UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 16, 2015 at 3:00 p.m.

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1. 10-46406-E-13 CORINA GARCIA
PGM-5 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
5-19-15 [83]

Tentative Ruling: 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).

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, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Corina J. Garcia the Chapter 13 ("Client"), makes a Request for the Allowance of Substantial and Unanticipated Additional Attorney's Fees in this case.

The period for which the fees are requested is for the period January

29, 2015 through May 13, 2015. Applicant requests fees in the amount of $1,900.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

Sound Plywood, Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing and filing three unanticipated motions, due to Debtor's vehicle accident. 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 $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 91. Applicant prepared the order confirming the Plan.

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

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

frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Use Cash Collateral: Applicant spent 2.5 hours in this category. Applicant assisted Client with preparing and filing a Motion to Use Cash Collateral, appearing in related hearing, and corresponding with client.

Motion for Disbursement: Applicant spent 3.75 hours in this category. Applicant corresponded with client, prepared client declarations, held client meetings, prepared and filed a Motion for Disbursement, and appeared in related hearing.

Motion to Modify Plan: Applicant spent 3.45 hours in this category. Applicant prepared and filed a Motion to Modify Plan and a Response to Opposition, corresponded with client, and appeared in a hearing.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso	9.5	$200.00	$1,900.00
Total Fees For Period of Application			$1,900.00

The Applicant is only requesting 9.5 hours worth of additional fees even though the Applicant appears to have worked 9.7 hours on the alleged substantial and unanticipated services. The court will take the request for 9.5 hours as a voluntary reduction.

TRUSTEE'S OPPOSITION

David P. Cusick ("Trustee"), filed an opposition to the instant Motion on May 26, 2015. Dckt. 88. The Trustee objects to the Debtor's Motion for Compensation for the following reasons:

Trustee alleges that the Applicant did not project any additional fees in the latest plan, filed on March 25, 2015, Dckt. 68. Trustee argues that Debtor's plan balance is currently $868.50 and that there is not enough funds to pay for the additional funds requested.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's opposition on June 9, 2015. Dckt. 92. The Debtor states that in addition to the stream of payments due under the plan, an additional $2,625.00 is to be paid into the plan pursuant to the June 4, 2015 Order to Modify Chapter 13 Plan After Confirmation. Dckt. 91. This increases the total paid into the Plan and allows sufficient monies to pay the administrative claim for attorney's fees.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The court finds that the fact that Debtor's vehicle was involved in a car accident caused substantial, necessary, and unanticipated additional work, namely motions to collect and use insurance proceeds to procure a new vehicle as well as the need to modify the terms of the plan. Therefore, Application for Additional Fees are in the amount of $1,900.00 pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court finds that under the newly confirmed modified plan, the Trustee will have sufficient funds in order to pay the additional fees to the Applicant, especially in light of the $2,625.00 to be paid into the plan.

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

Fees $1,900.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. 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 G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Debtor in Possession
>
> Fees in the amount of $1,900.00,

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.

2. 15-22909-E-13 JENNIFER RIANDA — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-2 Lucas Garcia — 5-21-15 [20]

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 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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 on May 14, 2015. The Meeting has been continued to June 11, 2015.

2. The Debtor failed to provide sufficient income verification. The Debtor has failed to provide the Trustee with proof of income for the 60 days preceding the filing of the bankruptcy. The Debtor provided pay advices for January 27, 2015, February 2, 2015, and February 3, 2015. The pay advices appear to indicate that Debtor is paid twice per month, but the pay days on the stubs do not confirm that, causing the Trustee to confirm all income is reported. Additionally, the Debtor failed to provide pay stubs for her non-filing spouse.

3. The Debtor has failed to provide the Trustee with a tax transcript for the most recent pre-petition tax year.

4. Debtor fails to provide sufficient payment to cure the arrears of Bank of America. The monthly dividend to mortgage arrears is insufficient to pay within 6 months. The monthly dividend must be no less than $2,500.00 per month to pay all arrears in 60 months.

5. Debtor fails to report on Statement of Financial Affairs No. 16 having a spouse or former spouse and no co-debtor is listed on Schedule H. On Schedule I, Debtor reports having a spouse.

6. Debtor fails to report prior Chapter 13 Case No. 13-23661 on her petition.

7. The Debtor’s plan fails the liquidation analysis since there appears to be non-exempt equity totaling at least $225,800.00 and the Debtor is proposing a 0% dividend to unsecured creditors. Debtor lists her real property on Schedule A with a value of $1,150,000.00. The Debtor reports a secured lien held by Bank of America in the amount of $848,000.00. With the value reported, Debtor has $202,000.00 in nonexempt equity in the real property after claiming $100,000.00 exemption on Schedule C. The Trustee is uncertain the value and lien amounts listed are accurate and is concerned that there may be additional non-exempt equity in the property. According to the Debtor’s prior case, Bank of America, N.A. filed a secured claim indicating that the loan balance totaled $723,851.47, a difference of $124,148.53 in additional equity.

   The Debtor also has at least $19,300.00 in non-exempt personal property listed on Schedule B. The total non-exempt equity totals no less than $225,800.00.

   The Trustee does not include monies held in Cetera ($12,775.95) in the calculation of non-exempt as it appears these monies have been levied by a Franchise Tax Board Lien.

   Also on Schedule B, Debtor reports having $2,800.00 in art pieces, 40 books and 100 DVDs and $6,500.00 in jewelry. After

inquiry by the Trustee, the Debtor's counsel emailed a list of the artwork and jewelry and also an appraisal of Debtor's wedding ring. The values provided appear to exceed that listed on Schedule B.

8. The Trustee is uncertain whether all assets have been listed. In the Debtor's prior case, the Debtor reported having an interest in an IRA held at Suntrust Bank. This asset is not listed even though the Debtor deducts $135.00 per month for life insure on Schedule J but lists no insurance policies on Schedule B.

9. The Debtor may not be able to make the payment under the plan because the Trustee is uncertain whether the ongoing mortgage payment includes property tax and insurance since none are reported on Schedule J.

The Trustee's objections are well-taken.

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

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); Fed. R. Bankr. P. 4002(b)(3). While the Debtor has provided some pay stubs, the Debtor has failed to provide all necessary pay stubs for herself and her non-filing spouse and failed to provide the tax transcript. These are grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee states that Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The Debtor reports arrears in the total amount of $210,000.00 but only proposes $3,000.00 to a month 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.

As to the Trustee's fifth and sixth objection, the Debtor appears to have failed to disclose not only the Debtor's non-filing spouse but also the previous bankruptcy case. While this may have been only been an oversight by the Debtor and Debtor's counsel, the failure to list these items raises concerns over whether the petition, as filed, is a true representation of the Debtor's financial history and situation. This leads to concern over whether the plan, as proposed, is feasible when the court and the Trustee do not have all the necessary information.

As to the Trustee's seventh objection, a review of the Debtor's

schedules as well as the Debtor's prior bankruptcy raises serious doubt over whether the Debtor can pass the liquidation analysis. The Debtor appears to have substantial non-exempt equity, like the artwork and jewelry, but only provide of a 0% dividend to unsecured. A comparison of the Debtor's prior bankruptcy with the instant case shows that there also may be equity in the Debtor's real property. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upwards of $225,800.00 in non-exempt equity. The Debtor's own appraisals of the jewelry appears to show that there is equity that should go to the benefit of unsecured. It appears that the Debtor's plan fails the Chapter 7 liquidation analysis. 11 U.S.C. § 1325(a)(4).

Furthermore, there may be additional assets, like the IRA account, that may actually be property of the estate but of which the Debtor has not listed in the instant bankruptcy. The Debtor, in her previous case, listed an IRA held at Suntrust Bank. While this asset is not listed in the instant case, the Debtor does provide for a $135.00 deduction on Schedule J for life insurance. This appears to be an instant where the Debtor has failed to disclose a life insurance policy, which is property of the estate. This leads to further concerns over whether the Debtor has provided all financial information and raises questions over whether the plan is feasible or filed in good faith.

Lastly, the Debtor may not be able to afford plan payments since the Debtor has failed to indicate whether the mortgage payments include property tax and insurance. These additional expenses, if not included in the mortgage, may make the plan not feasible. This objection appears to stem from the Debtor failing to appear at the Meeting of Creditors and for failing to disclose, in detail, the full financial reality of the Debtor. The failure to comply with the terms of the plan is grounds to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

3. 15-22909-E-13 JENNIFER RIANDA
JCW-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
5-20-15 [16]

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 and the Chapter 13 Trustee on May 20, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Bank of New York Mellon FKA The Bank of New York, as trustee for The Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-37T1, Mortgae Pass-Through Certificates, Series 2005-37T1, its assignees and/or successors, by and through its servicing agent Residential Credit Solutions, Inc. ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full amount of the arrearages.

The Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts that Debtor owes $266,357.18 in pre-petition arrears and not the $210,000.00 asserted by the Debtor. 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.

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

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

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

4. 13-22012-E-13 KENNETH/KRISTINE THOMPSON
REA-1 Peter Macaluso

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
5-5-15 [77]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

The court dismisses without prejudice the Creditor's Motion to Dismiss the Bankruptcy Case, and this bankruptcy case shall proceed in this court.

The California State Board of Equalization ("Creditor") having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case (Dckt. 89), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion to Dismiss the Bankruptcy Case**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the California State Board of Equalization ("Creditor"), the Creditor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

5. 13-31916-E-13 DALE/LEILANI MILLER
Pro Se

MOTION TO APPROVE LOAN MODIFICATION
5-8-15 [97]

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 NOT Provided. The Debtors failed to provide a Proof of Service. 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 denied without prejudice.

The Motion to Approve Loan Modification filed by Dale and Leilani Miller ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will change Debtor's mortgage payment from the current $925.00 a month to $1140.00 a month.

The Motion is a letter written by the Debtors, addressed to the court.

The Debtors filed a supplemental letter on June 1, 2015. Dckt. 99. The Debtors state that they are currently paying $925.00 a month for the mortgage but their adjustable rate mortgage adjusted and were expected to pay $1,779.00 a month. The Debtors allege they could not afford that so they reached out to Creditor to obtain a loan modification. The Debtors state that Creditor gave them a trial loan modification period for three months, the payment being $1,140.00. The loan modification would modify the monthly payment to the $1,140.00 for a 30 year fixed period. The Debtors state that in order to afford this, they adjusted their expenses, including removing their children from day care and surrendering their dog to the local shelter. The Debtors have received help from family for caring for the children. The Debtors assert that the cut in expenses allows them to pay the additional $215.00 a month for the mortgage and also provides a little food to the homes of the family who cares for their children after school.

Attached to the letter is a copy of the "Changes to Mortgage Interest Rate and Payment" from Creditor, which states that the new mortgage payment would be $1,779.11 starting December 1, 2014. Also attached is a mortgage account statement which reflects the trial loan mortgage payment amount of $1,139.00.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection on June 8, 2015. Dckt. 100. The Trustee states that neither the Debtors nor Creditors attach a copy of the loan modification, outlining all of the terms. The Trustee notes that if the principal is not being reduced, and the interest is fixed at 2.625%, the loan amortized over 30 years would result in a payment amount of $1,187.19.

The Trustee further notes that the Debtors are seeking approval of a loan modification with Creditor. However, a review of the Proof of Claims shows that Bank of New York Mellon Trust Company filed Proof of Claim No. 9, which appears to be the mortgage at issue. The Trustee argues that there is no evidence that The Bank of New York Mellon Trust has actually agreed to the modification.

The Trustee further argues that the Trustee is unsure whether the Debtors can make the mortgage payment. A review of the most recent Schedules I and J, it appears that the Debtors only have a monthly net income of $150.00, when the expenses include the $925.00 mortgage payment. It appears that the Debtors do not have sufficient income to cover the $215.00 increase.

Lastly, the Trustee argues that The Bank of New York Mellon Trust Company has filed a Notice of Mortgage Payment change on June 2, 2015 which indicates that the Debtors' mortgage is $1,778.80 effective July 1, 2015. The Bank of New York Mellon Trust Company does not note any loan modification or provide any support documentation.

DISCUSSION

Failure to Provide a Proof of Service

The Debtors have failed to attach a Proof of Service to the instant Motion. Without the court knowing what parties have been served and whether sufficient notice was given, the court is unable to determine if proper service was given to necessary parties. This is grounds to deny the Motion.

