UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 24, 2014 at 3:00 p.m.

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1. 13-22901-E-13 VICTOR/SANDRA GARCIA — CONTINUED MOTION TO MODIFY PLAN
PGM-5 Peter Macaluso — 5-5-14 [106]

CONT. FROM 6-10-14

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 May 5, 2014. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The modified plan is not proposed in good faith, 11 U.S.C. § 1325(a)(3). The Debtor initially proposed a plan paying $500.00 per month. No domestic support obligation appeared on Schedule I or J. The Trustee objected that the plan was not the Debtor's best effort, among other reasons, which was sustained. The Debtor subsequently amended the plan and declared that they had a domestic support obligation that ended in 13

months. The Debtors confirmed a plan that incorporated an increased payment based on this detail. The Debtors now declare they were unaware that their payment needed to increase, so they continued making the same payment. Debtors state their domestic support obligation is still ongoing and are uncertain when it will end.

Trustee argues that the Debtor now proposes to defer the payment increase called for by the confirmed plan without providing the Court evidence of current pay- such as a copy of current pay stubs - and without proving specific details as to the domestic support obligation to the Court. The Trustee requests pay stubs from both Debtors.

DEBTOR'S RESPONSE

Debtors respond, stating that the last two pay stubs were provided to the Trustee on June 3, 2014. Debtors request more time to allow the Trustee to review the pay stubs and provide additional documentation to the Trustee if needed.

As the Debtors have just recently provided the pay stubs to the Trustee, the court allowed a brief continuance for the Objection to Confirmation to June 24, 2014.

TRUSTEE'S REPLY

The Trustee received the Debtors' pay stubs as requested. Trustee states that while the pay stubs support the present budget and continue to have a deduction for child support, there is still no indication as to when the Domestic Support Obligation will end. The Debtor's prior plan proposed to increase the payments once the obligation ended; now, the Debtor disclaims any knowledge as to when the obligations will end.

JUNE 24, 2014 HEARING

Based on the failure to provide an end date for the Domestic Support Obligation payment, the modified plan does not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied without prejudice.

2. 14-23504-E-13 DPC-1 SHERMAN/MAXINE THOMPSON Scott Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 5-21-14 [31]

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, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that he was unable to conduct the First Meeting of Creditors as to Sherman Thompson on May 15, 2014. Maxine Thompson stated at the meeting that Mr. Thompson has had an onset of dementia. Trustee states he is unsure if Mr. Thompson is eligible for relief within Chapter 13 and that the meeting was continued to July 3, 2014.

The Trustee also argues that Debtors' plan relies on a pending motion to value, which is set for hearing June 3, 2014. The court having granted the motion, the Trustee's objection on this ground is overruled.

Lastly, the Trustee argues that the plan does not work

mathematically. The plan calls for $27,000.00 in total plan payments, at the rate of $450.00 per months for 60 months. The plan proposes to pay $2,800.00 in attorney fees, $6,379.87@ 4.25% to Safe Credit Union in Class 2A and a total of $15,266.00 to the Class 5 creditors. Franchise Tax Board was scheduled to be paid $353.33 and the Internal Revenue Service was scheduled to be paid $14,913.00. However, the Internal Revenue Service filed a claim on April 24, 2014, which lists the priority portion of the claim for $29,249.00; or $14,336.00 higher than the amount scheduled. The Debtor cannot make the payments and comply with the plan and the plan does not comply with applicable law. 11 U.S.C. § 1325(a)(1) & (6).

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

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

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

3. 14-24505-E-13 CHRISTINE DOUGLAS
FHS-1 Frederick Schill

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. AND ROBERT D. AND MARY JANE JEFFORDS
5-13-14 [14]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2014. By the court's calculation, 42 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.

Debtor Christine Douglas ("Debtor") seeks to value the secured claims of Bank of America, N.A. holding the second deed of trust and Robert and Mary Jane Jeffords, Trustees, holding a third deed of trust on the property commonly known as 5948 Selby Lane, Paradise, California.

However, the Motion on its face identifies the creditor as being Bank of America, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Bank of America, N.A. at several locations, including at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve any of the addresses by **certified mail** to an officer as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply. The court notes that Bank of America, N.A. was served by certified mail to CT Corporation System, but this does not satisfy the requirements under Federal Rule of Bankruptcy Procedure 7004(h).

Additionally, Federal Rule of Bankruptcy Procedure 9014 does not

incorporate Rules 9018 or 9020 for contested matters. The Movant have improperly attempted to join two motions to value collateral for two separate creditors.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate – proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. The Motion is denied for this independent ground.

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

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

4. 14-20006-E-13 RYAN/MEGAN ROSTRON — MOTION TO CONFIRM PLAN
SJS-1 Scott Johnston — 5-12-14 [30]

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 May 12, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

The Chapter 13 Trustee opposes the motion on the basis that Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors amended plan calls for total payments of $3,375.00 through April 2014, then $400.00 per month for the remainder of the 60 month plan. While Debtors Declaration sets forth changes in the Debtors income and expenses since moving from California to Indiana, Trustee states that no amended Schedules I and J have been filed to date. Debtors Exhibit E contains two pay stubs for Megan Rostron showing pay periods ending 3-22-14 and 4-5-14, which appear to indicate hourly wages of about $16.00 per hour. The Exhibit also contains two copies of the same pay stub for Ryan Rostron for a pay period from 3-16-14 through 3-29-14, which indicates hourly wages of $12.09. Since Debtors income and expenses have changed so dramatically due to new employment and living in a different state, the Trustee requests amended schedules be filed with the Court to accurately reflect the Debtors current finances.

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.

5. 14-22409-E-13 ROBERT/MARY LYTLE — MOTION TO CONFIRM PLAN
LBG-2 Lucas Garcia — 4-28-14 [27]

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 28, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

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

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

The Chapter 13 Trustee opposes the motion on the basis that the plan is not the Debtors' best effort. The Debtor is under the median income and proposes plan payments of $382.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor filed his original Schedule J on March 10, 2014, which failed to reflect an expense of $535.79 for the Debtor's 2007 Toyota Tundra listed in Class 4 of the Plan. Trustee states the Debtor filed an amended Schedule J on April 25, 2014, decreased the following expenses to account for the $535.79 auto payment:

Food Expense was $300.00, Now $210.00, Difference of $90.00
Medical/ Dental was $2,400.00, Now $2,100.00, Difference of $300.00
Transportation was $325.00, Now $200.00, Difference of $125.00
Entertainment was $100.00, Now $50.00, Difference of $50.00

The Debtor filed a second amended Schedule J on May 27,2014, in which the only change made was to the auto payment, which was originally $535.79 and now the payment has changed to $499.08, without any explanation of the change. The Debtor's monthly projected disposable income totals $426.12 and the Debtor is proposing plan payments of $382.00 with a 0% dividend to unsecured creditors. Absent specific convincing evidence of each expense, such as six months of bills and bank statements, the Trustee opposes confirmation. The Debtor previously stated under penalty of perjury that the expenses were higher and has not explained whether the prior testimony was mistaken or false, or whether events have occurred that have changed the expenses for the foreseeable future.

The expenses filed by Debtors do not appear to be realistic or accurate. Rather than an accurate statement of expenses, this appears to be a fabrication to support the payments under the plan for the vehicle payment. (What this court has commonly called a "Liar Declaration".)

Therefore, the motion is denied.

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.

6. 14-22510-E-13 CAH-2 ALFRED/MONICA SALAZAR Aaron Koenig

MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE 5-13-14 [42]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 13, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Carmax Auto Finance, "Creditor" is denied without prejudice.

The Motion filed by Alfred and Monica Salazar, "Debtor", to value the secured claim of Carmax Auto Finance, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Dodge Durango, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $5,825 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).

However, Debtor served Carmax Auto Finance at 225 Chastain Meadows Court, Kennesaw, Georgia, which does not appear at the California Secretary of State's database. The database lists several active corporations and limited liability companies with the term "Carmax," such as Carmax Business Services, LLC with a Richmond, Virginia address or Carmax Auto Superstores California, LLC with a Richmond, Virginia address. (The California Title

Certificate attached to the claim lists Carmax Business Services, LLC as the creditor having a lien on the vehicle. Proof of Claim No. 3.)

The court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. 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.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Alfred and Monica Salazar, "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 denied without prejudice.

7. 14-22510-E-13 ALFRED/MONICA SALAZAR — MOTION TO CONFIRM PLAN
CAH-1 Aaron Koenig — 4-29-14 [34]

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 29, 2014. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. However, the court has denied the Debtors' Motion to Value the Secured Claim of Carmax Auto Finance. Therefore, the plan cannot be confirmed.

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.

8. 13-35413-E-13 ROBERT JEFFREY — MOTION TO CONFIRM PLAN
RJ-8 Pro Se — 5-5-14 [93]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative

ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 50 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.

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

TRUSTEE'S OBJECTION

The Chapter 13 Trustee opposes the motion on the basis that the proposed plan appears to be overpaid. Trustee states the Debtor's prior Plan filed on February 20, 2014 called for plan payments of $3,323.00 for 60 months, beginning 1 month after the case was filed on December 5, 2013. The Debtor has paid $17,862.00 into the Plan to date. The Debtor's amended Plan filed on May 5, 2014 calls for payments of $2,265.00 for 60 months, beginning 1 month after the case was filed on December 5, 2013. Based on the proposed amended Plan, the Debtor has created an "appearance" of over payment of the Plan by $8,802.00 and the Debtor would not have to make another payment into the Plan for approximately 4 months.

The Trustee also argues that the Debtor listed Solano County property taxes in Class 2 of the Plan. No collateral description was given, although they gave two different account numbers on Schedule D and the Debtor has four different real properties on Schedule A. The creditor filed Proof of Claim No. 2 on December 16, 2013, for $9,116.46, the Debtor filed an amended secured claim on February 28, 2014 for $6,752.00, the Creditor filed an amended secured claim in the amount of $10,736.41 on March 17, 2014; and then another amended secured claim on May 12, 2014 in the amount of $7,346.35. Trustee states that the Debtor may not be able to amend the claim as they can only file a claim if no claim was timely filed.

CREDITOR'S OBJECTION

Creditor Wells Fargo Bank, N.A. ("Creditor") holding a second and third deed of trust on the real property commonly known as 1176 Mahogany Court, Fairfield, California, opposes the motion on the basis that the

claims have not been properly scheduled and that if they were, Debtor cannot feasibly compete the plan as proposed. Creditor states that the terms of the Agreements secured by the Second and Third Deeds of Trust, include conversion from interest only payments to principal and interest payments at the End of Draw period on July 17, 2014.

Based on the foregoing, 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.

9. 13-35314-E-13 BORIS/ZINAIDA MURZAK MOTION TO CONFIRM PLAN
MS-3 Mark Shmorgan 5-10-14 [70]

Final Ruling: No appearance at the June 24, 2014 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 10, 2014. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 10, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

10. 14-23416-E-13 WW-1 — MARIO/CHRISTINE BORREGO — Mark Wolff — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE — 6-10-14 [28]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Capital One Auto Finance, "Creditor" is continued to xxxx.

The Motion filed by Mario and Christine Borrego, "Debtor," to value the secured claim of Capital One Auto Finance, "Creditor," is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Corolla, VIN ending in 45692, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $8,762.00 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).

OPPOSITION

Creditor filed opposition to the motion, asserting that according to the NADA Used Car Guide, the retail value of the Vehicle is $12,625.00. In the alternative, Creditor requests the Debtors' cooperation to make the Vehicle available for appraisal or other expert valuation.

DISCUSSION

Creditor has not properly authenticated the *N.A.D.A. Official Used Car Guide* exhibit in order for the court to consider it as evidence. However, the motion having been brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) the court will set the final hearing to allow the parties to obtain appraisals of the Vehicle and file their final hearing pleadings.

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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to xxxx.

11. 14-23416-E-13 DPC-1 MARIO/CHRISTINE BORREGO Mark Wolff

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 5-21-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to ----------.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value for Capital One Auto Finance, which is set to be heard the same date as this Objection.

The court having continued the Motion to Value, the court continues the hearing on the objection by Trustee.

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 hearing on the Objection to confirmation the Plan is continue to ----------.

12. 14-23416-E-13 MRG-1 | **MARIO/CHRISTINE BORREGO** **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE** **4-15-14 [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, Chapter 13 Trustee, and Office of the United States Trustee on April 15, 2014. By the court's calculation, 70 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to ----------.

Capital One Auto Finance opposes confirmation of the Plan on the basis that Debtor has provided for its claim in the amount of $8,762.00 but had not filed a motion to value pursuant to 11 U.S.C. § 506(a). Creditor argues the full amount of its claim, $13,787.72 should be provided for in the plan.

On June 10, 2014, Debtor filed a Motion to Value the secured claim of Capital One Auto Finance.

The court having continued the Motion to Value, the court continues the hearing on the objection by Creditor.

