substitution of Applicant in as Debtor's counsel was entered on October 7 2015, Dckt. 78. Applicant requests fees in the amount of \$2,010.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant request on May 4, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including opposing the Trustee's Motion to Dismiss Case and filing a Motion to Reconsider after the case was dismissed. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

...

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

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

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 20. Applicant prepared the order confirming the Plan.

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

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

The Applicant substituted into the case as of August 10, 2015 following the transfer of Chapter 13 cases from Hughes Financial Law, with client approval. The Applicant is seeking reimbursement of post confirmation work.

FEES AND COSTS & EXPENSES REQUESTED

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$2,100.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

53. [16-22093](#)-E-13 RONALD RICHARDS
DPC-1 Scott Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-11-16 [[29](#)]

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 11, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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 plan fails the Chapter 7 Liquidation analysis based on non-exempt property in the Debtor's real property and the fact that the Debtor is proposing a 0% dividend to unsecured claimants.
2. The Debtor cannot make the payments under the plan because the Debtor misclassified the claims for Sacramento County Utilities and SMUD as priority.
3. The Debtor cannot make payments under the plan because the Debtor cannot afford the plan or maintain the living expenses based on the Debtor's Schedules. The Debtor's income listed does not support the full claim of rent.

On May 20, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for July 19, 2016. Motion and Notice, Dckts. 35 and 37.

The filing of an amended plan is a *de facto* withdrawal of the current plan to which the objection was filed.

In light of the Debtor filing an amended Chapter 13 plan, the Objection is sustained.

Upon review of the now proposed plan, it appears to facially comply with the requirements of Fed. R. Bankr. P. 9013 and 11 U.S.C. §§ 1322, 1325(a), and 1323.

Therefore, the Plan filed April 1, 2016 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed filed on April 1, 2016 Chapter 13 Plan is not confirmed.

54. [15-28894-E-13](#) CASSIUS BELL
NUU-2 Chinonye Ugorji

MOTION TO CONFIRM PLAN
4-14-16 [[51](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 61 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.

Cassius Bell ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 14, 2016. Dckt. 51.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 22, 2016. Dckt. 59. The Trustee opposes confirmation on the following grounds:

1. The plan does not appear to be the Debtor's best efforts based on the fact that the plan does not go 60 months and the Debtor appears to be over median. The Trustee asserts that the Debtor claims unreasonably high pet expenses and home maintenance.

- a. The Debtor claims a \$150.00 expense on home maintenance, the Debtor does not own any real property but still claims a rent or home ownership expenses of \$1,740.
 - b. The Debtor states that he spends \$200.00 per month on pet expenses. The Trustee states that the Debtor does not provide any evidence of such nor that it is reasonable.
 - c. If the Debtor is above median, the Debtor's plan fails to provide for 60 months. The Trustee states that if the Debtor is entitled to a tax return for 2015, the Debtor will be above median Debtor.
2. This is a Motion to Confirm the Second Amended Plan. While the Debtor does not plainly state it in the motion to confirm why an amended plan has been brought, the Debtor seeks to confirm a second amended plan after the Trustee successfully opposed the prior two plan. The Trustee states that he believes the second amended plan is in good faith.
 3. The Trustee is not certain if Debtor will be able to make plan payments called for based on the current tax withholdings.

DISCUSSION

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

A review of the plan and accompanying Motion shows that the proposed plan is not the Debtors best efforts. As noted by the Trustee, the debtor is proposing a 48 month plan when the Debtor appears to be an above median debtor. As such, the Debtor is required to propose a 60 month plan. 11 U.S.C. § 1325(b)(1)(B). The Debtor does not explain why the Debtor does not include the Debtors non-filing spouses income in calculating the applicable current monthly income.

Further highlighting the fact that the Debtors plan is not his best efforts, the Debtor has historically received tax refunds from both the federal government and state. However, the plan does not provide for the payment of those refunds into the plan. This indicates that there is additional income that is not being provided for in the plan.

Without this information, the court cannot determine if the Debtor must propose a 60 month plan, what the Debtor's true financial reality is, and whether the plan is viable or feasible.

As noted by the Trustee, this is the Debtor's seconded amended plan. The Motion nor declaration provides the specifics necessary to provide the court or any other party in interest sufficient information in determining if the proposed plan is in good faith and plausible.

The Trustee's objections, in total, seem to reflect the idea that the Debtor has failed to give sufficient information in order for the court to review the plan and the Debtor's finances to make a conclusion of whether the plan confirms with the necessary Bankruptcy Code Sections.

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

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

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

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

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

55. [16-21499-E-13](#) ANGELINA VILLON
JHW-1 Mark Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY AMERICREDIT FINANCIAL
SERVICES, INC.
5-3-16 [[22](#)]

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 May 3, 2016. By the court's calculation, 42 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.

Americredit Financial Services, Inc. dba FM Financial ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtor's plan fails to provide for the present value of Creditor's secured claim by failing to provide the proper "formula" discount rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii).

The Trustee's objections are well-taken.

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with the Debtor to 2.5%. Creditor's claim is secured by a 2012 Mercedes Benz. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. §1325(a)(5)(B)(ii).

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

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

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

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

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

CLOSED: 05/09/2013
DEBTOR DISMISSED:
12/21/2011

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 9, 2016. By the court's calculation, 6 days' notice was provided.

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

The Motion to Reconsider is -----.

Raj Singh filed a "Request to Reopen the Bankruptcy and for Other Relief" on May 26, 2016. Dckt. 234.

Raj Singh failed to properly notice and set the matter for hearing. The issued an order setting the Motion for hearing for 3:00 p.m. on June 14, 2016. Dckt. 241.

The "Motion" states that because Raj Singh "may need to file a bankruptcy on an emergency basis," the court should: (1) modify or set aside the Pre-Filing Order; (2) reopen the Debtor's bankruptcy case; and (3) waive the fees.

In support, Raj Singh states that he "has no secured creditors to protect with a refiling bar." Raj Singh also asserts that the pre-filing order is not narrowly tailored and does not allow for Raj Singh to file a bankruptcy in the case of an emergency. The Motion does not identify any specific "emergency" need for filing a bankruptcy, but assures the court that Raj Singh currently "is not planning to file a bankruptcy unless it is really needed to protect his basic needs."

APPLICABLE LAW

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine

if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

DISCUSSION

At the hearing, **xxxx**

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

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

The Motion to Reconsider filed by Debtor 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 **xxxx**.