Failure to Comply with 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. We have been approved for a loan modification to our home. Ocwen has given us the approval for the modification and need a approval from you to proceed with the modification

B. We are asking that you please give us an approval for our modification to go through, it will greatly help my family and I keep our home. Our loan will adjust from $925.00 a month to $1,140 a month.

C. Please address the loan company Ocwen and state, "You authorize Ocwen servicing to proceed with the loan modification for Leilani Miller."

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the Debtors would like to enter into a loan modification. 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.

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.

Incorrect Party to Loan Modification

Debtor seeks to modify a loan which appears to be serviced by Ocwen Loan Servicing. However, it has been repeatedly represented in this court that loan servicing companies are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. It appears, based on Proof of Claim No. 9, that the actual creditor on this loan is the Bank of New York Mellon Trust Company, but there are no documents and evidence providing showing that Ocwen, as the servicing agent for the Bank of New York Mellon Trust Company, has the right to enter into a loan modification with the Debtor in this case.

In most cases where Debtors have filed a Motion to Approve Loan Modifications naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights. In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt that was never modified.

The court is not certain how the Debtor can enter into a loan modification agreement with Ocwen, a loan servicing company, modifying the terms of an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

Ocwen has not provided a Power of Attorney granting it powers to enter into modification agreements with Debtors, to reduce the amount owed on a loan. There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting enter and sign a written contract, indicating that they are in approval of the modification negotiated by the loan servicing company and the Debtor, and that the servicing agent actually has the authority to enter into such an agreement with the Debtor borrower.

This court has recently repeatedly addressed Ocwen Loan Servicing, LLC on their representations to debtors that they are the creditor with whom a debtor is entering into loan modifications, without stating they are doing so as an agent of the actual creditor. The instant matter represents the court's very concerns where pro se debtors attempt to modify the terms of their loan in

hopes of keeping their home, even going as far as to give up family pets to afford mortgage payments, to only have Ocwen Loan Servicing, LLC not provide evidence that they are authorized to make such modifications.

Ocwen Loan Servicing, LLC is an institutional servicer who are well aware of the requirements of showing that they have the authority and power to modify the terms of the loans in which they service. It is not for the underlying creditors to come in to present the evidence that Ocwen Loan Servicing, LLC should have provided to the Debtors from the get-go.

Furthermore, the court is also concerned whether, even under the modified terms, the Debtors are able to afford the monthly payments. A review of the Debtors schedules show that, at most, the Debtors may only have $150.00 to increase their mortgage payment allowance, when the terms of the modification requires an additional $215.00. While the court understands that the Debtors have reduced their budget, the alleged expenses may not be sustainable.

The court is aware that the Debtors are filing the instant case in pro se. The court urges the Debtors to seek bankruptcy counsel to aid them in their journey through the bankruptcy process. There are many local bankruptcy clinics and services for individuals who cannot afford a traditional attorney. The University of the Pacific, McGeorge School of Law, for instance, offers a clinic for individual debtors. The Sacramento County Bar Association maintains a list of attorney who provide pro bono or discount fee services to consumers. The court emphasizes the importance of having counsel who can help ensure that the Debtors receive the fresh start provided for in the Bankruptcy Code. The instant Motion should provide as a prime example of how helpful competent counsel can be in aiding Debtors.

Based on the foregoing, 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 Dale and Leilani Miller 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.

6. 14-31916-E-13 RUPERT/JOSEFINA ARENAS — MOTION TO CONFIRM PLAN
JMC-4 Joseph Canning — 4-23-15 [66]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. 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 court's decision is to deny the Motion to Confirm the Amended Plan.

Rupert and Josefina Arena ("Debtors") filed the instant Motion to Confirm the Amended Plan on April 23, 2015. Dckt. 66.

U.S. BANK'S STATEMENT

U.S. Bank, N.A., as Trustee for Washington Mutual MSC Mortgage Pass-Through Certificates Series 2003-MS2, filed a statement in support of the amended plan on May 28, 2015. Dckt. 77.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection on June 2, 2015. Dckt. 78. The Trustee objects to the instant Motion on the following grounds:

1. The Debtors have failed to provide sufficient evidence over the decrease in income and calculation of non-exempt equity. The trustee notes that the Debtors have reduced Debtor Josefina Arena's income by

28% even though Schedule I states that the Debtor has held that job for 10 years. The Debtor does not explain this change with any evidence. Additionally, the Trustee argues that the Debtors failed to provide the spreadsheet summarizing Schedule A, B, C, and D which they claim to have prepared.

2. The Trustee argues that the plan improperly treats JP Morgan Chase as a Class 4 claimant. The Debtors' Statement of Current Monthly Income shows that they are delinquent to JP Morgan Chase in the amount of $91,989.46. The plan fails to propose a cure for these mortgage arrears.

3. The Trustee argues that the plan fails to satisfy the liquidation analysis based on the claims filed. The Trustee has calculated that there is $159,630.00 in non exempt assets. The Debtor estimates a total unsecured claims in the plan at $233,280.11 and allege that non-exempt equity totals $80,700.00. The Trustee's calculations shows filed and allowed unsecured claims totaling $81,714.38 and non-exempt equity totaling $159,630.00. Where the Debtors are proposing to pay $46,369.25 toward priority unsecured claims and $17,160.02 toward general unsecured claims, only $63,529.27 would be paid toward unsecured claims, less than what they would receive in the event of a Chapter 7.

   The Debtors have provided a document titled "Liquidation Analysis in Support of Motion to Confirm First Amended Plan," where Kenneth Sanders provides an analysis of what he believes would be paid to unsecured claims. Mr. Sanders suggests that the general unsecured claims would not receive more than $49,259.00 from a Chapter 7 distribution after payment of Chapter 7 trustee fees and $46,370.00 to priority claims. The Trustee asserts that Mr. Sanders does not address the possibility of any "carve outs" on behalf of the estate.

   Furthermore, the Trustee asserts that the analysis has defects which include:

   a. Umpqua Bank account of $205.00 for an exemption which was not claimed by the Debtors.

   b. Chase Checking is valued at $0.00 which is inaccurate based on Amended Schedule B. The balance and non-exempt equity in Chase Bank account is actually $467.74, all of which is not exempt.

   c. 2002 Porsche Boxster is valued at $12,562.00, lien amount is $0.00, exemption $7,822.00 not the $11,306.00 reported by Mr. Sanders.

   d. 2002 Kawasaki is valued at $2,795.00, lien amount is $0.00, exemption amount is $0.00; not the $2,516.00 reported by Mr. Sanders.

   e. 2001 Kawasaki is valued at $3,000.00, lien amount is $0.00, exemption is $0.00; not the $2,700.00 reported by Mr. Sanders.

   f. Erroneously reports the exemption for the 2011 Ford Transit

incorrectly at $8,201.00, where the actual exemption is $9,756.00

g. The Aesthetic Laser is considered in the liquidation analysis where the Debtors no longer claim any equity or exemption.

4. The Trustee is uncertain that the Debtors can afford the plan payment based on an attempted loan modification, the amount of the mortgage payments, and the amount of arrears.

The Debtors filed a Motion to Approve Loan Modification which indicates that the Debtors' mortgage payment will not change. The Debtors voluntarily withdrew this Motion.

Debtors' amended Form 22C-2 which changed the amount of monthly payments to both Bank of America and Chase Bank. The monthly payment to JPMorgan Chase Bank, N.A. increased from $1,172.00 to $3,398.00. The monthly payment to Bank of America, N.A. decreased from $839.68 to $744.50. In total, the deduction on line 9b totals $4,142.50 where it was originally claimed at $2,011.68. The Amended Schedule I reports their ongoing mortgage as $1,172.00, the same amount originally reported, which conflicts with Debtors' CMI which reports payment as $3,398.00

On Form 22C-2, Debtors changed the arrears due to Bank of America, N.A. from $22,000.00 to $8,011.29, which matches Proof of Claim No. 5. The Debtors also report arrears due to JPMorgan Chase Bank, N.A. as $91,989.46. The Debtors failed to report any arrearages owed to JPMorgan Chase Bank, N.A. on the form and proposed for payments to be made directly by Debtors in the original plan. Since JPMorgan Chase Bank, N.A. has not filed a claim, the Trustee has no way of verifying the new information from the Debtors.

RESPONSE OF KENNETH SANDERS

Kenneth Sanders, who is not an attorney for a party in this case, not a creditor in this case, and not a party in interest in this case, has filed a pleading responding to the Trustee's objection. This response appears to be a declaration, as it is certified under penalty of perjury. Debtors have not responded to the Trustee's Opposition to the Motion.

In his declaration Mr. Sanders make reference to other documents from other judicial pleadings, arguing the legal effect and consequences of such documents in this case. This "declaration" reads as a response which would normally be asserted by counsel for a debtor.

Finally, Mr. Sanders takes exception to being referred to as Debtor's hired analyst." He states that is incorrect, that rather he has been hired "by the Debtor's attorney, to whom I provide Bankruptcy consulting services." Declaration, Dckt. 81, p.3:20-21. This debate has the scent of debating what "is is." Mr. Sanders is not "consulting" with Debtor's counsel, but he is testifying as an expert witness.

On the question of liquidation value and best interests of creditors, the court begins with the statements of the Debtors under penalty of perjury in the

Schedules.

Real Property FN.1.

	Residence	Business Property	Lot 15	Lot 24
Final Amended Schedules A, C, D				
Value	$514,443	$447,220	$10,200	$10,170
Liens	($486,558)	($347,683)	$0	$0
Exemption	None	None	None	None
Costs of Sale of Real Property (Est. 8%)	($41,155)	($35,778)	($816)	($814)
Net Value for Estate After Cost of Sale and Liens	($13,270)	$63,759	$9,384	$9,356

FN.1. In reviewing the Declaration of Mr. Sanders and the liens against the Business Property, it appears that he transposed the numbers for the debt secured by the senior deed of trust, stating it was $248,674, rather than $284,674 set forth on the Schedules D filed by Debtors.

Personal Property

	2013 FJ Cruiser	2011 Connect	2002 Porsche Boxster	2002 Kawasaki 1000 STX
Final Amended Schedules B and C, and Proofs of Claim, and Analysis of Kenneth Sanders				
Value	$28,295	$15,648	$12,562	$2,795
Liens	($19,826)	($5,906)	$0	$0
Exemption	($7,838)	($9,765)	($7,822)	$0

Costs of Sale, Estimated at 10% for Auction	($2,830)	($1,565)	($1,256)	($280)
	($2,199)	($1,588)	$3,484	$2,516

Final Amended Schedules B and C	2001 Kawasaki Ninja			
Value	$3,000			
Liens	$0			
Exemption	$0			
Costs of Sale, Estimated at 10% for Auction	($300)			
	$2,700			

Thus, the court's "down and dirty" value calculation for a Chapter 7 liquidation estate would be:

Residence	$0
Business Property	$63,759
Lot 15	$9,384
Lot 14	$9,356
2014 FJ Cruiser	$0
2013 Connect	$0
2002 Porsche	$3,484
2002 Kawasaki 100 STX	$2,516
2001 Kawasaki Ninja	$2,700

Total For Chapter 7 Estate	$91,199

The court has not been provided with evidence of automobile experts as to the value of a 2002 Porsche Boxster or real estate professionals as to the value, marketing time, and cost for selling the real property. These amounts are based on the values used by Debtors.

The court also needs to take into account the Chapter 7 trustee's fees which would come of the top in a Chapter 7 case. If the $91,199 were the only

monies to disburse, the Chapter 7 trustee's fees would at most be,

Monies Disbursed	11 U.S.C. § 326 Maximum Percentage	Maximum Amount Which Could be Allowed as Reasonable Chapter 7 Trustee Fees
$5,000	25%	$1,250
$45,000	10%	$4,500
$41,199	5%	$2,060

	Total Maximum Chapter 7 Trustee Fees	$7,810

With respect to the Local Rule relating to computation of reasonable trustee fees, the 2015 amendment is consistent with the existing practices of the various judges in this District who, while treating the trustee's fee as a commission, also require it to be a reasonable commission.