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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to confirmation the Plan is continued to ----------.

13. 14-24616-E-13 JGD-1 | **NICOLE GOLDEN AND STEPHEN ALTER** | **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK**
John Downing | **6-9-14 [24]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, "Creditor," is denied without prejudice.

The Motion to Value filed by Nicole Golden and Stephen Alter, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5407 Caledonia Circle, Camelian Bay, California, "Property." Debtor seeks to value the Property at a fair market value of $450,000 as of the petition filing date.

However, Debtor names "Wells Fargo Bank" as the Creditor with the secured claim for the court to value. The California Secretary lists the two active entities authorized to do business in the state of California with the words "Wells Fargo Bank" in their names: Wells Fargo Bank LTD and Wells

Fargo Bank, National Association. http://kepler.sos.ca.gov/. The FDIC website, there are five federally insured financial institutions listed with the words "Wells Fargo Bank" in their names. http://research.fdic.gov/bankfind/.

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. The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

14. 10-39217-E-13 CK-6 STEPHEN/ELIZABETH DICKSON Catherine King CONTINUED MOTION TO MODIFY PLAN 4-4-14 [93]

Final Ruling: No appearance at the June 14, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 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 Trustee having filed an opposition, 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 for the Motion to Confirm the Modified Plan to 10:30 a.m. on June 26, 2014.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that there has been no substitution of parties or suggestion of death filed by Debtor.

Additionally, the Trustee states that there is no current statement of income and statement of expenses on file. According to the Trustee's records, the most current statement of income was filed on 5-17-11, Dckt. 83, and the most current statement of expenses was filed on 5-18-11, Dckt. 84.

The Trustee also argues that the order confirming plan, Dckt. 87, reflects attorney fees $726.00 paid prior to filing and an amount of $2,774.00 to be paid through the plan. The proposed plan lists attorney fees as $1,000.00 paid prior to filing, and an amount of $2,226.00 to be paid through the plan.

Lastly, Trustee states that Debtor's modified plan proposes to reduce the commitment period from 60 months to 45 months. However, Trustee argues that Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Form B22C, indicates Debtors are above median income and the commitment period is 5 years. The Trustee has objected to the proposed loan modification.

The court having ordered Wells Fargo Bank, N.A. to appear on June 24, 2014, the court continues the Motion to Confirm to be heard in conjunction with the hearing.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Chapter 13 Plan is continued to 10:30 a.m. on June 26, 2014.

15. 11-24420-E-13 FRANK SCHRODEK AND JOANNE DE LA TORRE **MOTION TO SELL**
PGM-3 **Peter Macaluso** **4-8-14 [74]**

DUE TO THE INABILITY GROUNDS STATED BY DEBTOR THE COURT SHALL CONTINUE THE HEARING TO JULY 22, 2014
NO APPEARANCE OF THE DEBTORS REQUIRED FOR THE JUNE 24, 2014 HEARING REQUIRED

APPEARANCE OF COUNSEL FOR THE DEBTORS REQUIRED FOR THE JUNE 24, 2014 HEARING

CONT. FROM 5-20-14

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 28 days' notice was provided.

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

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to continue the hearing to July 22, 2014.

JUNE 24, 2014 HEARING

As demonstrated by the Response, after consulting counsel the Debtors sold the Peterbilt Truck without court authorization and then diverted the proceeds because that is what they "wanted to do" or believed that it is what they "had to do." The Response is short on any legally sustainable reason or true necessity. As discussed, if believed, then the Debtors have been falsely living in a Chapter 13 Plan for which they had no ability to fund the plan and maintain a basic, habitable standard of living.

The Debtors first confirmed a Plan in this case on April 17, 2011. Order, Dckt. 22. No objection was made to the Original Plan (Dckt. 5) and no hearing on confirmation was required. The Debtors obtained confirmation, in part, based upon the financial information they provided under penalty of perjury on their Schedules. Dckt. 1. These included stating on Schedules I that they had monthly income of $4,321.47. This was comprised on $2,083.47 gross income from the Debtor's truck driving business and $2,238.00 in monthly Social Security payments. *Id.* at 34. For expenses, the Debtors stated under penalty of perjury that their expenses were ($3,941.47) a month, which would then leave $380.00 a month in net income with which to fund a Chapter 13 Plan. *Id.* at 35. For the truck driving business, the Debtors listed ($1,250.00) a month in expenses.

This Chapter 13 Plan was reviewed by the predecessor Chapter 13 Trustee to the current Trustee in February 2011. At that time, the court had not identified a practice in this District of what has become called "Liar Declarations." This was (and in some limited circumstances is still attempted) a practice by with debtors and debtor's counsel would just make up expense numbers to justify the plan, with no relation to the actual, necessary, expenses for the debtors to maintain a safe, habitable, minimal standard of living, and not one of abject poverty (such as without a stove on which to cook any meals).

In looking at Schedule J, some key expense items are either "missing" or "understated." These include (1) no expenses for business insurance, (2) no expenses for vehicle insurance, (3) no expenses for personal vehicle expenses (Schedule B listing three personal vehicles and a fifth wheel), (4) no state or federal self-employment taxes, (5) no state or federal income taxes, and (6) $59.09 a month medical expenses for Debtors in their 70's and one who is chronically ill. Rather than being truthful and accurate under penalty of perjury, it appears that Schedule J consists of "plug-in numbers" to justify a monthly plan payment of $380.00. This monthly plan payment was used to pay Debtors' counsel's fees, the secured claim on the Truck, and the Debtor's delinquent income taxes. Original Plan, Dckt. 5.

The Debtors inevitably stumbled, and on May 30, 2011, (a mere one month after the Order confirming the Original Plan was filed) the Debtor filed their First Modified Plan and motion to confirm. Dckts. 32 and 33, respectively. The Motion to Confirm the First Modified Plan merely directs the Chapter 13 Trustee, creditors, and the court to read a declaration to determine why the Debtors could not perform under the just confirmed Original Plan. The Modified Plan required that defaulted payments would be

forgiven and $380.00 a month payments would resume in June 2011 and be made through the remainder of the sixty month plan. In his declaration in Support of the First Amended Plan, Debtor Frank Schrodek fails to explain what defaults occurred, why they occurred, why they cannot be cured, and why further defaults will not occur. Declaration, Dckt. 35. Rather, it merely states, "The plan has been modified to provide fo rthe 'correct' Class 2 creditor."

A review of the First Modified Plan does change the name of the Class 2 creditor to Shelter Financial/P-Fund. Dckt. 32. The First Modified Plan makes no reference to any defaults which are waived. The Order confirming the First Modified Plan does not contain any amendments to provide for waiving any defaulted plan payments. Dckt. 39.

The Debtors then appeared to "perform" under the First Modified Chapter 13 Plan until they filed a Second Modified Plan on April 8, 2014, and Motion to Confirm Second Modified Plan. Dckts. 72 and 68, respectively. The Motion to Confirm the Second Modified Plan states the following grounds,

A. Due to a change in circumstances since the April 17, 2011 confirmation of the First Modified Plan, the Debtors cannot complete the Plan for the reasons stated in the Declaration in support of the Motion.

B. It quotes the Declaration, stating that the Debtor had shoulder surgery and wasn't *able to work as much*, which caused us to fall behind on the plan payments.

C. The Debtors seek to waive $840.00 in defaulted plan payments, and then begin making $100.00 payments for a period of 24 months.

D. The Debtors have provided updated Schedules I and J to document their current finances.

E. The terms of the Second Modified Plan provides for creditor "P-Fund/NorCal Kenworth" which is secured by the 2004 Peterbilt truck to be paid in full from a sale of the truck.

Motion, Dckt. 68.

Both Debtors signed the Declaration of the Motion to Confirm the Second Modified Plan, stating under penalty of perjury,

A. Several changes in the Debtors' finances have arisen since they confirmed the First Modified Plan.

B. "I" [presumably Frank Schrodek] had shoulder surgery and wasn't able to work as much, "which caused us to fall behind in our payment."

C. No testimony is provided as to why the monthly payments should be reduced from $380.00 a month to $100.00 a month.

D. The Debtors state that under the confirmed Second Modified

> Plan they will [in the future after confirmation] sell the 2004 Peterbilt truck to pay the claim secured by that asset, and "will be keeping the remaining amount."

Declaration, Dckt. 70.

The court denied confirmation of the Second Modified Plan. May 24, 2014 filed Order, Dckt. 98; Civil Minutes, Dckt. 96.

A copy of Amended Schedule I to show the current income of the Debtors is provided as Exhibit 2, Dckt. 71. The Debtors state that they current income is $2,329.00, limited only to $2,329.00 in Social Security benefits. No other retirement or pension income is stated. It appears that this is once again a "Liar Declaration," with reasonable and necessary expenses omitted or understated include: (1) ($375.00) for food and housekeeping; (2) ($59.00) for medical and dental; (3) ($200.00) transportation; ($0.00) for vehicle insurance; and ($11.00) for recreation. These appear to be plug-in numbers" to create the illusion of expenses. In light of the Debtor's testimony that their stove did not work and these expenses, it appears that the Debtors and counsel are sustaining a sub-subsistence environment for the Debtors, and the Co-Debtor who is chronically ill. This misstatement of expenses undercuts the credibility of counsel and the Debtors in trying to justify their failure to comply with the minimal requirements of being a debtor and obtaining the extraordinary relief available under the Bankruptcy Code.

The court finds the Debtor's response not sufficient, and not credible to the extent that the Debtors and counsel believe that they are trying to portray the Debtors' conduct as merely a "mistake." Rather, they have shown that the Debtors, having the assistance of counsel, chose to violate the Bankruptcy Code, do whatever they wanted, take as much money as they wanted, and then try to abuse the Bankruptcy Code to achieve their improper ends.

The Debtor's lack to credibility and honesty is further shown by contending that they use the sales proceeds to buy the $1,000.00 TV and stove. The Debtors had sufficient funds, other than the sales proceeds to buy these items. Why should the court believe that when the Debtors commingled the funds in Credit Union accounts it was the sales proceeds used to buy these items, rather than the Debtors using monies which would not be such a blatant violation of the Bankruptcy Code.

On Original Schedule C the Debtors claimed a $232.00 exemption in the Truck. Dckt. 1. at 22. On May 6, 2014, the Debtors filed an Amended Schedule C, under penalty of perjury, in which they tried to claim a $10,000.00 exemption in the 2004 Peterbilt Truck. However, they no longer owned the Truck, it having been sold and the Estate having the proceeds from the sale of non-exempt assets. Amended Schedule C falsely identifies that there is a 2004 Peterbilt Truck in which an exemption may be claimed. Exhibit 1, Dckt. 100, Credit Union April 2014 Statement showing that the estate had received $15,000.00 for the sale of the Truck by April 17, 2014.

This filing of the "Amended" Schedule C clearly demonstrates that neither the Debtors nor counsel appreciate the significance of making statements under penalty of perjury in this bankruptcy case. Rather, all

three continue in their pursuit of saying anything and filing "Liar Declarations" to achieve their goals – without regard to the Bankruptcy Code.

The court notes that in this bankruptcy case the Debtors have done little other than pay the mortgage on the house they want to retain, pay their delinquent income taxes, and pay their attorney for assisting them in this case. No monies have been paid to creditors holding general unsecured claim or any creditors who would not have nondischargable claims. The court not retroactively approving the sale, which may well doom any plan in this case, will be of little moment to the Debtors. If the case were dismissed and they had to truthfully and honestly provide information in a new bankruptcy case and in good faith perform a bona fide plan, it would not be any different then if they were not in bankruptcy.

That could well change if the U.S. Trustee, the Chapter 13 Trustee, or creditors should believe that the case be converted and a Chapter 7 Trustee recover the assets for the benefit of the estate from the buyer, creditor improperly paid (there being no confirmed plan providing for the creditor to be paid from a liquidation of asserts). Another "worst case" scenario for the Debtors could be that the U.S. Trustee, Chapter 13 Trustee, creditors, or a Chapter 7 Trustee determined that proceedings should be commenced to have the Debtors be denied a discharge.

No good faith, bona fide grounds have been presented for this court to retroactively issue an order approving the improper, unauthorized sale of assets by the Debtors in this bankruptcy case.

June 5 ,2014 Declaration

By Order filed on May 23, 2014, (Deck. 95) the court required the Debtors to address their failure to obtain the necessary orders to sell assets of the estate, turn the sales proceeds over to the Chapter 13 Trustee, account for the monies, and explain why they have failed to comply with this basic requirement for the sale of assets. The Declaration of Debtor Frank Schrodek was filed a declaration on June 5, 2014, (Dckt. 99). In it he states the following under penalty of perjury:

A. He has worked until the age of 75, quitting at that time only due to injury.

B. The Debtors have Social Security and a $77.00 pension from Mr. Schrodek's work as a teamster for 16 years. (Mr. Schrokek does not address income or retirement from the 59 prior years.)