In computing the Trustee fees, the court estimates it for purposes of this hearing based on the monies that a Trustee could actually obtain from liquidating the assets. The greatest difference is with respect to the business property for which there is a significant secured claim to be paid and a significant real estate commission to be paid. While it is likely that the court would allow a commission computed on a larger amount than the net, it is likely that it would not be on the full gross sales price given (1) the limited recovery for the estate and (2) the substantial professional fees paid to the real estate broker to sell the property. (This also assumes that little, if any effort, would be required of the trustee, and he or she would be a passive, little effort client of the real estate professional.)

Even taking the court's more conservative estimation of trustee fees, the monies which work down to pay creditors in a Chapter 7 case from these assets would be $83,389.00.

The Internal Revenue Services asserts a priority claim of $45,680 (Amended Proof of Claim No. 4, filed February 24, 2015) and the Franchise Tax Board asserts a priority claim of $690.23 (Proof of Claim No. 7, filed March 18, 2015).

After paying the priority claims, $37,019 appears to drop down to creditors holding general unsecured claims (using the court's conservative estimation for Trustee fees and the Debtors statement of value for the assets).

DISCUSSION

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

The Trustee's objections are well-taken.

The Trustee argues that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), because the Debtors failed to provide explanation as to why the Debtors' income reduced by 27% per month. Additionally, the Trustee does not have the spreadsheet summarizing Schedule A, B, C, and D to determine the non-exempt equity

The Debtor's amended Schedule I reflects a decrease in average monthly income of $1,537.85. Absent explanation from the Debtors as to how and why the Debtor's income dropped after 10 years being employed at the same job, 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).

Debtor's sudden, unexplained drop in income is even more concerning because her employer is her own business, the Wellness Care Center

The Trustee's second objection concerns the treatment of JPMorgan Chase Bank, N.A. The Trustee notes that in the proposed plan, the Debtors list the claim of JPMorgan Chase Bank, N.A. as a Class 4 claimant, whether the class of claims are described as not being in default. However, the Debtors state in their Amended Form 22C-2 that the Debtors are delinquent ot JPMorgan Chase Bank, N.A. in the amount of $91,989.46. Dckt. 65. JPMorgan Chase Bank, N.A. holds a deed of trust secured by the Debtor's residence. 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. Additionally, because the Debtors improperly classify JPMorgan Chase Bank, N.A. as a class 4 claimant, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(1).

The Trustee's third objection states that the plan fails to satisfy the liquidation analysis. Specifically, the Trustee argues that the support document filed by Debtors with Mr. Sanders' liquidation analysis is not accurate. A review of Mr. Sanders' analysis and the Debtors' Schedules shows that Mr. Sanders' analysis does not properly reflect the exemptions and values of assets of the estate. For instance, the Debtors on Schedule C claim no exemption as to either Kawasaki. Dckt. 60. However, in Mr. Sanders' analysis, he deducts exemptions not claimed by the Debtors. While the court has conducted a rough analysis of the liquidation value, these fundamental inconsistencies in the Debtors' calculations renders Debtors' calculations to not be credible.

The Trustee's fourth objection raises concerns over whether the Debtors are able to make the plan payments. Namely, the Trustee is concerned that the discrepancies between the amounts listed on Form 22C-2 and that listed on Schedule I make it that the Trustee nor the court cannot determine if the Debtors can afford to make the plan payments. A review of the information filed by the Debtors shows that there are substantial discrepancies between what is reported in the plan, schedules, and Form 22C-2. In fact, the Debtors report different arrearages amount (see the arrears owed to Bank of America) and the arrears of JPMorgan Chase Bank, N.A. While JPMorgan Chase Bank, N.A. has not filed a proof of claim, the Debtors self-report that there is $91,989.46 which the Debtors do not properly classify in the plan. Overall, the lack of

consistent information as well as the Debtors failing to provide evidence as to the proper amounts and classification of the claims makes the court believe that the Debtors are not accurately reflecting their financial reality and that they cannot comply with the terms of the plan. 11 U.S.C. § 1325(a)(6).

In light of the Trustee's substantial and valid objections, the Debtors need to re-evaluate what information they have filed and the claims in which they assert to ensure that not only it is an accurate depiction of their debts and assets but also that they are, in good faith, proposing a feasible and viable plan.

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.

7. 15-21419-E-13 JAMES JOHNSON MOTION TO CONFIRM PLAN
MET-1 Mary Ellen Terranella 4-29-15 [18]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

James Johnson ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 29, 2015. Dckt. 18.

DEUTSCHE BANK NATIONAL TRUST COMPANY'S OPPOSITION

Deutsche Bank National Trust Company, as Trustee for Carrington Mortgage Loan Trust, Series 2005-OPT2, Asset Backed Pass-Through Certificates, as serviced by Ocwen Loan Servicing, LLC ("Creditor") filed an objection to the instant Motion on May 18, 2015. Dckt. 22. The Creditor objects to the plan on the grounds that the plan understates the Creditor's pre-petition arrears. The Creditor states that the Debtor has $8,175.85 in pre-petition arrears that are not provided for in the plan.

Additionally, the Creditor argues that the plan provides for the Creditor's claim under Class 2 and 4. The Creditor states that there are no junior liens on the loan and is unable to determine the intentions of the

Debtor. The Additional Provisions state that the arrears shall be cured under Class 2 with a lump sum payment but the Creditor argues that this is not the appropriate class for such treatment.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on June 2, 2015.

DISCUSSION

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

The Creditor's objections appear to deal with the treatment of the alleged pre-petition arrears. However, a review of the proposed plan does provide for the Creditor's pre-petition arrears. The Debtor lists the pre-petition arrears of $10,588.00 in Class 2 due to the fact that the Debtor intends to pay the arrearages off with a lump sum, pursuant the Section 6 of the plan.

While the court understands the Creditor's concerns over the Class 2 classification, the bifurcation appears to be only due to the fact that instead of curing the arrearages through the plan in the form of monthly payments, the Debtor intends to pay them in a single lump sum, thus the Class 2 classification. As such, the plan does in fact appear to provide for the pre-petition arrears of the Creditor, in fact listing it in a larger amount than what the Creditor asserts.

Therefore, because the plan does appear to provide for the Creditor's arrears and the bifurcated classification of Creditor appears proper in light of the lump sum payment to cure arrearages, the Creditor's objection is overturned.

To address this concern and any confusion over the plan treatment, the order confirming the following additional terms:

"**IT IS FURTHER ORDERED** that the Chapter 13 Plan (Dckt. 15) is amended, as a condition of confirmation, and provides:

A. The Claim of "Ocwen Loan Servicing" listed as a Class 2A Claim is removed from Class 2 and is provided for in the Additional Provisions of Section 6 of the Plan.

B. Section 6 of the Plan is amended to add the following provision:

1. The secured claim of Deutsche Bank National Trust Company, as Trustee for Carrington Mortgage Loan Trust, Series 2005-OPT2, Asset Backed Pass-Through Certificates, for which the collateral is provided by a deed of trust recorded against the real property commonly known as 2796 Elmhurst Circle, Fairfield, California, shall be paid as follows:

a. The Pre-petition arrearage shall be paid in full from the first $33,000.00 plan payment of the Debtors; and

b. The post-petition monthly payments due pursuant to the terms of the note and deed of trust shall be paid by Debtors as a Class 4 Claim as provided in the Plan.

C. Paragraph 1.01 of the Plan is amended to strike the '$33,000.00*' stated for the amount of the monthly plan payment and 'See Section 6' is inserted in its place.

Upon review of the plan, the Plan as amended complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed. FN.1.

FN.1. Debtor and Debtor's counsel are fortunate that Deutsche Bank National Trust Company, Trustee, and its counsel came forward to raise the issue and allow the court to clarify the treatment of this claim. Also, this Creditor and counsel preemptively addressed the issue that the Plan identified an entity, Ocwen Loan Servicing, which does not have a claim to provide for payment. If the Plan had been confirmed as drafted, Debtor and Debtor's counsel may well have been forced to spend the time modifying the plan (which would not have been reasonable unanticipated) or risk losing the home through a foreclosure since there was no "claim" of "Ocwen Loan Servicing" for the Trustee to disburse money to through the Plan.

It continues to mystify the court how knowledgeable, experienced, reputable consumer counsel and the para-professional staff continue to misidentify loan servicing companies as creditors, thereby failing to properly provide for a claim or to serve the real party in interest to obtain an effective order (such as for an 11 U.S.C. § 506(a) secured claim valuation). As this court has commented on previous occasions, when the entity has the word "servicing" in its name, it is usually just a "servicing agent" and not the "creditor," as that term is defined in 11 U.S.C. § 101(10) and (5).

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 16, 2015, as amended at the hearing, 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.

IT IS FURTHER ORDERED that the amendments to the Chapter 13 Plan (Dckt. 15), as stated at the hearing as a condition of confirmation, are, and shall be set forth in the order confirming the Chapter 13 Plan:

A. The Claim of "Ocwen Loan Servicing" listed as a Class 2A Claim is removed from Class 2 and is provided for in the Additional Provisions of Section 6 of the Plan.

B. Section 6 of the Plan is amended to add the following provision:

1. The secured claim of Deutsche Bank National Trust Company, as Trustee for Carrington Mortgage
Loan Trust, Series 2005-OPT2, Asset Backed Pass-Through Certificates, for which the collateral is provided by a deed of trust recorded against the real property commonly known as 2796 Elmhurst Circle, Fairfield, California, shall be paid as follows:

a. The Pre-petition arrearage shall be paid in full from the first $33,000.00 plan payment of the Debtors; and

b. The post-petition monthly payments due pursuant to the terms of the note and deed of trust shall be paid by Debtors as a Class 4 Claim as provided in the Plan.

C. Paragraph 1.01 of the Plan is amended to strike the '$33,000.00*' stated for the amount of the monthly plan payment and 'See Section 6' is inserted in its place.

8. 09-44429-E-13 KENNETH/MYCHELE RIDDICK
MET-3 Mary Ellen Terranella

MOTION FOR SUBSTITUTION OF MYCHELE D. RIDDICK FOR KENNETH H. RIDDICK AND SUGGESTION OF DEATH
5-17-15 [131]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2015. By the court's calculation, 30 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). 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 Substitute is granted.

Joint Debtor, Mychele Riddick, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Kenneth Riddick. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtors filed for relief under Chapter 13 on November 8, 2009. On April 20, 2010, the Debtor's Chapter 13 Plan was confirmed. On October 21, 2013, the Debtor 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 May 17, 2015. Dckt. No 131. Joint Debtor is the 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.

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.
>
> 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, Debtor Mychele Riddick has 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 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. No 131. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Jackie Lowery, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Glenn Lowery. The court grants the Motion to Substitute Party.

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 granted and Mychele Riddick is substituted as the successor-in-interest to Kenneth Riddick and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

9. 15-22730-E-13 DPC-1 CHARLES/MARYLOU HODGE Scott Schumaker

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [55]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors are not making adequate protection payments. Debtors include treatment of their first mortgage held by Seterus in Section 6.05 of the plan. The Debtors are proposing delaying payment to mortgage arrears pending an application for loan modification. Debtors have altered the provisions to propose adequate protection payments be paid by Debtors directly as opposed to the standard language which proposes adequate

protection payment through the plan. At the Meeting of Creditors, the Debtors indicated that they had not made the first payment. The Trustee objects to the plan provisions that proposes payment of the ongoing mortgage directly by the Debtors. The terms of class 1 and the irregularity of the Debtors' income causes concerns over whether Debtors would be able to make the payments outside the plan.

2. The Trustee is unable to determine the feasibility of the plan because Debtors' Schedule I shows at least a portion of Debtors income is from family contribution. While the Debtors did provide a declaration signed by the adult children, the declaration has not been filed with the court.

The Trustee's objections are well-taken. The plan appears to utilize what has commonly been called in this court as the "Ensminger Provisions" proposing to provide adequate protection payments while delaying payment to mortgage arrears due to a pending loan modification. However, the Debtors attempt to change the standard use of these provisions by proposing that the Debtors make the adequate protection payments, in no specific amount, directly rather than through the plan. Like the Trustee, the court is concerned whether this is proper and viable, especially in light of the fact that the Debtors admitted to failing to make the first adequate protection payment. The Debtors failure to make the first payment is evidence that the proposed provision is not feasible.

Debtors have demonstrated that prior to the commencement of this case they were unable to make either the loan payments or obtain a modification. If Debtors want to try and negotiate a loan modification while holding the creditor's collateral "hostage" with the automatic stay, the court wants to make sure that the adequate protection payments are actually made to the creditor. That Debtors have attempted to circumvent that minimal amount of oversight by the Trustee indicates that they know they will not be able to, or do not intend to, actually make the adequate protection payments. FN.1.

FN.1. As to the Debtor's ability to fulfill their financial commitments in this bankruptcy case, the court notes that an Order to Show Cause was issued y the court on June 8, 2015, due to Debtors' failure to make the $77.00 filing fee installment which was due on June 2, 2015. Dckt. 59.

The court also notes that the "enhanced" Ensminger Provisions drafted by counsel go beyond what is properly provided for in a plan. Paragraph 6.02 appears to be a plan specific statement of the law and the imposition of a mandatory injunction upon the completion of the Plan. The court does not allow purported mandatory injunctions (such as, "Bank shall transfer its interest in the property") to be imbedded in an additional plan term.

Additionally, the Debtors have failed to provide the declaration to the court over the family contributions, which appear to be a part of the Debtors' monthly income. While the Trustee admits to having received the declarations himself, the Debtors have not provided a copy to the court to determine whether it is a viable and continuing source of income to help fund the plan. Since the court cannot determine if the plan is feasible without the confirmation of the

continuing income from family contributions, the plan does not comply with 11 U.S.C. § 1325(a)(6).

Further, the proposing of a Plan which provides for no adequate protection payment and the attempt to hide from the court the adequate protection payment, if any, manifests a lack of good faith in proposing this Chapter 13 Plan, in prosecuting this Chapter 13 case, and in even filing this Chapter 13 case. Debtors fail to comply with the requirements of 11 U.S.C. § 1325(a)(3) and (7).

Wherefore, 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.

10. 13-32531-E-13 DAVID/LORI JOHNSON MOTION TO MODIFY PLAN
BLG-3 Bruce Dwiggins 5-12-15 [38]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2015. By the court's calculation, 35 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.

David and Lori Johnson ("Debtors") filed the instant Motion to Confirm the Modified Plan on May 12, 2015. Dckt. 38.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 2, 2015. Dckt. 46. The Trustee objects on the following grounds:

1. Debtors have not filed Supplemental Amended Schedule I and J in support of the reduced plan payments. The Debtors indicate in the Motion and Declaration that they are modifying the plan in order to reclassify a Class 2 Claim regarding a 2009 Mini Cooper to a Class 3 because the vehicle was totaled.

2. The monthly dividend to this claim in Class 2 under the

confirmed plan was $178.99 and the Trustee has disbursed $1,941.24. The claim is paid in full per Trustee's Claim Adjustment filed March 31, 2015. While Debtors confirmed plan and the proposed modified plan both pay 100% to unsecured creditors, Debtors have not provided an explanation that would necessitate a reduced plan payment or filed Supplemental Schedules I and J.

DISCUSSION

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

The Trustee's objection concerns the Debtors' failure to provide an explanation as to why the monthly payments under the plan has decreased from $2,400.00 under the confirmed plan to $2,063.00 in the proposed plan.

The Debtors state that the modification is necessary because the vehicle was totaled and will be surrendered and, therefore, the Wells Fargo claim should be moved to Class 3. This is a reduction in expense of $178.99. Taking that into consideration, the plan is proposing to decrease the monthly payment amount an additional $158.01 ($337.00 difference in total plan payments - $178.99 due to the Class 2 claim moving to Class 3).

Debtors' counsel responded to the Trustee's objection, asserting the following:

A. Debtors are proposing a 100% plan. (The court notes that the 100% is stretched out over 60 months with no interest.)

B. After the Debtors lost their car to an accident, the court denied their request to purchase a replacement car.

C. Debtor are left in a conundrum -

1. They feel they are overfunding their plan by including amounts which were to go for payments on the car which was destroyed, and

2. Are "denied" the ability to buy a car.

D. Debtors have been reduced to use friends to help co-debtor go to work, pay for bas, or rent a car, "since the car they wished to purchase was denied by the court."

E. Debtors prepared this plan to pay creditors in full over five years, which will pay claims in the same manner as the original plan (but with the Debtors keeping the money that was to go to pay the creditor with a lien on the now destroyed vehicle).

F. Debtors do not have any unsecured debt.

G. Debtors feel they are "damned if they do and damned if they don't."

Dckt. 49.

Because Debtors hang their hat on the court having "denied" their request to buy the car "they want," the court has reviewed its ruling on that prior motion. Civil Minutes, Dckt. 35. Through that Motion, the car the "Debtors wanted to buy" was a 2012 Mercedes Benz C250 for $26,514.00. This Mercedes Benz was to replace the 2009 Mini-Cooper which was totaled.

As the court noted in that decision, Debtors failed to address for the court their decision to finance the purchase of a luxury car by paying creditors' claims over time with no interest. Additionally Debtors failed, or refused, to provide the court with a copy of the actual post-petition financing agreement. The court denied the prior request **WITHOUT PREJUDICE**. The court left the keys in the Debtors' hands to drive a new motion to the court to support the authorization to buy the Mercedes Benz or other car. Rather than do that, Debtors have just taken the keys and gone home.

The court reads Debtor's response to be one in which they have determined they will keep the money which they want to use to buy a Mercedes Benz from creditors, one way or another. Instead of coming back with a new motion and merely addressing the issues identified by the court, Debtors just want to divert the money from the plan, doing indirectly what they could not do directly. Debtor's failure to come back with a new motion indicates to the court that they have no good explanation why purchasing a Mercedes Benz to replaced a Mini-Cooper is reasonable or in good faith.

As stated by the Trustee, though this case was filed almost two years ago, Debtors have not provided updated financial information in support of confirmation. Some might infer from that Debtors' income has significant increased and that they should reasonably either increase their plan payment or provide for the payment of interest to creditors.

Using the now stale financial information from September 2013 (Schedule I, Dckt. 1 at 31), Debtors' gross monthly income was $10,998.84. Not including the payment of their home mortgage or the Mini-Cooper payment, Debtor's necessary monthly expenses were stated to be ($4,488.33). Schedule J, *Id.* at 32. This included $600 a month for electricity and gas, $315 a month for cell phones, $125 a month for cable, $125 a month for home maintenance, $700 a month for food, $100 a month for clothing, $525 a month for transportation, $150 a month for recreation, $43 a month for boat insurance, $300 a month for payment to dependant not living at home, and $50 a month emergency fund. The court does not believe that a debtor under a bankruptcy plan must live a Spartan or below poverty lifestyle. But the above demonstrates that the Debtors, even without purchasing a Mercedes Benz, have been allowed to properly budget for expenses and maintain a positive lifestyle.

It is not the court which is holding the Debtors back from purchasing a replacement vehicle - it is Debtors themselves. The court has not "damned" them to not having a car, but Debtors electing not to work with their counsel to put together a motion and supporting pleadings for which the court can authorize the post-petition financing. *See* Dckt. 49.

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 May 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. 15-23031-E-13 DPC-2 WILLIAM HAMILTON Marc Caraska

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [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 and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on a Motion to Value the Collateral of Toyota Financial Services.

2. The Debtor's plan fails to indicate in Section 2.06 whether the Debtor proposes to pay fees in accordance with Local Bankr. R. 2016-1(c) or whether the Debtor will be filing and serving a motion for fees in accordance with 11 U.S.C. §§ 329 and 330.

3. The Debtor has erroneously reported his household size on both

> Schedule I and Form B22C-1. Debtor admitted at the Meeting of Creditors that he has a household of one, that he and his non-filing spouse are separated and not living together. It appears that Debtor may be over median income if correctly reporting a household size of 1.

The Trustee's objections are well-taken. A review of the plan shows that the plan relies on the court valuing the secured claim on Toyota Financial Services. However, the Debtor has not filed a Motion to Value to date. Without the court valuing the secured claim, the plan is not feasible. The Trustee's first objection is sustained.

As to the Trustee's second objection, the plan does not indicate whether the Debtor's counsel is seeking fees under Local Bankr. R. 2016-1(c) or whether by separate motion. The plan provides for attorney's fees of $1,500.00 to be paid through the plan but does not indicate under which rule or statute. While this may be a mere scrivener's error, it raises concerns in context of whether the Debtor's plan and schedules provide all the necessary information required to determine whether the terms of the plan are feasible and viable. The Trustee's second objection is sustained.

Lastly, the Debtor's representation that he has a large household than he actually has raises concerns over whether the provided plan and schedules represent the Debtor's financial reality. Given that the Debtor appears to be an over-median debtor if his household is actually 1 as stated at the Meeting of Creditors, the proposed plan may not properly provide for all claims. It also raises concerns again over whether the information provided for by the Debtor is truthful as to all the income, expenses, and debts of the Debtor. 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.

12. 15-20936-E-13 KENT TEIXEIRA
DBJ-2 Douglas Jacobs

MOTION TO VALUE COLLATERAL OF HOMECOMINGS FINANCIAL, LLC
4-30-15 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is denied without prejudice.

The Motion to Value filed by Kent James Teixeira ("Debtor") to value the secured claim of Homecoming Financial LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 164 La Mirada Avenue, Oroville, California ("Property"). Debtor seeks to value the Property at a fair market value of $412,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. Douglas B. Jacobs's, Debtor's attorney, in his declaration, Dckt. 34, states under penalty of perjury that he hired a local title company to prepare a lot book guarantee which showed Homecomings Financial as the beneficiary of the Second Deed

of Trust. Mr. Jacobs further states that upon researching the agent for service of process for this company, he determined that Homecomings Financial LLC filed a Chapter 11 bankruptcy in 2013, and went out of business. The Debtors believe the current servicer of the loan to be Green Tree Servicing, as they receive monthly statements from Green Tree.

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

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

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

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

OPPOSITION

US Bank, N.A. as Trustee for Home Equity Trust 2007-HSA1, acting through its agent Green Tree Servicing LLC filed an opposition on June 2, 2015. Dckt. 38. This resolves the Debtor's confusion as to a loan servicer being the creditor. US Bank, N.A., as Trustee for Home Equity Loan Trust 2007-HSA1 is the creditor.

Green Tree notes that the Debtor made and executed a Promissory Note in the amount of $150,000.00 on November 6, 2006. That the total amount that is due and owing under the Promissory Note is approximately $148,120.22 and the pre-petition arrears in the amount of $435.52. Green Tree disputes the Debtor's estimated value, believing that the Property's value is greater than the estimated $412,000.00. Green Tree notes that it is in the process of obtaining its own valuation in order to determine the value of the Property, and that it will supplement this Opposition. Green Tree requests that the Motion be continued to allow them to obtain the appraisal

DISCUSSION

This is the Debtor's second attempt at valuing the instant secured claim. The first Motion to Value was denied because the Debtor failed to provide evidence

of the actual creditor. The Debtor states that he has attempted to determine the actual creditor and came up with Homecomings Financial, LLC. However, Green Tree filed an opposition, stating that they are the servicer for US Bank, N.A., as Trustee for Home Equity Trustee 2007-HSA1. Green Tree did filed a Proof of Claim No. 1 on June 2, 2015 which does provide evidence that the lien was transferred to US Bank, N.A., as Trustee for Home Equity Trustee 2007-HSA1.

While Green Tree Servicing, LLC has filed a response, it is not the Creditor. Green Tree Servicing, LLC does not state that it is the agent for service of process for the creditor or that it has been authorized to accept service for the creditor. The Motion does not seek to value the secured claim of US Bank, N.A., Trustee, but of some entity named Homecomings Financial, LLC. "Debtor....moves the court herein to value the collateral securing Debtors' indebtedness to Homecomings Financial LLC,...." Motion, Dckt. 31, p.1:18-20. While the pleadings to value Homecomings Financial LLC's secured claim was served on Green Tree Servicing, LLC, they were not served on U.S. Bank, N.A., Trustee.

At a minimum the pleadings would have to be amended and U.S. Bank, N.A., Trustee, substituted in as the party whose claim is to be valued. U.S. Bank, N.A., Trustee would then have to respond to the pleadings for which relief is being sought against it.