C. On April 8, 2014, Debtor went to his attorney's office to sign the documents for the sale of a 2004 Peterbilt truck ("Truck"), which is addressed in detail in this Ruling below.

D. The Debtor had not worked since December 2013.

E. He had found a buyer for the Truck who would pay $15,000.00, when other possible buyers (not stating what he did to properly market the Truck for sale) had offered only

$5,000.00.

F. The Debtor felt that he was lucky to have that sale and "payoff" the Truck, and then use the monies to pay for household expenses (to help care for his ailing wife).

G. The Debtor used a portion of the proceeds to purchase a new stove (unstated amount), as the one they had was "inoperable" (with the Debtor failing to state how long the stove have been "inoperable").

H. Mrs. Schrodek was in constant pain and the purchase of a new stove "made her happy."

I. The Debtor also used the money (unstated amount) to buy a "new variable speed lawn mover because our grass was over four feet high."

J. Because it was their thirtieth anniversary, the Debtor bought his wife a new TV for "just over $1,000.00." Due to pain, the Debtor testifies that his wife is bedridden.

K. The Debtor also paid creditors: $150.00 for storage, $45.00 for trip permits to get the Truck out of state, $15.00 for title, $447.00 for fuel, $305.00 for an oil change, $50.00 for repairs to the Truck, $6,226.09 to P-Fund for its claim secured by the Truck, and $448.00 for advertising to sell the Truck (without describing what advertising was done or to whom it was paid).

L. The Debtors have only $2,025.00 of the $15,000.00 in sales proceeds remaining, which is deposited in their bank account.

M. The Debtor states that they have an additional $1,300.00 in repairs to make to another car.

N. The Debtor states that he will send the remaining $2,025.00 to the Chapter 13 Trustee.

The Debtors have also provided copies of their April and May 2014 Credit Union account statements. Dckt. 100. The April 2014 Statement (pgs: 2-7) lists for Account (0) [savings] a starting balance of $3,000.75, deposits of $16,350.50, withdrawals of $10,140.00, and an ending balance of $9,211.40.

The withdrawals from Account (0) savings were ($2,300.00) on April 11, 2014, (prior to April 17, 2014 deposit of the $15,000.00 from selling the Truck); ($690.00) on April 12, 2014; ($1,000.00) on April 23, 2014; ($50.00) on April 23, 2014; and $100.00 on April 23, 2014. In addition, ($6,000.00) was transferred to Account (9) [checking].

For Account (9) [checking] the April Statement lists a starting balance of $411.18, deposits of $9,527.04, withdrawals of ($9,074.29), and an ending balance of $863.94.

For Account (9) [checking], in addition to checks written and electronic funds transfers ("EFT"), three was a $4,000.00 withdrawal on April 21, 2014, for which no explanation was handwritten on the Exhibit.

The May 2014 Statement (pgs: 8-15) lists for Account (0) [savings] a starting balance of $9,211.40, deposits of $350.00, withdrawals of $5,060.00, and an ending balance of $4,501.67.

The withdrawals from Account (0) savings were ($1,000.00) on May 23, 2014. In addition, ($4,160.00) was transferred to Account (9) [checking].

For Account (9) [checking] the April Statement lists a starting balance of $863.94, deposits of $7,000.29, withdrawals of ($7,900.11), and an ending balance of $963.23.

For Account (9) [checking], in addition to checks written and electronic funds transfers ("EFT"), there were no other unexplained (handwritten note on exhibit) large withdrawals.

June 19, 2014 Supplemental Declaration

Debtor filed a Supplemental Declaration on June 20, 2014 (Dckt. 102) stating that on June 19, 2014 he drove his wife (the co-Debtor) to the hospital emergency room. He further states that at the earliest she would not be discharged until June 23, 2014, and even in that event, she would be unable to attend the June 24, 2014 for medical reasons. This is in response to the court's order for both Debtors to appear at the June 24, 2014 hearing.

PRIOR HEARING

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell their 2004 Peter Built truck. The sales price is $15,000.00 to an unidentified "bonafide buyer" who is not a party in interest.

Trustee's Opposition

The Chapter 13 Trustee opposes to the sell on the basis that Debtors have not provided any evidence of a contract for the sale, the terms of the sale, or the name of the buyer.

Moreover, Debtors propose to use the proceeds to pay off the amount owing to the creditor, approximately $7,482.07, and retain the remaining proceeds. However, Debtors have not identified the payee.

Additionally, Trustee claims that Debtors have not offered any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00. Debtors also claim $232.00 as exempt. The Trustee is concerned that Debtor may be proposing to keep non-exempt proceeds in a plan that proposes no guaranteed dividend to unsecured creditors.

Debtor's Response

Debtor responds stating that there is no written contract and that there is a cash offer for $15,000.00 to which time is critical. The Debtor states he has now amended his exemption with more than $10,000.00 in open "wild card" exemptions that can be applied to the truck. Counsel states that he has been in contact with lien holder P-Fund, Inc., formerly Shelter Financial Services, Inc. to assure receipt of title.

While the Debtor has provided argument that there is no written contract, there has been no evidence presented regarding the terms of the sale, the purchaser (and whether they are insiders). In their rush to get an order from the court, the Debtors have neglected to provide evidence to support the motion. Merely having counsel argue that everything is ok and give the Debtors the money is not sufficient. Merely saying that time is critical does not grant the Debtors and counsel exemptions from the basic pleading and evidence requirements.

Though counsel argues that the Debtors "have" amended their exemptions to claim an exemption in the proceeds of the sale, that does not make it a fact. From the court's May 4, 2014 review of the docket, no such amendment appeared of record.

SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration, stating that he sold his Peterbilt truck to Jonathan Breon for the sum of $15,000.00. Debtor states he agreed to put fuel in truck and change the oil, costing him $645.00 plus $45 permit and $15 title. Debtor states he sold the truck because he could not drive the truck in California after December 31, 2013 and he could not afford $18,000 - $20,000 to upgrade the truck to conform with California law. Debtor also states he had shoulder surgery on January 28, 2014 and he cannot go back to work yet. Debtor states he has tried to sell the truck for some time but it was difficult because it cannot be driven in California. Debtor states that it is worth more than it was sold for, but that he could not let it sit any longer because the batteries go bad and it was costing him $100 per month to store it.

DISCUSSION

The Motion filed in this case, which is rather cryptic, indicates that Debtors seek authorization for a prospective sale of the Peterbilt Truck to an unidentified buyer for $15,000.00 for unstated terms. Counsel for the Debtors expressly uses prospective language in the Motion, including,

A. "The sale is to...." (Not the sale <u>was</u> to....).

B. "The Debtors have a pending offer for $15,000.00." (Not, the Debtors received an offer of $15,000.00 and previously sold the Truck.)

C. "Debtors wish to sell the trust and pay off the creditor in full." (Not, debtors have sold the truck and have paid off the creditor in full with the proceeds already received.)

D. "The amount owed to the creditor is approximately $7,482.07."

(Not, the amount paid creditor for its secured claim from the proceeds as $7,842.07.)

Motion, Dckt. 74.

The Debtors also provided testimony under penalty of perjury in support of the Motion. They so testified under penalty of perjury,

A. "We are financing a 2004 Peter Built with P-Fund/NorCal Kenworth and are requesting permission to sell."

B. "We owe approximately $7,482.07 and are planning to sell it for $15,000.00."

Declaration dated March 17, 2014, Dckt. 76. Clearly, the Debtors have testified that the Truck has not been sold, they understand that any proposed sale must be authorized by the court, and they are requesting such authorization to that they may then subsequently sell the Truck.

However, on May 13, 2014, the Debtor Frank Schrodek provides his "Supplemental Declaration" in support of the present motion. He testifies under penalty of perjury that he did not wait for the court to authorize the sale of the Truck, but instead on April 17, 2014, chose to just sell the vehicle (without authorization). He further testifies that he sold the vehicle on April 17, 2014, because "I could not drive the truck in California After 12/31/13, as the air board won't allow any truck old [sic.] than 2005 to be driven in California." Dckt. 90.

In an apparent justification for knowingly and intentionally selling the Truck without court authorization, Mr. Schrodek states,

"I had tried to sell the truck for some time, but not being able to drive it in California, it is very hard to sell it. It is worth a lot more than what it sold for. I could not let it sit any longer because in time seals and batteries go bad. It cost me almost $600 to find a buyer out of state."

Id.

This *post hoc* justification does not ring true. The hearing on the Motion to Sell (because the Debtors hid from the court the buyer and terms of the sale in the original motion) was continued to May 20, 2014. No evidence is presented that "seals and batteries would go bad" by the time for the hearing on May 6, 2014, set by the Debtors on their Motion.

Mr. Schrodek also states that "I thought it would be OK to pay truck off [sec.] and sell it. It didn't make sense to keep it, not being able to work or to drive it. It was costing me $100/month to store the truck." *Id.* Rather than showing a good faith error, the Debtor testifies that he did what he wanted to do, "Hang the darn bankruptcy laws. I do what I want and I say what the law will be." Unfortunately for the Debtors and their Counsel, Congress wrote the Bankruptcy Code and the Federal Judges apply the law to the facts of the case.

The court remains concerned regarding the unauthorized sale of estate

property. Debtor admits that the property was sold for less than it was worth. Debtor did not offer any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00, but admit that it is worth more in his Declaration.

Conspicuously absent from the Supplemental Declaration is any testimony as to what efforts were made to engage a broker to properly market and sell the Truck. Instead, it appears that the Debtors make a favored, below market same to a person who is now identified as Jonathan Breon. If sold for less than fair market value, the Debtors have violated their fiduciary duty to the bankruptcy estate.

The Debtors proceeded to knowingly, intentionally, and willfully violate the Bankruptcy Code. The court does not know if the Debtors did so in violation of directions from their attorney or lied to him about what they were doing. Counsel’s conduct in this case causes some concern. This is not the first time he has had clients who knowingly sold assets without obtaining authorization. In once case, the debtors did so after the court expressly denied a motion for authorization to sell. (The denial was without prejudice, again because the motion and supporting evidence prepared by Counsel did not meet the minimum necessary to grant such motion.)

The court has not been presented with a legally sufficient basis for granting the Motion. The Debtors were not and are not authorized to sell the Peterbilt Truck, were not authorized to pay P-Fund proceeds from the unauthorized sale, and was not authorized to turn over property of the bankruptcy estate to Jonathan Breon.

The court ordered the Debtors to deposit with the Chapter 13 Trustee, who shall hold such monies until further order of the court, the $15,000.00 of sales proceeds on or June 6, 2014. If The Debtors, as the fiduciaries of the bankruptcy estate, cannot deposit the $15,000.00 with the Chapter 13 Trustee because P-Fund, Inc. refuses to return the unauthorized payment, the Debtors shall commence shall proceeding as appropriate to recover the unauthorized disbursement.

In addition the court ordered that Frank P. Schrodek or Joanne De La Torre appear at 3:00 p.m. on June 24, 2014, to address the failure to obtain an order of the court authorizing the sale of the Peterbilt Truck, and if either fails to appear, the court may issue corrective sanctions which may be any or all of the following for the person who fails to appear as ordered:

A. Dismissal of the Chapter 13 case as to the non-appearing party with prejudice (thereby rendering all debts in the current bankruptcy case nondischargeable in a subsequent bankruptcy case);

B. Order the payment of a $1,000.00 corrective sanction by the non-appearing party, and setting further hearing date for appearance;

C. Conversion of the case to Chapter 7 for the non-appearing party; and

D. Referral of the conduct of selling property of the estate and disbursing of proceeds thereof without obtain proper court authorization to the United States District Court for imposition of monetary punitive sanctions in the amount of not less than $15,000.00 for the each of the Debtors.

If either of the Debtors is unable to appear due to any medical conditions, a motion for relief from the personal appearance on June 24, 2014, for that Debtor must be filed and heard on or before June 10, 2014. Any such motion shall be supported by competent, admissible evidence.

If the Debtors fail to deposit the $15,000.00 of sales proceeds with the Chapter 13 Trustee by June 6, 2014, the court was prepared to determine at the June 24, 2014 hearing whether the Debtors, as the fiduciaries of the estate and under the Confirmed Chapter 13 Plan, shall also be ordered to recover possession of the Peterbilt Truck from Jonathan Breon, the identified purchaser.

The court is to also determine whether it should refer the conduct of the Debtors and Counsel for the Debtors to the United States District Court for imposition of monetary punitive sanctions in the amount of not less than $15,000.00 for the Debtors, jointly and severally, and not less than $5,000.00 to be paid by Counsel for the Debtors. The District Court can determine the extent to which Counsel was aware of the Debtors' intention to violate the Bankruptcy Code and whether the incomplete pleadings were mere "sloppy practices" or an intentional pleading act to mislead the court and cover-up the intended misconduct of the Debtors.