Rather than create a series of convoluted pleadings, the court denies this motion without prejudice. Counsel for Debtors can confer with counsel for Green Tree Servicing, LLC to determine a reasonable time for an appraisal, and then Debtors may file and serve U.S. Bank, N.A., Trustee. If the Bank, through its authorized agent, wants to waive the service requirements of Fed. R. Bankr. P. 7004(h), it may so do, but the court will not presume that such a waiver has been given for a motion which does not name U.S. Bank, N.A., Trustee, as the party whose rights are to be modified. FN.2.

FN.2. In reviewing Debtor's Counsel's declaration, the court notes that no reference is made to contacting Green Tree Servicing, LLC to obtain the identity of the actual creditor or any attempt to serve simple Rule 2004 written interrogatories on Green Tree Servicing, LLC to obtain the identity of the creditor if Green Tree Servicing, LLC refused to disclose that information other than under subpoena. Presumably, as the court has observed in other cases, when Green Tree Servicing, LLC would have been contacted it would have provided the name of the creditor or evidence that it was the creditor by virtue of a dual custodial agreement with Freddie Mac or Fannie Mae by which the custodian of the note automatically switches from owning a fiduciary duty to hold the note solely for Freddie or Fannie, and instead hold it as the fiduciary solely for Green Tree Servicing, LLC.

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 Kent J. Teixeira ("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.

13. 15-20936-E-13 KENT TEIXEIRA
DPC-1 Douglas Jacobs

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-17-15 [19]

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 March 17, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection to Confirmation and deny confirmation without prejudice.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the proposed plan relies on a pending Motion to Value Collateral of Green Tree Servicing, LLC. The Trustee argues that if the Motion

to Value is denied, the Debtor cannot afford to make the payments as required by 11 U.S.C. § 1325(a)(6).

Debtor filed a reply to the Trustee's objection on April 7, 2015. Dckt. 23. The Debtor states that the Motion to Value is set for hearing on April 14, 2015 and that there is no opposition to the Motion.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 16, 2015 to allow the Debtor the opportunity to identify the actual creditor, provide the court with a basis for concluding that the entity identified in the motion is the creditor, and then the court to issue an order determining the value of the secured claim of the actual creditor in this case. Dckt. 27.

DISCUSSION

No supplemental papers have been filed in connection with the instant Motion. The Debtor has filed a Motion to Value the Collateral of Homecomings Financial, LLC, set for hearing on 3:00 p.m. on June 16, 2015.

As noted in the court's ruling on that motion (denying it without prejudice), Homecomings Financial, LLC is not the creditor. Further, while the creditor could have been identified, Debtor failed to do so, filing the motion against a straw entity. Debtor failed to document making any effort to identify the actual creditor when he knew the loan servicing company. (Either by contacting the loan servicing company or sending a simple set of Rule 2004 written interrogatories to the loan servicer.

The objection to confirmation is sustained, and confirmation of the plan 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 the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and confirmation of the plan is denied without prejudice.

14. 15-23241-E-13 AFL-1 STAN/VICKY MARSHALL Ashley Amerio

MOTION TO AVOID LIEN OF CACH, LLC
5-15-15 [17]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 15, 2015. By the court's calculation, 30 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Stan and Vicky Marshall("Debtor") commonly known as 5124 McLean Drive, Elk Grove, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,526.43. An abstract of judgment was recorded with Sacramento County on October 29, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $350,764.00 as of the date of the petition. The unavoidable consensual liens total $391,704.43 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 $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien.

ABSENCE OF JUDGMENT LIEN

Unfortunately, though the Motion states, "A copy of the Abstract of Judgment that gave rise to this judicial lien is included in the Exhibits concurrently filed with this Motion to Avoid Judicial Lien....," the Debtor does not provide a copy of an Abstract of Judgment. Motion p. 2:14-16, Dckt. 17. The Document identified as an "Abstract of Judgment" filed as Exhibit 2 in support of the Motion (Dckt. 20) is actually the judgment itself.

The court does not know if any "Abstract of Judgment" was ever issued by the state court or if such judgment lien was ever recorded with the County Recorder.

No Abstract of Judgment or other evidence of a judicial lien having been presented, the Motion is denied without prejudice.

The court shall issue 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 Motion to Avoid Judgment Lien is denied without prejudice.

15. 12-36944-E-13 EDA URRIZA
BJK-1 Peter Cianchetta

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH EDA GAHOB URRIZA 5-19-15 [136]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's counsel and Chapter 13 Trustee on May 19, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion For Approval of Compromise is denied without prejudice.

Eda Urriza ("Debtor") and America's Servicing Company, a division of Wells Fargo Bank, N.A. ("Wells Fargo"), and U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX ("US Bank") requests that the court approve a compromise and settle competing claims and defenses with arising from the Adversary Proceeding No. 14-2227. The claims and disputes to be resolved by the proposed settlement relate to a June 2013 notice of mortgage payment change that was disallowed without prejudice by the court.

GENERAL PLEADING REQUIREMENTS FOR ALL

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

A. The settlement agreement calls for Wells Fargo to advance, without repayment, the difference between what was called for in the notice of mortgage payment change and what was called for in the original monthly payment in the proof of claim.

B. In exchange, Wells Fargo and US Bank obtain a complete release from Debtor.

C. As this resolves the main issue in the litigation, and is fair and equitable, the court should approve the agreement.

D. The motion is based upon the following memorandum of point ans authorities, the pleadings and papers on file in this action and in the underlying bankruptcy case, and upon such further evidence, both oral and documentary, as may be offered at the time of the hearing.

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 generic resolutions without any specifics and instructs the court to mine through the other filings to construct the bases for the relief sought. 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."

DISCUSSION

While the court is cognizant that this is a joint motion by the parties, the fact remains that the Motion merely speak to the generalities of the settlement. The Motion does not provide the specifics of the settlement terms or why the settlement should be approved. The Motion says that, for the necessary information, the court and any party in interest should compile the necessary information in the Points and Authorities and exhibits. This is facially not sufficient.

The court does not make attorneys guess when they need to comply with the rules and when the court will turn a blind eye and let it slide. For the response, "judge, it's really simple, just read the settlement agreement and you outline the very simple terms," the court's response is that it is even simpler for the attorneys who drafted the settlement agreement to state the terms in the motion. That minimizes any incentive to draft a convoluted settlement agreement, hiding terms, hoping that the court would not notice an improper dealing of one or more parties. FN.1.

FN.1. Rules exist not to force the good practitioners and parties to conform, but to minimize the ability of the unethical to abuse the good practitioners and parties, as well as the court. In making this statement, the court does not believe that either the parties or the very fine attorneys involved in this matter were, or would act improperly. But they, with they good reputations intact, must also comply with the Rules.

It appears that rather than stating both the grounds with particularity and the relief with particularity in the Motion, the attorneys spent significant time and effort to sprinkle them throughout a seven page points and authorities. As required under the Local Rules; the motion, points and authorities, each declaration, and the exhibits document are each filed as separate pleadings. Each serves a different purpose. Again, though counsel may say that a seven page points and authorities isn't that long and the court can tease out the grounds which should be stated in the motion, there is not a special rule for good attorneys. This court spent too much time digging through boilerplate forty-five page points and authorities trying to glean the grounds from less accomplished writers. The attorneys do not have to guess - the motion stating both the grounds and relief with particularity is separate

from the points and authorities (which succinctly states the legal points and authorities, held together with concise, relevant argument).

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 Compromise filed by Eda Urriza ("Debtor") and America's Servicing Company, a division of Wells Fargo Bank, N.A. ("Wells Fargo"), and U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX ("US Bank") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise is denied without prejudice.

16. 15-23046-E-13 DPC-1 STEVEN/MARGARET LAWRENCE March Carpenter

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors held on May 14, 2015. The Meeting has been continued to June 11, 2015 at 1:30 p.m.

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).

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

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

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

17. 15-22747-E-13 DPC-1 GARY/VICTORIA TEDFORD Peter Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on a Motion to Value Collateral of Schools Financial Credit Union

2. The Debtors' plan fails to indicate in Section 2.06 whether the Debtors propose to pay fees in accordance with Local Bankr. R. 2016-1(c) or whether the Debtors will be filing and serving motion for fees.

3. Debtors report mortgage arrears in Class 1 of the plan totaling $23,860.00 and propose a monthly dividend of $954.40. The payment toward arrears over 60 months would average $397.67. The Trustee objects to the accelerated monthly dividend to the mortgage creditor, as it causes a delay in payments towards unsecured claims.

4. The Debtor cannot make the plan payments because the Debtor failed to disclose an annual expense of $940.00 for timeshare maintenance.

5. Debtors indicated at the Meeting of Creditors that they have a pending lawsuit against their mortgage lender which was not disclosed on Schedules B and C.

6. The Debtors failed to complete their Statement of Financial Affairs, namely questions 1, 2, 3, 4, and 7.

7. Debtor Victoria Tedford failed to provide proof of her Social Security Number to the Trustee as required by 11 U.S.C. § 521(h)(2).

The Trustee's objections are well-taken. First, a review of the Debtors' plan shows that it relies on the court valuing the secured claim of Schools Financial Credit Union. However, the Debtors have failed to file a Motion to Value the Collateral of Schools Financial Credit Union. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's first objection is sustained.

The Trustee's third objection is also sustained. The plan provides for what appears to be an accelerated pay off of the arrears for "residential Credit Slt" but does not provide for any justification or explanation of why such treatment is proper. As noted by the Trustee, the accelerated pay off of the arrears, rather than the standard pay off through the life of the plan, will cause a delay in the unsecured creditors receiving their dividend. Without legal justification that would allow such preferential treatment for the creditor (and the Debtor in enhancing the value of the property Debtor seeks to retain), the unfair delay to the unsecured claimants makes the plan not feasible or viable.

The Trustee's remaining objections all concern the Debtors failing to accurately, completely, and honestly providing necessary information. The Debtors failed to report expenses, namely the timeshare maintenance, failed to report a pending lawsuit against their mortgage lenders, failed to complete all income and payment information on Statement of Financial Affairs, and failed to provide the Trustee with the Debtor's Social Security Number. Taken collectively, the court finds that the Debtors are not accurately and truthfully providing information as to their financial reality nor are the Debtors fulfilling their duties as fiduciaries. Without the Debtors properly filling out the schedules and reporting all assets and expenses, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325. These failures appear to be more than mere scrivener's errors and may be, in fact, an attempt by the Debtors to not fully disclose their finances. Therefore, the Trustee's objections are sustained.

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

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

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

18. 15-20149-E-13 ANNA PETERSON — MOTION TO CONFIRM PLAN
RAH-1 Richard Hall — 5-5-15 [58]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Plan to 3:00 p.m. on July 28, 2015 to be heard in conjunction with the Debtor's Objections to Claims.

Anna Peterson ("Debtor") filed the instant Motion to Confirm the Amended Plan on May 5, 2015. Dckt. 58.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 2, 2015. Dckt. 68. The Trustee objects on the following grounds:

1. The Debtor is $167.00 delinquent in plan payments to date. The Debtor has paid $334.00 into the plan to date.

2. The plan will complete in 73 months as opposed to 60 months. The cause of the over-extension is due to the priority claim of Placer County Department of child Support in Section 2.13 $3,445.35. In Section 6 of the plan, Debtor provides that Debtor's tax refund of $4,400.00 will offset the claim amount and that the claim should be paid $3,445.35.

3. The Debtor may not be able to make the payments because the Debtor fails to provide for the priority claim of Diamond Court Reporters, Proof of Claim No. 6, in the amount of $692.89.

DEBTOR'S RESPONSE

The Debtor filed a response on June 9, 2015. Dckt. 81. The Debtor responds in order of the Trustee's objections as follows:

1. Debtor has paid a total of $674.00, in the form of two cashier's checks for $167.00 each on May 5, 2015, and on May 29, 2015. Debtor made a payment in the amount of $340.00 via TFS. The Debtor is now current.

2. The Debtor has filed an Objection to Claim of the Place County Department of Child Support Services. The objection is based upon a tax refund of $4,400.00 being redirected by the Internal Revenue Service to the Creditor. The Objection is set of hearing on July 28, 2015.

3. The Debtor has filed an objection to the claim filed by Diamond Court Reporters was filed on June 9, 2015 due to the debt being unsecured and not qualified as a priority claim. The Objection is set for hearing on July 28, 2015.