At this juncture, the court leaves it to the Chapter 13 Trustee, U.S. Trustee, and other parties in interest to determine if this case should continue as a Chapter 13 case, be converted to Chapter 7, be dismissed with prejudice, or dismissed without prejudice.

16. 14-20321-E-13 DWIGHT BROWN
NLE-1 W. Scott deBie

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-20-14 [19]

CONT. FROM 3-25-14

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 20, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to July 22, 2014 at 3:00 p.m.

The Chapter 13 Trustee ("Trustee") opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value Collateral. According to the Trustee, Debtor proposes to value the secured claim of ResMae Mortgage Corp in Class 2 but has not filed a Motion to Value Collateral. Accordingly, the Trustee believes that Debtor cannot make plan payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

Debtor's opposition

In his opposition, Debtor alleges that he has filed a Motion to Value Collateral on February 24, 2014. The hearing on the Motion is scheduled for March 25, 2014. According to Debtor, he delayed in filing the Motion because he was unable to determine the correct creditor due to conflicting information.

DISCUSSION

The court has denied the Debtors' Motion to Value the secured claim of "ResMae Mortgage Corporation." It appears that ResMae Mortgage Corporation has been liquidated through a Chapter 11 case in Delaware and no longer exists. See March 25, 2014 Civil Minutes for court's ruling on Motion to Value, DCN: SDB-1.

The court continued the Motion to Value for Debtor to properly identify and serve the correct Creditor.

Debtor filed an Ex Parte Motion for Examination in order to determine the creditor for the Motion to Value secured claim.

The objection is continued to 3:00 p.m. on July 22, 2014.

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 hearing on the Objection to confirmation is continued to 3:00 p.m. on July 22, 2014.

17. 14-20321-E-13 SDB-1 DWIGHT BROWN W. Scott deBie

CONTINUED MOTION TO VALUE COLLATERAL OF RESMAE MORTGAGE CORPORATION
2-24-14 [23]

CONT. FROM 3-25-14

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 24, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral 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 court's decision is to continue the hearing on the Motion to Value to 3:00 p.m. on July 22, 2014.

SERVICE ISSUES

The court has not been able to determine that service at the various addresses listed on the Proof of Service complies with Federal Rule of Bankruptcy Procedure 7004 and 9014. A search of the California Secretary of State's Business Search, and Delaware Corporation Entity Search, do not provide any results for ResMae Mortgage Corporation.

The Certificate of Services does not state how the Brea, California address used for the identified creditor. The court cannot identify how

effective service was made for this Contested Matter.

The court did find using the California Secretary of State website the following information for corporations with the word “ResMae” in their names:

A. ResMae Financial Corporation

1. Status.....Forfeited

2. Address.....6 Pointe Dr, Brea, California

3. Agent for Service.....Steve Glouberman

a. 6 Pointe Dr., Brea, California

B. ResMae Service Corporation

1. Status.....Dissolved

2. Address.....2601 Saturn St Suite 101, Brea California

3. Agent for Service.....Steven Glouberman

a. Address....1925 Century Part East Suite 500, Los Angeles, California.

http://kepler.sos.ca.gov/

The court has also looked up an entity with the name ResMae Mortgage Corporation using the Lexis Nexis data bases. The information includes the following:

A. Liquidating Trust of ResMae Mortgage Corporation

1. Chapter 11 case No. 07-10177
2. Date filed.....February 2, 2007.
3. Filing Jurisdiction.....Delaware
4. Attorney for Debtor.....Douglas D. Herrman, Wilmington, Delaware.

B. ResMae Mortgage Corporation

1. State of Incorporation.....Delaware
2. Status.....Forfeited
3. Agent for Service of Process.....CAC-Lawyers Incorporating Service, 11 E Chase Street, Baltimore, Maryland 21202-2516

C. More than 40 judgments and liens issued against ResMae Mortgage Corporation.

In conducting a general internet search (using the Bing search engine) the court identified an article in Bloomberg Businessweek which

provides the following information:

> "Bridgefield Mortgage Corporation provides mortgage services. Its services include free faxes, verification of mortgage, loan history, document request, name change, amortization schedule, insurance substitution, duplicate year-end statement, cancelled check copy, loan reanalysis, and Web payment. The company was formerly known as ResMAE Mortgage Corp. and changed its name to Bridgefield Mortgage Corporation in February 2010. The company was founded in 2001 and is based in Overland Park, Kansas. Bridgefield Mortgage Corporation is a former subsidiary of ResMAE Financial Corporation."
>
> 7101 College Boulevard
>
> Suite 1400
>
> Overland Park, KS 66210
>
> United States
> Founded in 2001
> Phone:
> 913-661-8728
>
> Founded in 2001"

http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=12072067. While the court does not take the above as credible, properly authenticated evidence, it is a thread which the Debtors could have followed in figuring out who the creditor is in this case. Bridgefield Mortgage Corporation is registered with the California Secretary of State, listing CT Corporation Service as its agent for service of process.

The court continued the hearing to allow the Debtor to name and serve the proper creditor.

On April 30, 2014, the court granted an ex parte Motion for Examination, in which the Debtor is seeking to discover the identity of the creditor.

Nothing has been filed to date. The court will continue the hearing approximately 30 days to allow Debtor to further determine the identity of the creditor.

18. 13-34624-E-13 DEBRA RANDELL **MOTION TO CONFIRM PLAN**
MWB-3 Mark Briden **5-15-14 [61]**

ATTENDANCE OF MARK BRIDEN, COUNSEL FOR THE DEBTOR REQUIRED FOR JUNE 24, 2014 HEARING
Telephonic Appearance Permitted

COUNSEL'S FAILURE TO APPEAR SHALL RESULT IN AN ORDER TO APPEAR
NO TELEPHONIC APPEARANCE PERMITTED

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 **Not** 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 15, 2014. By the court's calculation, **40** 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Local Bankruptcy Rule 3015-1(d)(1) requires that notice be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-

day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). By the court's calculation, only 40 days' notice has been provided in this case.

The motion was not properly set for hearing. The motion is denied without prejudice and the Chapter 13 Plan is not confirmed.

TRUSTEE'S OPPOSITION

Trustee argues that it appears that the Plan is not the Debtor's best effort, under 11 U.S.C. § 1325(b). The Debtor is over the median income and proposes plan payments of $2,000.00 for 4 months, then $0 for 2 months, and $2,100.00 for 54 months, with a 0% dividend to unsecured creditors. The Plan calls for $0.00 payments for the months of April and May 2014. The Debtor's Declaration states that "Due to a reverse Visa credit to my business bank account on Apri1 21, 2014, I was delinquent in my Plan payment and thereafter confirmation was denied." The Debtor made payments from January 24, 2014 to May 6, 2014, totaling $10,000.00, with $0 paid in April but $2,000.00 paid May 1, 2014 and $2,000.00 paid May 6, 2014. Trustee argues that the Debtor has not justified the failure to make the payments by stating that they had a Visa issue on April 21, 2014.

Trustee also argues that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's monthly projected disposable income on Schedule J filed March 5, 2014 reflects $2,000.00 and the Debtor is proposing to increase the plan payments to $2,100.00 beginning June 25,2014. The Debtor fails to indicate how they can increase the plan payment.

Trustee also notes that Section 6 of the Debtor's Amended Plan indicates that Debtor has a pending loan modification application with F1agstar Bank regarding her First Trust Deed on her personal residence. The Plan does not contain any language for the treatment of the creditor if a loan modification is denied. The Trustee has not received any documentation of the Debtor applying for a loan modification to date.

CREDITOR'S OPPOSITION

Flagstar Bank, FSB ("Creditor") objects to the Chapter 13 Plan filed by Debtor on the basis that the plan fails to properly provide for its claim and because its not feasible. Creditor states that Debtor's Plan fails to provide for a cure of Creditor's pre-petition claim in full and fails to provide for ongoing post-petition payments as required under the loan documents.

DISCUSSION

It appears Debtor has a fatal service defect. In addition, Debtor must cure the arrearage asserted by Creditor. 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).

Further, though the attorneys in this District (consumer working

with creditor) have worked out additional provisions to a plan which makes the loan modification and adequate protection payments part of the plan (commonly called the "Ensminger Additional Provisions for loan modification process," the Debtor has filed to use that provision. Rather, the Debtor's plan consists of no payments being made on the secured claim, no adequate protection payments made pending a determination of the loan modification, and the Debtor retaining use and possession of the house without making any payments. No provision is made to pay this claim through the Plan, so no monies have been paid by the Debtor to the Trustee.

On Original Schedule I filed in this case the Debtor's states under penalty of perjury that he has $5,000.00 a month in "wages." Dckt. 1 at 25. However, this income is from Debtor's sole proprietorship, not wages from an employer. *Id.* No withholding is provided for any taxes (income or self-employed). The Debtor also lists having $5,875.00 in additional income from "rentals." *Id.*

On Original Schedule J the Debtor states under penalty of perjury that he is paying $1,661.00 a month for his mortgage payment. *Id.* at 26. This is stated to include insurance and taxes. The Debtor lists various other expenses, which appear to be unrealistically low or not provided for when such appear reasonably necessary for a family of two persons – the Debtor and a 12 year old son. These unreasonable or unprovided for expenses include: (1) ($0.00) for water and sewer; (2) ($0.00) for home maintenance and upkeep; (3) ($350.00) for food; (4) ($0.00) for health insurance; (5) ($0.00) recreation; (6) $(0.00) for automobile insurance; (7) ($300.00) for state and federal income and self-employment taxes; and (8) ($0.00) for rental expenses.

Based on Original Schedules I and J, the Debtor has $10,875.00 in income, ($8,875.00) in expenses, and exactly $2,000.00 in Monthly Net Income to fund a Plan. *Id.* at 25-26. Of these stated expenses, ($7,283.00) are for payments the Debtor states she is making directly to the creditor.

On January 7, 2014, the Debtor filed an Amended Schedule I reducing her income to $9,400.00 a month. The amended is to reduce the rental income to $5,000.00 a month and list ($600.00) in payroll deductions.

On March 5, 2014, the Debtors filed an Second Amended Schedule I and an Amended Schedule J. Dckt. 41. Second Amended Schedule J deletes the $600.00 in withholding for taxes and re-increases the rental income to $5,875.00 a month.

Amended Schedule J now includes an automobile expense of ($275.00) a month, but is still able to maintain Net Monthly Income of $2,000.00 a month due to the income increases.

On June 5, 2014, the Debtor filed the Third Amended Schedule, stating income of $10,875.00 and Second Amended Schedule J which states expenses of ($8,775.00). Dckt. 78. By virtue of the amendments, the Debtor now shows Net Monthly Income of $2,100.00. The defects of unreasonable or non-existent allowance for reasonable and necessary expenses continues for this Debtor.

According to the Plan, the Debtor has not been paying Flag Star Bank

the $1,661.00 payment stated on the various Schedules J filed by Debtor. The payments will be made only if and when the Bank agrees to the loan modification proposed by the Debtor. This case having been filed in November 2013, there are at least seven monthly payments, totaling $11,627.00, which the Debtor has to be holding. No evidence has been presented to the court that such monies are being held by the Debtor.

This Debtor, the Plan, the financial information provided, and the prosecution of this case suffer from several major defects (including, but not limited to, the following). One is that the Debtor fails to provide for the Creditor's claim. Second, the Debtor fails to use the proper adequate protection payment alternative, and instead takes the position that bankruptcy means she can unilaterally withhold payments or make the payments she wants – irrespective of the Bankruptcy Code. Third, the Debtor has provided conflict income information and what appears to be "made as helps me win" expenses which bear no relation to reality. (The court commonly calls this type of fictitious expenses a "Liar Declaration.") On its face, the Debtor shows that she is not paying self-employment or income taxes – incurring substantial post-petition unpaid tax liability.

This is not the Debtor first foray into bankruptcy. She filed her first Chapter 13 bankruptcy case on December 12, 2010, which was dismissed on April 29, 2012. Bankr. E.D. Cal. 10-53182. The bankruptcy case was dismissed based on the Notice and Motion to Dismiss based on a $10,000.00 default in plan payments (as of the Notice date). *Id.*, Dckt. 79; Order, Dckt. 82. The Debtor did not respond to the Notice or make any attempt to modify the plan in that case.

The Debtor's second bankruptcy case was filed on October 22, 2012, and dismissed on December 2, 2013. Bankr. E.D. Cal. 12-38694. The Second Bankruptcy Case was dismissed upon motion of the Debtor when she faced the Chapter 13 Trustee's motion based on the Debtor's failure to provide copies of the 2012 tax returns. *Id.*, Dckt. 74; Order, Dckt. 78.

The Debtor was represented in both prior bankruptcy cases by the same attorney who is her attorney in the current (third) bankruptcy case.

Though experienced in bankruptcy, and having been ensconced in the protective bankruptcy cocoon since 2010, the Debtor has not been able to actually perform a Chapter 13 Plan. It appears that these defaults may well result for the "Liar Declarations" of expenses which are used to seek improper confirmation of a Chapter 13 Plan.

Because it fails to provide for the full payment of arrearage, the plan cannot be confirmed. Because the Debtor has failed to provide the court with credible financial information showing that the Plan is feasible, it cannot be confirmed.

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.

19. 11-34826-E-13 RHONDA CRAFT — AMENDED MOTION TO SELL
PGM-5 Peter Macaluso — 6-3-14 [72]

Tentative Ruling: The Motion to Sell 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)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 21, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property is granted.

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

A. 9453 Plain Oak Way, Elk Grove, California

The proposed purchaser of the Property is Donna and Hong Keow Ling and the terms of the sale are a purchase price of $263,000.00, Allowable Closing

Costs (Commission: $15,780.00, Closing Cost: $7,143.93, Relocation Assistance: $3,000.00). Net Proceeds must meet or exceed $237,076.07.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Rhonda Craft 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 Rhonda Craft, the Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Donna and Hong Keow Ling or nominee (“Buyer”), the Property commonly known as 9453 Plain Oak Way, Elk Grove, California (“Property”), on the following terms:
>
> 1. The Property shall be sold to Buyer for $265,000.00 on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 69, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. The Debtor be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Debtor ‘s agent, Lisa K. McKee.
>
> 5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a

copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

6. The Chapter 13 Debtor is authorized to receive the $3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

20. 13-20028-E-13 EJS-21 GREGORY/ELISA WYATT Eric Schwab OBJECTION TO CLAIM OF CAVALRY PORTFOLIO SERVICES, LLC, CLAIM NUMBER 1 4-30-14 [204]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 30, 2014. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 1 of Cavalry Portfolio Services, LLC is sustained and the claim is disallowed in its entirety.

Gregory Wyatt and Elisa Wyatt, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Cavalry Portfolio Services, LLC ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of

Claims in this case. The Claim is asserted to be unsecured in the amount of $29,095.09. Objector asserts that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the date of the last payment was March 5, 2007, and that the account was charged off on October 30, 2007.

DISCUSSION

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

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer credit card, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to be an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the last payment and transaction in the subject claim was March, 2007. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established by California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Cavalry Portfolio Services, LLC, Creditor filed in this case by Gregory Wyatt and Elisa Wyatt, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 1 of Cavalry Portfolio Services, LLC is sustained and the claim is disallowed in its entirety.

21. 10-50133-E-13 TODD/MARDI DE CARLO MOTION TO REFINANCE
MAC-5 Marc Caraska 6-9-14 [45]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Motion to Refinance 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 Refinance is denied without prejudice.

The Debtors seek an order to refinance their mortgage. The proposed refinance is a single loan only to replace the existing mortgage encumbering the Debtor's residence real property commonly known as 533 Alden Way, Roseville, California.

However, the Motion fails to provide sufficient information regarding the proposed refinance. The refinance appears to be a loan from some unidentified third party to replace the existing "Wells Fargo Mortgage" claim. The court is unable to discern what entity Debtors are obtaining the loan from. No evidence has been presented of the contract terms or the identity of the entity offering the refinance.

Further, no copy of the agreement for this post-petition credit transaction as required by Federal Rule of Bankruptcy Procedure 4001 has been provided. The "documents" provided as an exhibit is a "Conditional Acceptance Notice" provided by some entity name "New Penn Financial." The Debtor does not identify New Penn Financial as a party to the post-petition modification contract (either in its own right as creditor or as the agent executing the contract in the name of the creditor."

On this basis and for the reasons detailed above, the Motion to Refinance with "Wells Fargo Home Mortgage," 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 Refinance filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Refinance is denied without prejudice.

22. 09-44339-E-13 GLEN PADAYACHEE
PLC-15 Peter Cianchetta

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
5-30-14 [186]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 30, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion to Determine Final Cure and Mortgage Payment 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 Determine Final Cure and Mortgage Payment is granted.

Debtor seeks an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h). Debtor asserts that the Trustee filed a Notice of Final Cure Payment for U.S. Bank, N.A. and in response, U.S. Bank, N.A. filed a Response to Notice of Final Cure Payment claiming six (6) payments in the total amount of $11,530.34 was owed. Debtor disputes these amounts and asserts that all payment have been paid on time. Declaration, Dckt. 189. Debtor argues that U.S. Bank, N.A.'s website records indicate the payments were in fact made and statements from his bank acknowledge the payments.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts. Here, Creditor filed a Response to Notice of Final Cure Payment within 21 days after the service of the notice as required by Federal Rule of Bankruptcy Procedure 3002.1(g) stating that Debtor has not made all required payments. However, a review of the Notice of Final Cure Payment indicates that debtor made all payments under the plan for arrears to U.S. Bank, N.A. and Debtor's records show that payments were in fact made for the dates disputed by U.S. Bank, N.A. Therefore, the court finds Glen Padayachee, Debtor, has cured the mortgage default and made all appropriate payments to U.S. Bank, N.A., as required by the Chapter 13 Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Determine Final Cure and Mortgage Payment filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the court finds Glen Padayachee, Debtor, has cured the mortgage default and made all appropriate payments to U.S. Bank, N.A., as required by the Chapter 13 Plan.

23. 14-23440-E-13 DPC-1 — TOSHIBA FRANCOIS, Peter Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, 5-21-14 [19]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. However, the Debtor has resolved the objection by obtain court approval for the Motion determining the creditor's secured claim to be $6,000.00.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value. The court having granted the motion to value, the Trustee's objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 3, 3014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 14-23440-E-13 TOSHIBA FRANCOIS **MOTION TO VALUE COLLATERAL OF**
PGM-1 Peter Macaluso **SANTANDER CONSUMER USA**
5-19-14 [14]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Debtor, Creditor Santander Consumer USA Inc. and Office of the United States Trustee on May 19, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA, "Creditor" is granted.

The Motion filed by Toshiba N. Francois, "Debtor", to value the secured claim of Santander Consumer USA, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Chevy, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $6,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,401.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $6,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Toshiba N. Francois, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, "Creditor," secured by an asset described as 2007 Chevy, "Vehicle," is determined to be a secured claim in the amount of $6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

25. 13-20745-E-13 CA-1 DARWIN GUMOBAO AND JOCELYN ALVAREZ-GUMOBAO Michael Croddy MOTION TO INCUR DEBT 6-10-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor pro se), Debtor's Attorney, Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on

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

The Motion to Approve Loan Modification is denied without prejudice.

Debtors Darwin and Jocelyn Gumobao, ("Debtors") seek authorization from the court to enter into a loan modification agreement with the American Servicing Company with respect to the real property commonly known as 4212 Palm Ave., Sacramento, California.

Debtors have filed a "Motion to Incur Debt" to "purchase" 4212 Palm Ave., Sacramento, California (Dckt. 22, Item 4). However, it appears that Debtors already own the real property. (Dckt. 1, Schedule A). It appears Debtors actually seek approval of a Loan Modification.

INCORRECT PARTY TO LOAN MODIFICATION

The Motion to Approve Loan Modification 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. Debtors identify the "Lender" party to the subject loan modification as American Servicing Company. The creditor as listed on the B-10 Form is HSBC Bank USA, however, the Debtors wish to enter into a permanent loan modification agreement with American Servicing Company. This is not sufficient. This is consistent with Proof of Claim No. 12 filed by HSBC Bank USA, in this case, which states that the Bank is the creditor, not a "servicing company." FN.1.

FN.1. If counsel for the Debtor had reviewed Proof of Claim No. 12, it is obvious that a loan servicing company is not the creditor. This is not unique to this attorney, as it continues to amaze the court how many knowledgeable, well versed consumer attorneys request orders of the court against or authorizing transaction with persons who are not parties to a transaction. A simple rule of thumb that when the other person has the word "*Servicing*" in its name, it is most likely not a creditor but an agent (loan servicer, collection agency) for the actual creditor.

Furthermore, the Loan Modification Approval Letter filed by Debtors as Exhibit "A" in support of the motion dated March 14, 2014, is from America's Servicing Company, and includes the modification proposal for Debtors' residence. Dckt. No. 23. However, while America's Servicing Company is the party contracting with Debtors to modify the subject loan, they are not the holder of the underlying claim.

The Debtors have failed to provide a copy of the credit agreement. They provide only a letter with some terms listed. The court has no idea of what the complete terms are for the modification.

The parties will have to accurately and correctly identify the actual creditor who is entering into this Loan Modification Agreement, have the Agreement properly identify the creditor, and if the Agreement is being executed by an agent, that the agent be correctly identified and proof of

its authority provided to the court. The current motion is deficient because it does not meet the requirements of Federal Rule of Bankruptcy Procedure 9013 in stating the grounds for relief with particularity, and does not comply with the provisions of 11 U.S.C. § 364(d).

The Debtors and "Lender" will have to provide the court with a copy of the actual post-petition credit agreement. Fed. R. Bankr. P. 4001(c)(1). The court does not grant *carte blanche* authority to persons to impose any and all types of terms they desire on debtor under the guise of a court authorized post-petition credit transaction. Quite possibly "Lender" may try to impose unreasonable conditions (such as a 100% default penalty, 25% interest rate, mandatory insurance from "Lender" owned entities, and the like), which "Lender" would later defend as being ordered by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors Darwin and Jocelyn Gumobao ("Debtors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve the Loan Modification is denied without prejudice.

26. 14-20045-E-13 TUBAYA/DEBORAH CARTER — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
PGM-5 Peter Macaluso — 5-15-14 [68]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 15, 2014. By the court's calculation, 40 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 Bank of America, N.A., "Creditor," is granted.

The Motion to Value filed by Tubaya and Deborah Carter, "Debtor" to value the secured claim of Bank of America, N.A., "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4600 Chamberlin Circle, Elk Grove, California, "Property." Debtor seeks to value the Property at a fair market value of $188,000.00 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 senior in priority first deed of trust secures a claim with a balance of approximately $470,437.08. Creditor's second deed of trust secures a claim with a balance of approximately $37,703.50. 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 Tubaya and Deborah Carter, "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 Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4600 Chamberlin Circle, Elk Grove, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $188,000.00 and is encumbered by senior liens securing claims in the amount of $470,437.08, which exceed the value of the Property which is subject to Creditor's lien.

27. 14-20045-E-13 TSB-1 TUBAYA/DEBORAH CARTER Peter Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-13-14 [33]

CONT. FROM 4-8-14, 6-10-14

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2014. 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.

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to value Collateral of Green Tree Servicing, LLC. The court having denied this motion without prejudice, the objection is sustained.

The Trustee also objects that the Debtors have failed to pay the installment of $70.00 by February 3, 2014. It appears an installment payment was made on February 20, 2014.

The court continued the hearing to allow the Debtor to resolve the Motion to Value. However, the motion was denied it does not appear the Debtor filed or served a new motion or amended the plan.

The court continued the hearing to allow Debtor to file and serve a Motion to Value Collateral. The Debtor filed and served the motion on May 15, 2014, set for hearing on June 24, 2014.

The court having granted the Motion to Value secured claim of Bank of America, N.A., the Trustee's Objection is overruled.

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

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

28. 14-23450-E-13 SHANNON POWELL — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Gerald Glazer — 5-21-14 [21]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. However, the Debtor having obtained the order valuing the Creditor's secured claim, no hearing is required.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value. The court having granted the motion, the Trustee's objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 3, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. 14-23450-E-13 SHANNON POWELL
GG-1 Gerald Glazer
MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION
5-13-14 [16]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 13, 2014. By the court's calculation, 42 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 The Golden 1 Credit Union, "Creditor," is granted.

The Motion to Value filed by Shannon Carina Powell, "Debtor" to value the secured claim of The Golden 1 Credit Union, "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1160 Arroyo Grande Drive, Sacramento, California, "Property." Debtor seeks to value the Property at a fair market value of $420,000.00 as of the petition filing date based on a Uniform Residential Appraisal Report of her home. 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 senior in priority first deed of trust secures a claim with a balance of approximately $440,405.03 to Flagstar Bank. Creditor's second deed of trust secures a claim with a balance of approximately $94,102.38. 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 Shannon Carina Powell, "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 The Golden 1 Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 1160 Arroyo Grande Drive, Sacramento, California is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $420,000.00 and is encumbered by senior liens securing claims in the amount of $440,405.03, which exceed the value of the Property which is subject to Creditor's lien.

30. 09-36051-E-13 ACK-2 ROSELLEN SMITH Aaron Koenig

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES FINANCIAL LAW FOR AARON C. KOENIG, DEBTOR'S ATTORNEY(S)
5-8-14 [59]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 8, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion for Compensation 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. No opposition having been filed, the court shall rule on the motion based on the pleadings filed in connection therewith.

The Motion for Compensation is granted.