The Debtor requests that the court continue the instant Motion to July 28, 2015 to be heard in conjunction with the two Objection to Claim. FN.1.

FN.1. The court notes Debtor's counsel's direct, concise, and succinct response to the Trustee's objection. The response is one that is not only easy to read but is also focused on the issue, making it simple for the court and all other parties to understand the response without the need of superfluous narrative or argumentative justifications.

Additionally, the factual statements in the response were supported by a declaration, not merely thrown out as arguments of counsel.

DISCUSSION

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

In light of the Debtor's response and the fact that the Trustee's objections are directly related to the Debtor's Objections to Claims, the court

continues the instant Motion to 3:00 p.m. on July 28, 2015 so the matters can be heard concurrently.

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 July 28, 2015 to be heard in conjunction with the Debtor's Objections to Claims.

19. 10-23957-E-13 MICHAEL/MAXA ROE
RK-1 Richard Kwun

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BOWMAN AND ASSOCIATES APC FOR RICHARD KWUN, DEBTORS' ATTORNEY(S)
5-18-15 [85]

NO APPEARANCE OF COUNSEL FOR DEBTOR IS REQUIRED The Court Has Set This as a Tentative Ruling in Case Counsel For Debtor Believes That the Court's "Correction" of the Fee Computation is Itself in Error

Tentative Ruling: 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).

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, parties requesting special notice, and Office of the United States Trustee on May 18, 2015. By the court's calculation, 29 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). The defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is granted.

Richard Kwun, the Attorney ("Applicant") for Michael E. Roe and Maxa Tadlock Roe the Chapter 13 ("Client"), makes a Request for the Allowance of Final Fees and Expenses in this case. FN.1.

FN.1. The court construes this request as a final request since the Applicant is requesting for the fees be paid directly to the Applicant post-discharge.

The period for which the fees are requested is for the period June 30, 2014 through May 15, 2015. The order of the court approving substitution of attorney and employment of Applicant was entered on July 20, 2014, Dckt. 67. Applicant requests fees in the amount of $1,070.00 and costs in the amount of $18.20. FN.2.

FN.2. The summary chart provided in the Motion and the Exhibit state that the Applicant is seeking $1,120.00 in fees. However, the court's calculation of the fees stated in the chart and as well as the Motion itself provides for only $1,070.00 in fees.

The Order Confirming the Chapter 13 Plan, prepared by previous counsel on record, expressly provides that the then counsel on record was allowed $5,000.00 in attorneys fees pursuant to Local Bankr. R. 2016-1(c). Of the approved $5,000.00, $1,000.00 was paid prior to the filing of the petition, and the balance of $4,000.00 to be paid by the Trustee from the available funds from the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case. Dckt. 65. As the order confirming states, the previous attorney was paid the full amount prior to the most recent modified plan.

Attached to the Motion is a copy of the fee arrangement which provides for an hourly rate rather than the "no-look" fee pursuant to Local Bankr. R. 2016-1(c).

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 executing a substitution of attorney, preparing and filing documents, general case administration, and attending court hearing. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Substitution and Fee Agreement: Applicant spent .6 hours in this category. Applicant obtained and executed a Motion for Substitution of Attorney.

Case Review: Applicant spent .8 hours in this category. Applicant reviewed and examined the debtor's Notice of Filed claims, as well as the online data base in an effort to become familiarized with the case.

Case Administration: Applicant spent 1.3 hours in this category. Applicant corresponded with Trustee and residential home loan lender, filed necessary documents, and explained certain bankruptcy procedures to debtor.

Tax Obligation: Applicant spent 1 hour in this category. Applicant in reviewing the notice of liability issued to debtors, noticed inconsistent dates and amounts, thus necessitating a phone call to resolve the issue.

Hearings: Applicant spent .1 hours in this category. Applicant will appear in court for a hearing pertaining to this instant motion.

Fee Application: Applicant spent 1.5 hours in this category. Application prepared this instant motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Richard Kwun	3.6	$250.00	$900.00
Connie Rozier	1.7	$100.00	$170.00
Total Fees For Period of Application			$1,070.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $18.20 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost

80 copies	$0.08/page	$6.40
20 stamps	$0.49/stamp	$9.80
20 envelopes	$0.03/envelope	$0.60
PACER charges	Documents not provided by previous counsel	$1.40
Total Costs Requested in Application		$18.20

OPPOSITION & RESPONSE

Opposition

David P. Cusick ("Trustee"), initially objected the Debtor's Motion for Compensation due to a typographical error. The typographical error stated, in pertinent part, "the surviving debtor" which thus implied that one debtor was deceased. The Trustee, unclear as to whether or not one of the debtor's was deceased, filed an Opposition to clarify the matter.

Response

Applicant filed a Response to the Opposition. Applicant noted that Debtors are not deceased, and the clarified that the text regarding a surviving debtor was a typographical error.

Withdrawal of Opposition

Trustee withdrew his Opposition to this instant Motion, accepting the Applicant's correction of the typographical error.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The Applicant was substituted in as counsel of record to aid the Debtors in completely their Chapter 13. The Applicant entered into a fee agreement, rather than electing "no look" fees which were already paid through the plan to the prior counsel. Dckt. 92, Exhibit D. The court finds that the services provided by the Applicant were necessary and beneficial to the Debtors and the estate in aiding with the completion of the plan as well as discharge. First and Final Fees in the amount of $1,070.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor directly post-discharge.

Costs and Expenses

The First and Final Costs in the amount of $18.20 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor directly post-discharge.

Applicant is allowed, and the Chapter 13 Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,070.00
Costs and Expenses $18.20

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Richard Kwun ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Richard Kwun is allowed the following fees and expenses as a professional of the Estate:
>
> Richard Kwun, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,070.00
> Expenses in the amount of $18.20,
>
> 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 Chapter 13 Debtor is authorized to pay the fees allowed by this Order directly from the Chapter 13 Debtor post-discharge.

20. 15-24266-E-13 GLORIA WELLINGTON MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter Macaluso 6-2-15 [9]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, and Office of the United States Trustee on June 2, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Gloria Wellington ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-33301) was dismissed on September 16, 2014, after Debtor failed to cure plan payment delinquencies. *See* Order, Bankr. E.D. Cal. No. 13-33301-C-13C, Dckt. 86, December 12, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor

failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as she had been caring for her terminally ill mother. Because Debtor no longer has to provide that care, she can work full time. Moreover, Debtor has not incurred any new debt since her previous case was dismissed. Debtor's change in financial situational circumstances indicate that she will be capable of maintaining Plan payments.

While the court attempts to give every Debtor the benefit of the doubt when one may stumble, the court notes that Debtor and her current counsel have been filing, and unsuccessfully prosecuting, Chapter 13 cases for the Debtor since October 2010. A brief summary of these cases is set forth in the chart below.

10-46452 Chapter 13 "First Bankruptcy Case"	Filed: October 4, 2010 Dismissed: December 12, 2011	
	No Plan Confirmed Dismissed due to Debtor's failure to confirm a Chapter 13 Plan by the court imposed December 5, 2011 deadline.	
11-49530 Chapter 13 "Second Bankruptcy Case"	Filed December 23, 2011 Dismissed: August 15, 2012	

	No Plan Confirmed Dismissed due to Debtor failing to make all of the required plan payments under the proposed plans.	
12-37004 Chapter 13 “Third Bankruptcy Case”	Filed: September 20, 2012 Dismissed: October 3, 2013	

	Plan Confirmed December 12, 2012 (12-37004 Dckt. 48) Modified Plan filed February 14, 2013. (*Id.*, Dckt. 56) Monthly Plan Payments of $3,100 to be reduced to $500 after first two months under the Modified Plan. Confirmation of Modified Plan denied. (*Id.*, Dckt. 87) Grounds for denial included (1) Debtor stating that she was in the process of a "short sale," but no authorization sought by Debtor; and (2) only source of income identified by Debtor were gifts from children. Additionally, Debtor explained that her problems in prosecuting the case were in part due to having been diagnosed with eye cancer. (*Id.,* Civil Minutes, Dckt. 85) Second Modified Plan denied Confirmation. (Id., Dckt. 111) Grounds for denial included Debtor's failure to provide current financial information and any evidence to support a contention that the Modified Plan was feasible. (*Id.,* Civil Minutes, Dckt. 109). The court's findings include the following: "This Debtor has dramatically failed under the prior plan which she swore that she could fund and confirmation was proper. The Debtor did not have to prove her ability to pay in open court, but apparently convinced the Trustee that she could and would make the payments. The Trustee did not object, nor did any other creditors, so the Debtor was able to confirm a plan without having to prove the feasibility of a proposed plan. The Debtor has now proven that the financial information provided was either inadvertently not accurate or affirmatively misstated to achieve a predetermined goal irrespective of the truth. The Debtors testimony is not credible, and her legal and factual conclusions cannot replace providing the court with evidence and leaving the court to struggle with coming to the actual factual and legal conclusions." *Id.* In dismissing this Third Bankruptcy Case of the Debtor, the court recounted the history of prior cases and uniform inability to prosecute a Chapter 13 Plan.

13-33301 Chapter 13 "Fourth Bankruptcy Case"	Filed: October 15, 2013 Dismissed: September 16, 2014	
	Amended Chapter 13 Plan confirmed April 8, 2014. (13-33301 Dckt. 47) Notice of Default in Plan Payments Filed April 15, 2014. (*Id.*, Dckt. 48) Modified Plan filed May 15, 2014. (*Id.*, Dckt. 56) Modified Plan sought to have $11,400 default in plan payments waived. Before the evidentiary hearing on the Modified Plan could be conducted the case was dismissed due to Debtor being $7,660 in default under the proposed Modified Plan. (*Id.*, Civil Minutes, Dckt. 81)	

The current case was filed on May 27, 2015. This is eight months after the dismissal of the Fourth Bankruptcy case. In the present Motion Debtor alleges that she has filed a plan "which is confirmable and very likely to successfully complete given the debtor's income and expenses. Motion ¶ 4, Dckt. 9. The Plan filed by Debtor (Dckt. 14) requires $2,600 a month payments for sixty months. Under the Plan Debtor does not provide for payment of the $158,501.27 in pre-petition arrearage for the claim secured by her home and the $3,414.08 current monthly plan payment, but only a $1,900.00 a month "adequate protection payment" while the Debtor prosecutes a loan modification in good faith. See Additional Provisions of the Plan. While this loan modification additional provision is a standard "Ensminger Provision" commonly used in this District, merely placing it in a plan does not mean the Debtor is proceeding in good faith.

The Debtor's Declaration in support of the present motion provides no information as to how she is diligently seeking any good faith loan modification. Dckt. 11. Rather, the only testimony as to why the presumption of bad faith should be deemed rebutted is,

> "10. I am refiling bankruptcy due to financial hardship. I had the added
> responsibility of caring for my 79 year old mother with a terminal illness of multiple myeloma.
>
> 11. Since my case was dismissed, my situation has changed. I no longer
> have the responsibility of the care of my mother. I can now work full time."

Id.

The only other claims to be paid through the Chapter 13 Plan is the Debtor's car loan ($6,482, with proposed monthly payments of $125) and tax claims ($8,287). Plan, Dckt. 14.

On Schedule D Debtor lists the claim secured by her home to be in the amount of ($613,067) and the property to have a value of $415,000. Dckt. 13 at 12. On Schedule I Debtor states that she has net income of $4,092 from her business. *Id.* at 27. In response to Question 13 on Schedule I concerning any changes in income, Debtor states under penalty of perjury, "Debtor is back on her feet and increasing her sales in the last 6 months; $4,466/monthly average." *Id.*

On Schedule J Debtor states that her monthly expenses are only $1,492. *Id.* at 28-30. This monthly expense results in Debtor stating that she has Monthly Net Income of $2,600. To achieve this Monthly Net Income, Debtor states under penalty of perjury that her expenses, for a family of two (Debtor and Debtor's dependent adult daughter) include the following:

A.	Rent/Mortgage	$ 0.00
B.	Home Maintenance	$ 23.00
C.	Food and Housekeeping Supplies	$250.00
D.	Medical and Dental	$ 25.00
E.	Transportation	$350.00
F.	Health Insurance	$ 0.00
G.	Income Taxes	$ 0.00
H.	Self-Employment Taxes	$ 0.00

Id.