Aaron C. Koenig, Counsel for Debtors, seeks permission to receive a payment of $1,000 from the "Debtor's real estate company" from a short sale of the Debtor's real property. On April 7, 2014, Debtor filed a motion to approve short sale, which was granted on April 30, 2014. The terms of the Order required debtor's attorney to seek approval from the court for compensation.

Description of Services for Which Fees Are Requested

1. Motion for Short Sale: Counsel received emails from real estate agent, spoke to client, prepared declaration for client; received declaration, prepared motion, notice and service and filed documents with the court.

The hourly rates for the fees billed in this case are $300.00/hour for counsel for 4.5 hours of work. Counsel has reduced the fees sought to $1,000.00.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee opposes the motion on the basis that he has not received any proceeds from the sale of the property to date. Trustee states that on or about June 5, 2014, he received a copy of the final closing statement from the title company stating that Hughes Financial Law

received $1,000.00. The Trustee is concerned that Counsel may have already received the funds sought by this motion directly from the title company in violation of the Order Approving Motion for Short Sale.

Trustee supplemented his response, stating that on or about June 13, 2014, the Trustee received by mail a letter from Hughes Financial Law enclosed with a check made out to Hughes Financial Law for $1,000 from Orange Coast Title of Northern California dated April 7, 2014. Trustee states that the check is not endorsed and that he cannot negotiate the check without such endorsement.

COUNSEL'S RESPONSE

Counsel responds, stating that the $1,000 check from the title company was received by their office after escrow closed and was then forwarded to the Trustee's office. Counsel states this motion is not to receive money from the Debtors, but rather a third party (title company).

DISCUSSION

The court is uncertain as to the legal authority counsel seeks the attorney fees. It appears prior counsel elected to receive fixed fees ("no look" fees) approved in connection with plan confirmation. The court does not follow Counsel's argument regarding attorneys fees. If Counsel has been paid the fees per the Order confirming, any additional substantial and unanticipated fees must be requested from this court. See Local Bankruptcy Rule 2016-1(c)(3).

Further, it appears that while being "counsel for the Debtor," the attorneys are being paid by third-parties for work done in connection with the Debtors and this bankruptcy case. This person is identified only as the "debtor's real estate company."

The Motion for approval to conduct a short sale states that the Debtors have arranged a short sale as a method to have property, which they intend to surrender, transferred out of their name. Though the creditor was given relief from the stay through the Plan (surrender), the creditor has failed to foreclose. The Debtors are concerned with retaining title to property they do not want to continue to possess. Motion, Dckt. 44.

The short sale approved by the court is a consensual transaction for the creditor. In agreeing to such a sale, the creditor allows a portion of the sales proceeds to be retained for the costs of sale, including commissions paid to real estate brokers. This is consistent with the projected escrow statement provided as Exhibit A in support of the motion for approval of the short sale. Dckt. 47. This shows $15,000.00 in Sales Brokers' Commissions – $7,500.00 to Redfin and $7,500.00 Sierra Foothills Real Estate. $15,000.00 equals 15% of the $250,000.00 gross sales price, the common residential real estate commission paid in this District.

The court understands Counsel's explanation to be that the real estate broker for the Debtors (as opposed to the Debtors owning a real estate company which is paying Counsel) have agreed that Counsel's fees may be paid from the commission sale proceeds.

Because Counsel was able to clearly articulate a benefit to the Debtors in conducting the short sale (getting title out of their name when the creditor refuses to close). This is not a situation where the "debtor's attorney" is that in name only, acting for the creditor to conduct a short sale to short-circuit the requirements of the state non-nonjudicial sale process. Such conduct, where the Debtors get nothing, not even a nominal exemption or moving expenses, raises the specter that the attorney is duping the debtors and pocketing money which otherwise should have been negotiated to be paid to the debtors. FN.1.

FN.1. Counsel should not expect that the court will work so hard on other motions when there is a failure to clearly state the grounds and articulate the unanticipated nature of the work done.

The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $1,000.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Hughes Law Corporation, Aaron C. Koenig lead counsel, as Counsel for Debtor, is allowed the $1,000.00 in legal fees, which shall be paid from the escrow proceeds from the sale of the property commonly known as 4607 Plantation Drive, Fair Oaks, California (Order, Dckt. 56).

31. 10-26951-E-13 ALLEN PEREZ — MOTION TO MODIFY PLAN
SDH-3 Scott Hughes — 5-6-14 [88]

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 May 6, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

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

The Trustee opposes the motion on the basis that Section 6.01 of the plan states that payments shall change from $3,871.00 to $3,916.00, when the current plan payment is actually $3,826.00. The Trustee states that he would not object to correcting this in the order modifying the plan.

The modified Plan, as corrected, 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 6, 2014, as corrected to state that the payments into the Plan by the Debtors is $3,826.00, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. 14-23652-E-13 DPC-1 — PHILIP/YVETTE HOLDEN — W. Scott deBie — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-27-14 [31]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 27, 2014. 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 Debtor filed a response, stating no opposition and requesting that denial of confirmation be without prejudice to seeking confirmation of this plan later.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan exceeds the time allowed under 11 U.S.C. § 1322(d). The Debtors propose a plan of $700.00 for 4 months and $1,320.00 per month for 56 months. In Class 1 the Debtors propose to pay $1,251.00 per month to ongoing mortgage payments and in Class 2 Debtors propose payments of $280 for 4 months and $546 for 56 months to Bank of the West and $320 for 4 months and $641 for 56 months to Harley Davidson Credit.

The combined monthly distributions total $1,851.00 for the first 4 months and $2,438 per month effective 5th month. The Debtors' proposed monthly payment is insufficient to pay the dividends proposed in the plan. Debtors' plan would need to be no less than $2,580.98 per month to complete in 60 months paying no less than 0% to general unsecured claims. Debtor's

plan payment of $700 for the first four months is insufficient to pay the proposed adequate protection payment of $1,251 to Class 1 creditor Wells Fargo.

Trustee also argues that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Trustee states that Debtor Philip Holden admitted at his 341 held on May 22, 2014, that he is not currently employed and is not working at the employment listed on Schedule I. The Debtors' household is reliant upon the Debtor's employment to not only support the household but to assist in making proposed plan payments.

Additionally, the Trustee states that the plan relies on pending motions to value, set for July 1, 2014.

Lastly, Trustee states that the Debtors Plan may not be debtors' best effort, under 11 U.S.C. § 1325(b). Debtors report on Schedule J, disposable income of $1,320. However, Debtors propose for the Trustee to pay ongoing mortgage payments in Class 1 of the plan and have also deducted $1,251 on Schedule J for projected future payments.

DEBTOR'S RESPONSE

Debtor acknowledges that the plan is not confirmable as proposed and requests that confirmation be denied without prejudice. Debtor states they will file an amended plan shortly.

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, without prejudice to the Debtor subsequently seeking to confirm this plan.

33. 14-23554-E-13 PAULA CAMPBELL
DPC-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-21-14 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Secured Claim of Citifinancial listed in Class 2C, which the Debtor has failed to file or set for hearing. As the motion to value has not been granted, Debtor's plan does not have sufficient monies to pay the claim in full and must be denied confirmation.

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

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

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

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

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

34. 10-51955-E-13 ALESIA THOMAS — MOTION TO MODIFY PLAN
CAH-1 Aaron Koenig — 4-16-14 [58]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2014. By the court's calculation, 69 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 16, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-21955-E-13 AEB-2 STEVEN/DEBRA RAZWICK Andrew Bakos MOTION TO EXTEND TIME 5-23-14 [45]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Motion to Extend Time 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 Time is denied without prejudice.

Debtors Steven and Debra Razwick, ("Debtor") move the court for an order extending the deadline to confirm the Debtor's Chapter 13 plan. Debtor states a pending objection to the secured claim of the Internal Revenue Service must be resolved before the overall scope of the plan can be realized. Debtor states the earliest date that the First Amended Plan can be heard is August 31, 2014. Debtor argues that pursuant to 11 U.S.C. § 1324(b) the hearing on the confirmation of the plan must take place not more than 45 days after the date set for meeting of creditors but that the court has authority to extend the deadline.

The court conducted a hearing on June 3, 2014, on the Trustee's Objection to the Debtor's Chapter 13 Plan filed March 13, 2014. The court sustained the Objection based on the failure to make payments due to the Internal Revenue Service claim filed on April 7, 2014, best efforts and uncertainty regarding counsel's fees.

As the court sustained the Trustee's objection, the Debtor must file, set and serve a First Amended Plan in order to avoid a Motion to Dismiss from the Chapter 13 Trustee for failure to prosecute this case. The court will leave the discretion to file relevant motions to the parties. FN.1.

FN.1. The court does not create arbitrary time periods for a debtor to proposed an amended plan. Rather, the court (except under exceptional circumstances) gives debtors and their counsel the ability to communicate with the Chapter 13 Trustee concerning what constitutes good faith, diligent prosecution of the case.

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

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

36. 14-20056-E-13 THOMAS/SUSAN CLAYTON — MOTION TO CONFIRM PLAN
PGM-5 Peter Macaluso — 5-2-14 [67]

Final Ruling: No appearance at the June 24, 2014 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 2, 2014. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 2, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

37. 13-32861-E-13 JAMES/BETH FRY
PGM-3 Peter Macaluso
MOTION TO APPROVE LOAN MODIFICATION
5-15-14 [72]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 15, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

Debtors seek permission to enter into a trial loan modification agreement with Lender, Nationstar Mortgage. However, Federal Rule of Bankruptcy Procedure 4001(c)(1)(A) requires that a copy of the agreement must be provided to the court. The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007). It appears the Debtor has attached a letter from Green Tree Servicing, LLC to Debtor's Counsel. This does not appear to be the actual loan modification agreement.

Therefore, the motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

38. 13-29563-E-13 JAVIER/JEANNE RODRIGUEZ — OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK/MACYS, CLAIM NUMBER 2
CAH-1 C. Anthony Hughes — 5-8-14 [34]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 8, 2014. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Department Stores National Bank is sustained and the claim is denied it its entirety.

Javier and Jeanne Rodriguez, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Department Stores National Bank/Macys ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $264.13. Objector asserts that they do not owe the amount in question because they were a victim of identity theft and did not actually use the credit card to make purchases.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed

hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, Objector provides a declaration stating that Mrs. Rodriguez was a victim of identity theft. Objector states that the perpetrator of the crime ran up thousands of dollars worth of charges on her credit cards, which she reported to the police and notified creditors. Debtor states that the creditors received proof of the theft from the police but still filed a proof of claim.

No evidence, such as notifications to the credit card companies or the police report have been provided to the court. Second, Debtor does not state what amount of the $264.13 provided by the Creditor in the proof of claim was due to identity theft. Debtor testifies that "thousands of dollars worth of charges" were made on her "credit cards" but does not state what amount for this Creditor was due to the identity theft.

However, the Proof of Claim filed is minimal. First, the creditor is named to be "Department Stores National Bank/Macys." The California Secretary of State does not list any entity by that name authorized to do business in California. http://kepler.sos.ca.gov/. The FDIC does not list any federally insured financial institution with that name on its website. http://www3.fdic.gov/idasp/main.asp. However, it does list an entity known as Department Stores National Bank. That bank has an office address in Sioux Falls, South Dakota. But that is not the name of the creditor which was stated under penalty of perjury on Proof of Claim No. 2. FN.1.

FN.1. The creditor, if it is Department Stores National Bank, might argue that it should be "obvious" even to a judge that the creditor is meant to be it and not some entity named Department Stores National Bank/Macys. If it were so obvious, then why could not a sophisticated creditor accurate state its true and correct name on the Proof of Claim form.

Second, there is not a copy of a credit agreement or any documentation upon which Department Stores National Bank/Macys asserts whatever rights upon which the Proof of Claim is based. On the proof of claim form the only information as to the basis for the claim is "Credit Card."

The Proof of Claim is signed by a person at NCO Financial Services, Inc. (a well known, experienced, third-party collection agency), executing the form as the agent for Department Stores National Bank/Macys.

Another attachment to Proof of Claim No. 2 is a "Statement of Accounts," with the date August 12, 2013. This Statement affirmatively states that the "Creditor" is "Department Stores National Bank/Macys. It states that the account was opened August 26, 2001, the last payment was November 30, 3009, and the "Charge-Off Date" was July 20, 2014.

Another attachment to the Proof of Claim is a copy of a letter, unsigned except for the typed signature "/s/ Daniel B. Coles." There is no letterhead on the letter and Mr. Cole's titles is stated to be "Recovery Manager." This letter, with the date September 28, 2010, typed in the upper left-hand corner, is addressed "To Whom it May Concern." It states that NCO Financial Systems, Inc. is authorized to file Proofs of Claim on behalf of Macys, Bloomingdales, FDCP Bank, and Department Stores National Bank. No information concerning the claim at issue or support for the claim is provided in this attachment.

The confirmed Chapter 13 Plan in this case provided for a 100% dividend for creditors holding general unsecured claims. Plan, Dckt. 10; Order confirming Chapter 13 Plan, Dckt. 29. In the Additional Provisions, ¶ 6.01, it is stated that the identify theft was committed by the Debtors' daughter. The Debtors do not repeat this fact in the Declaration filed in support of the Objection to Claim.

While the evidence is support of the Objection is limited, it is sufficient to overcome the prima facie value of Proof of Claim No. 2 filed by Department Stores National Bank/Macys. In addition to serving the creditor named in the Proof of Claim, the Debtors sent by certified mail the Objection, Notice, and Supporting Pleadings on Department Stores National Bank at the address listed by the FDIC. The pleadings were also served at the addresses listed on Proof of Claim No. 2 and to the attention of the individual signing Proof of Claim No. 2 for Department Stores National Bank/Macys.

Based on the evidence before the court, the objection to the Proof of Claim is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Department Stores National Bank/Macys, ("Creditor") filed in this case by Javier and Jeanne Rodriguez, the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 2 filed for Creditor Department Stores National Bank/Macy's is sustained and the claim is denied in its entirety.

39. 14-20565-E-13 RYAN/BRENDA COBOS — MOTION TO CONFIRM PLAN
CAH-1 Aaron Koenig — 4-16-14 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2014. By the court's calculation, 69 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtor is $1,303.08 delinquent in plan payments, which represents multiple months of the $650.77 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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.

40. 14-24867-E-13 SAC-1 | **MIGUEL GONZALEZ** **Scott A. CoBen** | **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 5-19-14 [15]**

Final Ruling: No appearance at the June 24, 2014 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, parties requesting special notice, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Miguel Gonzalez, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 413 McKinley Way, West Sacramento, California, "Property." Debtor seeks to value the Property at a fair market value of $127,243.00 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 senior in priority first deed of trust secures a claim with a balance of approximately $173,950.00. Creditor's second deed of trust secures a claim with a balance of approximately $30,497.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount

of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Miguel Gonzalez, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 413 McKinley Way, West Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $127,243.00 and is encumbered by a senior lien securing a claim in the amount of $173,950.00, which exceeds the value of the Property which is subject to Creditor's lien.

41.	**11-20868-E-13**	**WAYNE WILKINSON AND**	**MOTION TO APPROVE LOAN**
	ACW-2	**DENISE ARMENDARIZ**	**MODIFICATION**
		Andy C. Warshaw	**5-22-14 [169]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, affected lienholders, the Chapter 13 Trustee, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 33 notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on July 22, 2014.

The Motion to Approve Loan Modification filed by Wayne Roy Wilkinson and Denise Annette Armendariz ("Debtors") seek court approval for Debtors to incur post-petition credit. Debtors state that they have entered into a loan modification agreement with Ocwen Loan Servicing, LLC, to change Debtors' mortgage payments from $2,186.00 to $2,595.42. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 1.250% to 4.750%

The Motion is supported by the Declaration of Wayne Roy Wilkinson and Denise Annette Armendariz. Dckt. No. 171. The Declaration affirms the Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

Onewest Bank, FSB filed Proof of Claim No. 16 on the claims registry, claiming a debt owed for money loaned in the amount of $497,821.24. The Proof of Claim lists OneWest Bank, FSB, as the creditor on this claim. A Deed of Trust identifying Debtors as the borrower, and MortgageIt, Inc. As the Lending Corporation.

The Debtors identify Ocwen Loan Servicing, LLC, as the current servicer of their primary home loan. The Debtors have not, however, provided credible evidence that Ocwen Loan Servicing, LLC is the creditor or that it is authorized as the named principal to modify this loan. The Debtors have not demonstrated that Ocwen Loan Servicing, LLC, is obligation that appears to be owed to Onewest Bank, FSB. The court will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Onewest Bank, FSB.

The Loan Modification Agreement identifies Ocwen Loan Servicing, LLC as the "Servicer," and does not indicate that it is the actual creditor to enter into a contract to modify the Loan. While the Loan Modification Agreement clearly identifies and requires proof of identity for the Debtors, the signature block for the "creditor" who has the claim only lists "Mortgage Electronic Registration Systems, Inc. – Nominee for Servicer" as signing the contract. The court does not know what it means to be "nominee of servicer," what agency powers such a "nominee" may have, and how the

nominee of the servicer is the creditor or authorized to bind the creditor (who is not disclosed in the Loan Modification Agreement).

The court has now been presented with multiple instances of different loan servicing companies misrepresenting 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 case the loan servicing company was merely that, 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.

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. The Debtors provide no evidence for the court to determine that this loan servicing company is a creditor in this case. Declaration, Dckt. 171. The Debtors do not testify that they have borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Ocwen Loan Servicing, LLC. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Obtaining an order approving a loan modification of the "mortgage" of a loan servicing company may not be approved by the actual creditor. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the Debtors would then have a rude awakening that there still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court will issue an order to Debtors and Ocwen Loan Servicing, LLC to file on or before July 15, 2014, any and all properly authenticated documents identifying that Ocwen Loan Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). The court continues the hearing to 2:00 p.m. on July 22, 2014, 2014, to allow the parties to file the appropriate documentation. FN.2.

FN.2. As a reference for the parties, this court has previously addressed with another servicing company, Green Tree Servicing, LLC, the requirement to accurately identify the status of the party 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. In addition, Specialized Loan Servicing, LLC and U.S. Bank, N.A. have also addressed this issue. The servicers and this bank have altered their practices and are not improperly listing or identifying the loan servicing company as the creditor when it is not a creditor as defined by 11 U.S.C. § 101(10).

The court shall issue an order (not a minute order) substantially in the following form holding that:

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

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

IT IS ORDERED that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on February 25, 2014.

IT IS FURTHER ORDERED that Debtors and Ocwen Loan Servicing, LLC shall file on or before July 15, 2014, any and all properly authenticated documents identifying that Ocwen Loan Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). If Ocwen Loan Servicing, LLC asserts that it is the holder of a promissory note endorsed in blank, it shall provide a copy of the note endorsed in blank and a declaration of a person at Ocwen Loan Servicing, LLC who has personal knowledge of the location of the original note, the person who is in possession of the original note or responsible for where the note is held (identifying the person by name, not merely a generic "custodian of records), and to provide testimony as to when Ocwen Loan Servicing, LLC the date from which the current possession of the note has been continually maintained by Ocwen Loan Servicing, LLC.

The Clerk of the court shall serve Ocwen Loan Servicing, LLC copies of this order at the following addresses:

Ocwen Loan Servicing, LLC
C/O CSC - Lawyers Incorporating Service
Agent for Service of Process

2711 Centerville Road
Wilmington, DE 19808

Ocwen Loan Servicing, LLC
Attn: Officer or Agent for Service of Process
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409

Ocwen Loan Servicing, LLC
Attn: Officer or Agent for Service of Process
Bankruptcy Department
110 Virginia Drive, Suite 175
Fort Washington, PA 19034

William G. Malcom, Esq.
Malcolm Cisneros
Attorneys for OneWest Bank, FSB
2112 Business Center Drive, Second Floor
Irvine, CA 92612

Ocwen Loan Servicing, LLC
Attn: Office or Agent for Service of Process
Payment Processing
3451 Hammond Avenue
Waterloo, IA 50702

42. 13-23469-E-13 RONALD/JILL SHAFER
MET-2 Mary Ellen Terranella

CONTINUED MOTION TO CONFIRM PLAN
3-20-14 [61]

Tentative Ruling: The Motion to Confirm Plan 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, all creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed an opposition, 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Confirm the Amended Plan to is deny confirmation of the Chapter 13 Plan.

JUNE 3, 2014 HEARING

The court continued the Motion to Confirm the Amended Plan from June 3, 2014 to this hearing date to allow the debtor to propose a new plan payment. A review of the court docket shows that the Debtors have not set forth a new plan payment or proposed new plan terms.

TRUSTEE'S OBJECTION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that

the Debtor has failed to file a Motion to Value the secured claim of WestAmerica Bank.

The Trustee also argues that the Plan is not the Debtor's best effort. The Debtor is over the median income and proposes plan payments of $248.00 for 12 months, then $477.00 for 48 months of the 60 month plan, with a 3% dividend to unsecured creditors, which totals $3,704.65. The Creditor's Objection to Confirmation was heard and sustained on October 22, 2013 and the Court's decision stated that the plan was under funded by $229.00 per month. Dckt. 53. The Debtor filed the present amended Plan on March 20, 2014, approximately 5 months after the order was entered by the Court. The Plan calls for payments of $248.00 for 12 months (April l4, 2013 through March 25, 2014), then $477.00 for 48 months (beginning April 25, 2014). The Debtor's Plan increases the plan payments by $229.00 as per the Court's order, however it fails to increase the plan payments until April 25, 2014 and the Court's order was entered on October 22, 2013. The Debtor has failed to indicate what happened to funds that have not been paid into the plan, since the order was entered.

WESTAMERICA BANK'S OBJECTION

WestAmerica Bank ("Creditor") objects to the plan on the basis that the plan is not feasible, as Debtors have not shown that their income from Burger City Corporation will continue even though the corporation is being sued for non-payment and facing a seizure of its assets.

Creditor also argues that the plan does not provide for the allowed amount of their secured claim and that Debtors have not moved to value their secured claim.

Lastly, Creditor argues that the amended plan has not been filed in good faith. Creditor states the Debtors' Amended Plan proposes to pay Westamerica $212.00 per month on its secured claim, with interest at 4% per annum; however, in order to pay the Bank the allowed amount of its $40,000 secured claim over 60 months, without any interest, the payments must be at least $666.67 per month. Creditor states that the Amended Plan proposes to pay $3,121.00 per month on the Debtors' home loan, which represents 49% of the Debtors' monthly take home pay. Creditor argues that the court should also consider that the seriously over encumbered residence is a significant burden to the Estate, and seriously interferes with the Debtors' ability to pay their creditors.

DEBTORS' RESPONSE

Debtors respond, stating they have now filed a Motion to Value the secured claim of Westamerica Bank, which is set for June 3, 2014. Debtors state that, as shown in their originally filed Schedules I and J, they had $248.00 per month available in net disposable income to fund their Chapter 13 plan. Debtors state that their budget is not extravagant, and included modest charitable contributions as well as school expenses for their minor daughter. Debtors state that when the Court issued its ruling in October 2013, the debtors had to adjust their budget to afford the higher plan payment. As their budget was not excessive to begin with, they had to consciously decide what expenses would be cut in order to make the higher plan payment. This was a process that took several months to implement, and

included eliminating their charitable contributions, reducing the amounts spent on their minor daughter's school activities, reducing recreational expense, for a family of three, to $100.00 per month, and reducing their home maintenance. They have accomplished their budget paring, but it did take some time. Debtors contend that, if the Court requires them to make up the five months of the increased payment, or $1,145.00, they will provide for that amount in the later months of their plan, when they are more able, financially, to do so.

Debtor argues that there is no certainty, whatsoever, that Westamerica Bank will prevail in its lawsuit against Burger City, Inc. and that the debtors have had steady, stable income from Burger City, Inc, since 1997. Debtors state that they have decades of experience in the restaurant industry and even in the unlikely event Westamerica Bank does prevail in its lawsuit against Burger City, Inc., debtors are confident in their abilities to procure comparable positions in the restaurant business.

DISCUSSION

The court continued the hearing to June 3, 2014, to be heard in conjunction with the Motion to Value Collateral of Westamerica Bank.

On May 27, 2014, the Debtors and Westamerica Bank filed a Stipulation resolving the Motion to Value the Bank’s secured claim. The Stipulation provides for the secured claim of Westamerica Bank to be valued at $18,270.00. Stipulation, Dckt. 92.

The Motion to Value having been resolved, the Creditor’s objection is overruled.

The Trustee, however, raises a valid concern. The Debtor filed the present amended Plan on March 20, 2014, approximately 5 months after the order was entered by the Court sustaining the Trustee’s objection which stated that the plan was under funded by $229.00 per month. Dckt. 53. While the Debtor's Plan increases the plan payments by $229.00 as per the Court's order, it fails to increase the plan payments until April 25, 2014 and the Court's order was entered on October 22, 2013. Debtors testify that they adjusted their budget to afford the higher plan payment, which included eliminating their charitable contributions, reducing the amounts spent on their minor daughter's school activities, reducing recreational expense, and reducing their home maintenance, but that it took five months to do so.

This does not explain as to why the lower “projected disposable income” is proper than computed by the court previously. There is not a premium to the delay cause by the extended dispute with Westamerica Bank, during which time the Debtor was allowed to “pocket” the additional monies.

The Debtors’ declaration does not state why they could not pay the amount – merely that they took time to adjust their budget. What the Debtors miss in this discussion is that while they have the right to pay the secured debt, it is their conscious choice. They have chosen to spend 50% of their monthly net income to retain their home ($3,121.00 payment with $6,374.00 monthly net income. Memorandum Opinion and Decision, Dckt. 53.