Debtor did not attach to Schedule I the statement showing receipts and expenses for her business. The Debtor only stats that her net income from her business is $4,092 a month. *Id.* at 27. Debtor has filed a Business Income and Expense Statement, but has appended it to her Chapter 13 Statement of Current Monthly Income (From 22C). *Id.* at 4. To generate Net Monthly Income of $4,092, Debtor states under penalty of perjury that her business expenses consists only of the following:

A.	Other Taxes	$300.00
B.	Utilities	$125.00
C.	Office Expenses	$ 50.00
D.	Repairs and Maintenance	$100.00
E.	Travel and Entertainment	$100.00
F.	Equipment Rental	$ 31.00
G.	Legal/Accounting/Prof. Services	$100.00
H.	Phones/Internet	$102.00

Id.

As far as the court can tell, Debtor makes no provision for paying any income tax and self employment tax. As shown on Schedule E, Debtor owes back income taxes to both the federal and state governments. *Id.* at 14-15. The taxes listed by Debtor total $32,898, of which $8,287 is stated to be priority. Debtor has demonstrated that she has been challenged to pay her income taxes in the past.

On the Statement of Financial Affairs in this case, Debtor states under penalty of perjury that she had gross income of $28,000 YTD, $0.00 in 2014, and $19,671 in 2013. The court has created the following chart comparing the income information stated by Debtor in the Statements of Financial Affairs filed in her five bankruptcy cases.

	15-24266	13-33301	12-37004	11-49530	10-46452
2015 YTD	$28,000				
2014	$0	FN.1			
2013	$19,671	$35,728 2013-YTD			
2012		$27,762	$35,000 2012-YTD		
2011		$24,309	$0	$40,000 2011-YTD	
2010			$0	No Information	$40,000
2009				$0	$0
2008				$998	$998

FN.1. In Debtor's declaration dated May 14, 2014, in support of confirmation, she testified under penalty of perjury that, "11. That I am able to make all payments under the plan. The primary source of my income for my household is from self employment in Real Estate loans and sales and I anticipate this income source for the remainder of the plan." This statement under penalty of perjury is inconsistent with her statement now that in 2014 Debtor had $0.00 in income.

With respect to Debtor's good faith prosecution of a loan modification, such terms ring hollow. In her prior cases Debtor has stated in plans that she is in good faith prosecuting loan modifications of that she was providing for this claim as follows:

I. Fourth Bankruptcy Case:

A. Prosecute Loan Modification. First Modified Chapter 13 Plan Filed May 15, 2014.

B. Prosecute Loan Modification. First Amended Chapter 13 Plan Filed February 5, 2014.

II. Third Bankruptcy Case

A. Surrender Collateral and allow creditor to foreclose. Second Amended Chapter 13 Plan Filed June 24, 2013

B. Surrender Collateral and allow creditor to foreclose. First Amended Chapter 13 Plan filed February 14, 2013.

C. Cure $27,200 arrearage (delaying cure payment to month six of the Plan) and make current $1,863 monthly payment. Chapter 13 Plan filed September 20, 2012.

III. Second Bankruptcy Case

A. Cure $42,403 arrearage and make current $1,863 a month payments. First Amended Chapter 13 Plan filed July 17, 2012.

B. Cure $27,200 arrearage and make current $1,863 a month payments. Chapter 13 Plan filed December 23, 2011.

IV. First Bankruptcy Case

A. Cure $16,564 pre-petition arrearage, cure $7,852 post-petition arrearage, and make current $1,863 a month payments. Third Amended Chapter 13 Plan filed October 24, 2011.

B. Cure $42,403 arrearage and make current $1,886 a month payments. Second Amended Chapter 13 Plan filed June 29, 2011.

C. Cure $42,403 arrearage and make current $2,187 a month payment. First Amended Chapter 13 Plan filed January 10, 2011.

D. Cure $18,000 arrearage and make current $1,863 a month payment. Chapter 13 Plan filed October 18, 2010.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to extend the automatic stay. The Debtor has told this court that she has been prosecuting, in good faith, a loan modification since at least February 5, 2014. Before that, she told the court that she was surrendering the property and allowing the creditor to foreclose. What is clear is that during the four years of bankruptcy cases the Debtor has failed to make payments to the creditor holding the claim secured by her residence, the arrearage growing from $18,000 when Debtor filed her first bankruptcy case in 2010, to the current arrearage stated by Debtor in this case of $158,501. Using the $1,883 monthly payment amounts stated by Debtor in the four prior bankruptcy cases, this would equal 84 months of payments. In the Proof of Claim filed by Bank of New York Mellon in the Fourth Bankruptcy case, the monthly plan payments increased to $3,622 in 2012 and were reduced to $3,226 in 2013. Using a higher average payment amount of $3,400, then the $158,501 arrearage would represent approximately 47 months, 4/5ths of the five years that Debtor has spent in prior bankruptcy cases.

Debtor has had repeated chances to reorganize her finances through four prior cases spanning five years. Debtor failed. Debtor has had the benefit of the automatic stay for the four cases spanning five years. Debtor has failed to use the automatic stay to reorganize. What Debtor has done over the five years is to continue to occupy the property without making payments, making and breaking promise after promise to the Chapter 13 Trustee, creditors,

and the court.

The Motion is denied.

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

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

21. 15-23769-E-13 COREY LEE COLEMAN **MOTION TO VALUE COLLATERAL OF**
PLC-1 Peter Cianchetta **GM FINANCIAL**
5-19-15 [12]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2015. 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 AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") is granted and the secured claim is determined to have a value of $10,791.00.

The Motion filed by Cory Coleman ("Debtor") to value the secured claim of AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of a 2012 Mazda 5 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,791.00 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).

FN.1. The Debtor states that the Creditor is "GM Financial." However, AmeriCredit Financial Services, Inc. dba GM Financial filed a Proof of Claim No. 1, stating that they are the lienholder. The Debtor served GM Financial by certified mail. Since the Creditor represents that they are doing business as GM Financial, it appears that proper notice has been provided.

The lien on the Vehicle's title secures a purchase-money loan incurred in March 31, 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 $14,422.00. FN. 2. 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 $10,791.00. *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.

FN.1. The Debtor is the Motion states that the purchase-money loan was incurred "on or about August 1, 2012. A review of the purchase agreement attached to the Creditor's proof of claim states that the purchase agreement was signed on March 31, 2012. While either date falls outside the necessary 910 days, the court is using the date in which the Vehicle was purchased since the Debtor offers no evidence that the loan was incurred after the purchase, which is not typically customary.

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 Cory Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor") secured by an asset described as 2012 Mazda 5 ("Vehicle") is determined to be a secured claim in the amount of $10,791.00, 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 $10,791.00 and is encumbered by liens securing claims which exceed the value of the asset.

22. 10-51570-E-13 FRANCIS/DONNA O'BRIEN MOTION TO MODIFY PLAN
BLG-5 Chad Johnson 5-5-15 [110]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 5, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

23. 11-31275-E-13 KEVIN/MEGAN CANFIELD MOTION TO MODIFY PLAN
BLG-7 Chad Johnson 4-24-15 [104]

ATTENDANCE OF COUNSEL FOR DEBTORS NOT REQUIRED IF COUNSEL CONCURS IN THE COURT'S STATING OF THE PROPOSED AMENDMENT

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2015. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

The court's decision is to grant the Motion to Confirm the Modified Plan, as amended at the hearing.

Kevin and Megan Canfield ("Debtors") filed the instant Motion to Confirm the Modified Plan on April 24, 2015. Dckt. 104.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant

Motion on June 1, 2015. Dckt. 111. The Trustee objects to the plan on the ground that the Debtors have paid ahead $3,200.00 under the proposed plan. The Debtors have listed the proposed plan payments in the additional provisions of the proposed plan as: “Through April 8, 2015 (which accounts for payments for the first 46 months of this plan), Debtors have paid $149,760.00 into their plan”, then “Month 47, Debtors propose a plan payment of $0.00 for month 47" then “Month 48-60: Debtors plan payment will remain at $3,200.00 per month for months 48 through 60.”

The Debtors’ would need to have paid to the Trustee a total of $152,960.00 through May 2015. The Trustee’s records reflect that Debtors have actually paid a total of $156,160.00, a difference of $3,200.00. The Trustee is confused about the proposed $0.00 for month 47. The Debtors’ would be current without the proposal of $0.00 for month 47.

DEBTORS’ RESPONSE AND TRUSTEE’S WITHDRAWAL OF OPPOSITION

Debtors filed a response on June 10, 2015, stating that they amend the plan to clarify that the May 27, 2015 payment received by the trustee in the amount of $3,200.00 is for the June 2015 payment, thereby having the June 2015 payment made at the time of confirmation.

DISCUSSION

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

The Trustee’s objection is well-taken. A review of the Motion states that the Debtors are seeking modification of the plan in order to cure arrearages for the April 2015 payment. The only modification in the proposed plan versus the confirmed plan is that month 47, the plan payment would be $0.00. However, as noted by the Trustee, it appears that the Debtors’ efforts to catch up had paid off. According to the Trustee’s records, the Debtors are, in fact, current and there is no need to modify the loan.

Debtor has amended the Second Modified Plan to provide that the payment made to the Trustee on May 27, 2015, is the Plan payment due on June 25, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 granted and the Second Modified Plan filed on April 24, 2015, as amended by Debtors to state that the $3,200 payment made to the Trustee on May 27, 2015, is the Plan payment due on June 25, 2015. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order, which shall state the

above amendment, confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

24. 15-22782-E-13 MATTIE MULDROW
DPC-1 Lauren Rode
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-21-15 [27]

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 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor failed to appear at the First Meeting held on May 14, 2015, and thus the Trustee does not have sufficient information

to determine whether or not the case is suitable for confirmation. The Meeting has been continued to June 11, 2015 at 1:30 P.M.

2. Debtor failed to provide a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

3. Debtor failed to provide the Trustee with proof of income for the 60 days preceding filing of their bankruptcy.

4. Debtor's Plan fails to indicate, in Section 2.6, whether the Debtor is to pay fees in accordance with Local Bankruptcy Rule 2016-1(c) or whether the Debtor will be filing and serving a motion for fees.

5. A search using Debtor's social security number, identified two additional bankruptcy filings by the Debtor. Case #14-28197 filed August 12, 2014 and Case #14-22430 filed on March 10, 2014. Debtor did not disclose either bankruptcy filing on their petition, nor any fees paid in the cases on their Statement of Financial Affairs.

6. Debtor's Plan may not be debtor's best effort, under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying $3,649.23 per month with no guaranteed dividend to unsecured claims. Debtors projected disposable monthly income listed on Schedule J totals $4,138.82 and the Debtor is proposing a plan payment of $3,649.23.

7. Debtor's Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's stated non-exempt equity totals $0.00 and the Debtor proposes a 0% dividend to unsecured creditors. Debtor has failed to disclose and exempt all assets. Debtor does not list interest in any life insurance, retirement plans, or vehicles on Schedule B.

   On Schedule I, Debtor reported working for the county of Sacramento for 15 years. Trustee is concerned with Debtor not disclosing being a beneficiary of a pension or retirement plan.

   On Schedule J, Debtor reported a life insurance expense of $100.00 per month, and transportation expenses in the amount of $450.00 per month.

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

The Trustee's second and third objection arise because 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); Fed. R. Bankr. P. 4002(b)(3). These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

While the Trustee's fourth objection concerning attorney's fees may have been a mere oversight, this oversight coupled with the Trustee's fifth objection over the Debtor failing to report previous bankruptcy cases raises concerns over whether the Debtor's plan is his best efforts and whether the Debtor is further failing to disclose assets. This then leads to concerns over the Debtor failing to disclose all assets, which is the basis of the Trustee's seventh objection. It appears that the Debtor has assets, namely the life insurance policy, retirement plans, and vehicles, that he fails to disclose. Not only does the failure to list assets and exemptions for said assets raise issues over whether the Debtor can pass the liquidation analysis of 11 U.S.C. § 1325(a)(4), the failure to fully disclose all assets raise serious concerns over whether the plan and schedules is a true representation of the Debtor's reality.

Furthermore, these concerns are further exasperated by the Trustee's argument that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan proposes to pay a 0% dividend to unsecured claims, which total $0.00, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $4,138.82. The plan only provides for plan payments of $3,649.23. Thus, the court may not approve the plan. FN.1.

FN.1. The court also notes that on June 10, 2015, U.S. Bank, N.A. filed its own Objection to Confirmation. Dckt. 35. No notice of the objection or hearing was provided. It appears that this pleading may have been in response to the Trustee's objection, as opposed to be a stand alone objection. The Objection asserts that the proposed Plan fails to provide for curing an arrearage of $72,306.60 on the U.S. Bank, N.A. Claim. See Proof of Claim No. 1 filed by U.S. Bank, N.A. on May 19, 2015, which states such an arrearage as part of the Bank's claim. The arrearage amount stated in the plan is slightly lower, $66,161.00. To pay the higher amount, the arrearage dividend would have to be increased by $102.43 a month for the sixty months of the plan. No computation is provided by the Trustee or Debtor stating that such an increase is feasible with the current plan payment of $3,649.23.

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

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

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

25. 14-26385-E-13 PATRICIA SIMS **MOTION TO MODIFY PLAN**
HAW-2 Helga White **4-16-15 [42]**

APPEARANCE OF COUNSEL FOR DEBTOR NOT REQUIRED IF COURT HAS CORRECTLY STATED PLAN AMENDMENT

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2015. By the court's calculation, 60 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.

Patricia Sims ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 16, 2015. Dckt. 42.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 2, 2015. Dckt. 47. The Trustee objects on the following grounds:

1. Debtor incorrectly states in Section 6.1 that she will make payments totaling $19,920.00 between the period of August, 2014, through March 30, 2015. The correct period for this total

is July, 2014, through March, 2015. Trustee has no objection to correcting this defect in the order confirming.

DEBTOR'S REPLY

The Debtor filed a reply on June 2, 2015. Dckt. 50. Debtor requests that the order approving Debtor's Second Amended Plan correct the time period in which her payments total $19,920.00, as requested by Trustee.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor concurs that the plan should state that "Between July 2014 through March 30, 2015, total payments of $19,920.00 were made." Since this is a mere scrivener's error, the Debtor can correctly state the amount paid into the plan in the order confirming.

With no other objections remaining, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed. The Debtor in the order confirming shall correct the amount paid into the plan between July 2014 and March 30, 2015 to $19,920.00.

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 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan and correcting the amount paid into the plan between July 2014 through March 30, 2015 to $19,920.00, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 15-22991-E-13 DPC-1 | PARISH HARRIGAN AND AMY BAKER Scott Johnson | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtors Plan may not be the Debtors best efforts under 11 U.S.C. § 1325(b). Debtors are below median income. At the Meeting of Creditors, Debtors admitted that Parish Harrigan is now employed. He had previously reported, in Schedule I, that he was unemployed. Debtors have failed to file supplemental Schedules I and J to reflect their current income and expenses.

   Debtors received an IRS refund for the overpayment of taxes, in

> the amount of $4,533.00. Debtors could use this additional disposable income to pay unsecured creditors each year, whereas the proposed plan seeks to pay unsecured creditors $0.00. Additionally, a tax refund of $4533.00 could be used to supplement income, and thus garner an additional $377.75 per month to be paid into the plan. The Trustee requests that Debtors turn over future tax refunds to pay into the plan as an additional payment each year.

The Trustee's objections are well-taken. The court notes that on May 22, 2015, the Debtors filed Supplemental Schedules I and J, reflecting that the Debtor has recently gained employment at Market Source. Dckt. 20. However, the Debtors do not list any income or expenses arising from the employment, for what appears to be due to the fact the Debtor has only had the job for two weeks.

Unfortunately, the Trustee's objections remain unresolved since the Supplemental Schedules do not provide information as to the wages earned by the Debtor in the new position. Without this information, the court cannot determine if the plan is in their best efforts since the plan is premised on the Debtor not having employment. It is possible that the Debtors may become an over-median debtors which would require additional plan changes. This is further exasperated by the Debtors failing to provide for the Internal Revenue Service reimbursement. It appears to the court that, while the Debtors did file Supplemental Schedules, they do not provide for updated financial information. As such, it appears that the plan is not the Debtors' best efforts. 11 U.S.C. § 1325(b).

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

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

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

27. 15-22094-E-13 DPC-1 | **RL EMERY AND AMY WARD** | **Mark Briden** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **5-20-15 [26]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 20, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor's proposed plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). While Debtor was previously receiving unemployment, at the 341 Meeting Debtor indicated that he is currently employed, and is receiving approximately $900.00 a week. This income in not listed on Schedule I. As a result, Debtor has disposable income not in the Plan. Debtors are below median income and propose a 36 month plan paying $100.00 er month with a 3% guaranteed dividend to unsecured claims.

2. The Trustee's review of the Debtor's tax return shows that the Debtors received $4,135.00 from the Internal Revenue Service and owed taxes of $2,941.00. No tax expense appears on Schedule I or J. Based on tax refunds from the 2014 tax year listed on Schedules B and C, Debtor will likely receive additional tax refunds, which should be paid into the Plan.

DISCUSSION

The Trustee's objections are well-taken. The Debtor's plan does not appear to be their best efforts. 11 U.S.C. § 1325(b). The Debtors admitted at the Meeting of Creditors that Debtor RL Emery has gained employment and is making approximately $900.00 per week. The Debtors have not filed Supplemental Schedules I and J. The court is unable to determine the feasibility or viability of the plan when the Debtors have not provided updated financial information. The recent employment of Debtor will have a direct effect on whether the plan complies with the relevant statutory provisions. Additionally, the failure of the Debtors to provide for additional tax refunds raises further concerns over whether the plan is the Debtors' best efforts and whether the plan does in fact provide for all of Debtors' disposable income.

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.

28. 15-23397-E-13 EJS-2 JASON/SANDRA PERKINS Eric Schwab

MOTION TO VALUE COLLATERAL OF FIRST U.S. COMMUNITY CREDIT UNION
5-13-15 [19]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, and Office of the United States Trustee on May 13, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of First U.S. Community Credit Union ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Jason and Sandra Perkins ("Debtor") to value the secured claim of First U.S. Community Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6547 Rogers Lane, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $575,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $598,646.00. Creditor's second deed of trust secures a claim with a balance of approximately $78,585.37. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Jason and Sandra Perkins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of First U.S. Community Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 6547 Rogers Lane, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $575,000.00 and is encumbered by senior liens securing claims in the amount of $598,646.00, which exceed the value of the Property which is subject to Creditor's lien.

29. 15-22798-E-13 DPC-2 | **PARKER/DONNA PUGH Nekesha Batty** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [34]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors may not have the ability to make payments under the proposed plan or comply with the Plan under 11 U.S.C. § 1325 (a) (6). In Class 1 of the Plan, Debtors report mortgage arrears owed to Wells Fargo Home Mortgage in the amount of $20,000.00, with a monthly dividend of $344.00. On May 4, 2015, Wells Fargo Bank, N.A. filed an Objection to Confirmation, asserting that mortgage arrears totaled $71,972.88. Debtors may not have sufficient disposable income to pay the increased monthly dividend of $1,199.55.

2. Debtors indicated at the 341 Meeting that they have creditors not listed on Schedule D or provided for in their proposed plan. Debtors indicated that they hold an equity line on their real property and a vehicle loan for the 1004 Kia Sorrento listed on Schedule B.

3. Debtor has failed to list all income on Schedule I. The Debtors stated at the 341 Meeting that their adult daughter lives with them, and contributes money to the household. As a result, Debtor has disposable income not in the Plan.

The Trustee's objections are well-taken.

The Trustee asserts that Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor asserts $71,972.88 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.

As to the Trustee's remaining objections, the court is concerned that the Debtors have not truthfully and accurately provided the court and the parties information as to the actual financial reality of the Debtors. The failure of the Debtors to list secured creditors or to provide for them in the plan raises concerns over whether the plan is feasible when all of the Debtors' liabilities are not provided treatment under the plan. The failure to fully disclose all debts raise concerns that the plan is not the Debtors' best efforts.

Furthermore, based on the representation at the Meeting of Creditors, it appears that the Debtors did not disclose additional income from their adult daughter. 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.

By the Debtors not fully disclosing all income, the Debtors' plan is not their 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.

30. 15-22798-E-13 RCO-1 PARKER/DONNA PUGH Nekesah Batty

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 5-4-15 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on May 4, 2015. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank ("Creditor") opposes confirmation of the Plan on the basis that the plan does not provide for the full amount of the pre-petition arrears of the Creditor.

The Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $71,972.88 in pre-petition arrearages. The Plan does not propose to cure these arrearages and only provides for pre-petition arrearages of $20,000.00. 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. 15-22998-E-13 DPC-1 | **TSION GETACHEW**
D. Randall Ensminger | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
5-21-15 [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 and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor has failed to list all income on Schedule I. As a result, Debtor has disposable income not included in the Plan. On April 30, 2015, the Trustee received Debtor's 2012 and 2013 tax returns, showing a return of $2,869.00 and $2,544.00, respectively. At the 341 Meeting held on May 14, 2014, Debtor further indicated a 2014 tax refund of approximately $4,500.00. None of Debtor's refunds have been disclosed on Schedule I.

2. Debtor's proposed plan may not be her best efforts, required under 11 U.S.C. § 1325(b). While Debtor initially indicated on Form 22C-1 that she is a household of four, Debtor stated at the 341 Meeting that her household size is three. Furthermore, Debtor's mother, as one of the three in Debtor's household, has recently retired and will be able to cover her own expenses. Debtor's gross income of $89,676.00 is over the average median income of $68,917.00 for a household of three in a case filed on April 14, 2015. Trustee also contends that Debtor is deducting $250.00 for an auto payment in both the Plan and on Schedule J. Because Debtor is counting this expense twice, she should have an extra $250.00 to put towards the Plan.

3. The Debtor's proposed plan is dependent on a Motion to Value the Secured Claim of Bank of America, N.A. However, no Motion to Value has been filed.

DISCUSSION

The Trustee's objections are well-taken.

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

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

The Plan proposes to pay a 0% dividend to unsecured claims, which total $0.00. However, at the Meeting of Creditors, the Debtor admitted that she received around $4,500 in tax refunds which was not disclosed on her Schedule I. Furthermore, the Debtor received tax refunds for previous years which the Debtor did not disclose in her schedules nor provide for in the plan. Thus, the court may not approve the plan as it appears that there is additional income that should be committed to the plan.

The Trustee's second objection arises due to what appears to be false representations made by the Debtor in her schedules and Form 22C-1. Namely, the Debtor inaccurately said that she has a household of 4 rather than 3 and failed to disclose that her mother who lives with her will be able to support her own expenses now. Additionally, the Debtor appears to be "double counting" her auto payment in the plan and Schedule J. The failure of the Debtor to accurately disclose her household and expenses raise serious questions over whether the proposed plan is the Debtor's best efforts and whether the information provided by the Debtor is a true and accurate representation of the Debtor's financial reality. Therefore, the Trustee's objection is sustained.

Lastly, the Trustee's final objection concerns the fact the proposed plan relies on a Motion to Value the Collateral of Bank of America, N.A. A review

of the docket shows that the Debtor has filed a Motion to Value set for hearing on June 30, 2015. Dckt. 16. While the Motion, if granted, would resolve this objection, the Trustee's remaining objections remain sustained.

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

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

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

32. 15-24309-E-13 KAREN PACOL **MOTION TO EXTEND AUTOMATIC STAY**
CAH-2 **O.S.T.**
6-5-15 [18]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2015. By the court's calculation, 11 days' notice was provided.

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

The Motion to Extend the Automatic Stay is granted.

Karen Pacol ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-23000) was dismissed on April 3, 2015, after Debtor failed to cure the default. *See* Order, Bankr. E.D. Cal. No. 13-23000, Dckt. 50, April 3,2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the previous case was dismissed because the Debtor had to fix her vehicle due to unexpected mechanical issues. The cost of the repair was $1,500.00 which caused her to fall behind in the payments. The Debtor states that her non-filing spouse is now once again leaving with her and helping with household expenses. The Debtor states that she does not expect any further mechanical expenses and, with the contributions of her non-filing spouse, will have sufficient funds..

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.