Debtors argue that they should be forgiven under-funding the plan because they do not live "extravagantly." Alternatively, if the court is going to make them actually fund the plan with their projected disposable income, then they should be allowed to pay the previously unfunded amounts over the life of the plan.

There is a certain extravagance in choosing, as a Chapter 13 Debtor, to retain a home which consumes (principal, interest, taxes and insurance) 50% of the Debtors' monthly net income. The Debtors offer no new value for this property as of confirmation, now more than a year after this case was filed. This property is stated by the Debtors under penalty of perjury to have a value of $378,200. Schedule A, Dckt. 1 at 12. This property is subject to liens totaling ($555,331.00). This lien amount exists after, in reliance on the $378,200.00 valuation, the court determined that the secured claim of the creditor having the junior deed of trust on the property had a value of $0.00.

The Debtors choosing to spend 50% of their monthly net income to pay a mortgage on a property in which there is a ($200,000) negative equity, the court concludes that they had the ability to pay the full amount of the projected disposable income since the commencement of this case. The court only requires the Debtors to pay what they are required to pay – and corresponding, the Debtor have to pay what they are required to pay, not merely pay what they choose if it is financially convenient.

The Debtors failing to properly fund their plan, the Motion to Confirm 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 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.

**43. 14-23669-E-13 DPC-1 | DAVID/JESSICA CERVANTES
David P. Ritzinger | OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
5-21-14 [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 and Debtor's Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes the confirmation of Debtors' plan on two grounds.

First, the Plan relies on a pending motion. Trustee states that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value the Secured Claim of PNC Bank, which was set for hearing on June 10, 2014.

On that date, the court granted Debtors' Motion to Value and valued the secured claim of Creditor PNC Bank, N.A. in the amount of $0.00. Thus, Trustee's objection regarding the pendency of Debtors' Motion to Value is resolved.

Second, Trustee argues that Debtors' income is unclear. Mr. Cervantes lists his overtime pay on Schedule I, Line #3, as $496.02. According to the pay advice dated April 3, 2014, his year to date straight overtime earnings are $36.42 for a difference of $459.60. The Trustee clarifies that while it has received and reviewed the pay advice, the Trustee has not filed the pay advice as an Exhibit, as the Trustee believes that it may not be necessary, but will submit the returns if requested or required.

Mrs. Cervantes failed to list her Deferred Net Pay, which is reflected on her pay advice dated March 31, 2014, in the amount of $527.59. The Trustee also clarifies that he can submit the returns for Mrs. Cervantes if requested or required.

The income listed differs where it is not clear whether the net income listed on Schedule J is accurate, which is listed in the amount of $2,697.84 per month.

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.

44. 13-34373-E-13 RUSSELL/TINA CALDWELL
LBG-3 Stephen J. Johnson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEPHEN J. JOHNSON FOR LUCAS GARCIA, DEBTORS' ATTORNEY(S)
5-20-14 [47]

Final Ruling: No appearance at the June 24, 2014 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 20, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6) 21 day notice and L.B.R. 9014-1(f)(1) 14-day opposition filing requirements.)

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Lucas Garcia, Counsel ("Applicant") for Russell Caldwell and Tina Galdwell, the Chapter 13 Debtors ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of August 8, 2013 to May 20, 2014.

Applicant provides a short description of the work performed, and attaches billing statements as exhibits in support of this Motion. Dckt. No. 51.

Applicant's services included general correspondence, emails, telephone calls, reviewing the Clients' file, amendments, reviewing the pleadings, preparing the petition, drafting related documents, and reviewing the filed proof of claims. Applicant's Declaration states that the Debtors scheduled several appointments and made a number of phone calls to the office in regard to crafting a strategy for her bankruptcy filing. Declaration of Lucas Garcia, Dckt. No. 49.

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).

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 as legal 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 legal services 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 legal fee] tab 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, is obligated to consider:

> (a) Is the burden of the probable cost of legal 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 a valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) to determine the value of the secured claim of Creditor Wells Fargo Bank, N.A. that was granted on January 14, 2014. Dckt. No. 26. Moreover, Applicant assisted Debtors in confirming their Chapter 13 reorganization plan, and successfully modifying their existing plan. Dckt. No. 45. The Chapter 13 Trustee filed a statement of non-opposition to the Application on May 27, 2014.

The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The fees request 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**
Lucas Garcia	11.8	$225.00	$2,655.00
Unnamed Paralegal	13.8	$115.00	$1,587.00
Unnamed Legal Staff	1.7	$65.00	$110.50
Total Fees For Period of Application			$4,352.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The Application for Approval of Debtors' Attorney Fees and Costs in the amount

of $4,352.050 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the retainer of $2,500.00 received by Applicant before the filing of the petition, and from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $377.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Credit Report Fee incurred on August 23, 2013		$70.00
Filing Fee for November 8, 2013		$281.00
Regular Mail fees incurred on November 21, 2013	$0.66 (4 items)	$2.64
Certified Mail fees incurred on November 21, 2013		$3.76
Regular Mail on February 7, 2014	$0.49 (20 units)	$9.80
Regular Mail on May 20, 2014	$0.49 (20 units)	$9.80
Total Costs Requested in Application		$377.00

The Costs in the amount of $377.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 13 under the confirmed plan from the retainer of $2,500.00 received by Applicant and deposited into a trust before the filing of the petition, and from the available funds of the confirmed Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $4,352.50
Costs and Expenses $ 377.00

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 Lucas Garcia ("Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Lucas Garcia is allowed the following fees and expenses as a professional of the Estate:
>
> Lucas Garcia, Professional Employed by the Chapter 13 Trustees
>
> Fees in the amount of $ 4,352.50
> Expenses in the amount of $ 377.00,
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtors are 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 under the confirmed Plan.

45. 14-23573-E-13 MICAELA VAN DINE
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-27-14 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor's Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of $349.00 per month for 60 months with a 0% dividend to unsecured claim holders. It appears that Debtor has not reported all income on Form B22C. On Schedule I, Debtors reports income from her job as a data collector, of $250, with a student loan stipend of $1200, and contribution from fiancé of $700 which are not reported on Form 22C.

Debtor has not accurately completed the form, causing the Trustee to be unable to determine accurately Debtor's disposable income. Also, the Debtor claims a household of 3 on Form 22C, but only herself and one child on Schedules I and J. Debtor further reports income from a separated spouse on Line 1b, and deducts the income on Line 19, causing Debtor to be below median income. Due to the deduction on Line 19, Debtor has not filled out the form completely to Line #59. If all income was reported, it appears that the Debtor would be required to itemize her deductions on the form.

2. Debtor reports on Schedule A and Schedule D, that she is not currently paying the ongoing mortgage payments to Wells Fargo. Instead, Debtor is depositing rents into a "savings account." On Schedule B, Debtor lists no savings account. She does list one checking account at Chase with a balance of $6,000. This would total approximately 2.4 payments of $2500 per month, which is the amount of rent reported on Schedule B. It appears that the Debtor has not been saving rents/ mortgage payments to be turned over to Wells Fargo.

   Debtor indicated at the Meeting of Creditors held on May 22, 2014, that mortgage payments to Wells Fargo Home Mortgage have not been made since June-July of 2013. That there is a dispute between the lender and Debtor's former spouse (whose name is on the note), causing Wells Fargo to refuse payments. Debtor admitted that the monies for each months mortgage payments have been provided to Debtor's former spouse who is holding the money in a savings account pending resolution of the dispute.

3. Trustee argues that the Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $481,577.00, and the Debtor is proposing a 0% dividend to unsecured claim holders. Debtor lists on Schedule B, an interest in a lawsuit, which she values at $500,000 and exempts $18,823.73 on Schedule C. Any non-exempt portion of a recovery should be turned over to the Trustee for the benefit of unsecured claims.

DECLARATION OF DEBTOR IN RESPONSE TO OBJECTION

Debtor clarifies that she is now divorced from Piotr Reysner. She acknowledges that her form 22c must be corrected and filed with the court. She is getting married to her fiancé on June 14, 2014, and she will need to amend her plan to include his contribution to the household. Debtor states that she will submit a new plan once she is married and back from her honeymoon on June 23, 2014. Debtor states that she will also amend her Schedule I upon her return from her honey moon.

Debtor states that there is currently a dispute with Wells Fargo regarding real property located at 5063 Archcrest Way, Sacramento, California as to a settlement agreement reached between Wells Fargo and Piotr Reysner, Debtor's former husband. Included in the settlement was Debtor's fiduciary responsibility of paying the mortgage that she and Reysner had placed on the title as joint tenants. She filed her own lawsuit against Wells Fargo to assert her interests as a third party beneficiary,

enforce a settlement agreement, and compel the bank to accept mortgage payments. The case is No. 34-2014-00163823. The home currently does not have equity, but the goal is to establish the mortgage payments either through enforcement of the settlement agreement or through a new loan modification that Piotr has submitted.

Debtor states that any money set aside for the mortgage payments is not available for disbursements to the creditors. The money is for the house, contains funds that are from the renters that live in the home, and is being held in an account for the sole purpose of paying the mortgage. If for some reason the lawsuit and/ or new loan modification do not prevail, then the new money will be placed in Debtor's possession and become an asset to the bankruptcy. As of this time under the advice of Debtor's attorney, however, the money is allocated for the house only. This is the same as Debtor paying rent at $1500 per month and her two roommates paying $1000, which covers the mortgage at $2500 per month.

The rents that have been paid toward the mortgage are not the Debtor's to spend pending the state court action, and/or the approval of a new loan modification. Thus, the Debtor asks that the court recognize that she pay $1500 per month in rent and accept that as part of Debtor's bankruptcy plan.

DECLARATIONS OF MELINDA JANE STEUER AND PIOTR REYSNER

In addition to her own declaration in response to the Objection, Debtor has also filed the declarations of her ex-husband, Piotr Reysner, and Melinda Jane Steuer, the attorney of record for Debtor in the state court action that Debtor has filed against Wells Fargo and Piotr Resyner in Sacramento County Superior Court.

The Declaration of Melinda Steuer describes the pending litigation between Debtor and Wells Fargo Bank and Piotr Reysner, in which Debtor seeks specific performance of a provision in her marital settlement agreement which provides for a permanent modification of the loan on real property located at 5063 Archcrest Way, Sacramento. Dckt. No. 33. The Declaration of Piotr Reysner confirms Debtor's statements regarding the parties' marital status.

Reysner testifies that a status only divorce decree was entered for the parties on May 22, 2014, and that the property division agreement is before the family court and judgment has not yet been rendered in that matter. Resyner also states that it is his understanding that Debtor has now hired litigation counsel to enforce her rights against Wells Fargo as an intended or incidental third party beneficiary on a loan modification agreement/Judgment entered by the Superior Court on July 2, 2013. Resyner also states that he believes that the state court will likely order Debtor to not only make mortgage payments, but also to relinquish to Wells Fargo a lump-sum of money for mortgage payments that Wells Fargo has refused to take from Jule 1, 2013 to the present.

Debtor has acknowledged that she must submit an amended plan, and revise her Form 22C to reflect accurate income figures and submit a new form to the court. As it stands, Debtor's current proposed 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.

46. 13-26375-E-13 KAREN KRIEG
SJS-2 Scott J. Sagaria

MOTION TO MODIFY PLAN
5-14-14 [43]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 14, 2014. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed modified plan, on the basis of Debtor's apparent inability to make the proposed plan payments.

Debtor's modified plan proposes plan payments of $13,950.00 total paid in through May 2014 (month 12, where Debtor's petition was filed on May 8, 2013), $2,000.00 for one month, then $2,737.50 commencing July 25, 2014, for the remainder of the plan. Debtor's plan payments under the confirmed plan are $6,900.00 total paid in through Month 5 (October 2013), then $2,350.00 for 55 months.

Debtor filed an Amended Schedule I on May 14, 2014, reflecting an average monthly income of $4,620.04, which appears to be identical to the

one filed on May 8, 2013, at the outset of this case. The Trustee is uncertain what qualifies this Schedule I to be amended. Additionally, Debtor's Amended Schedule I was not filed using the Official Form B 6I, which was effective on December 2013.

Debtor's Declaration, Dckt. No. 46, indicates that Debtor's average monthly net income is $4,620.04, her average monthly expenses are $2,270.04, thus leaving a net disposable income of $2,350.00. Debtor states that she is proposing a plan payment of $2,350.00. Debtor further states that the plan modification requires no change to her current budget, but that she will file an amended Schedule J in June 2013, showing her ability to make the plan payments from July 2014 forward.

Debtor's modified plan was filed to cure the delinquency and to add post-petition mortgage arrears to Class 1. Debtor is in month 13 of her 60 month plan. Within that 13 months, the Trustee has issued Notices of Default on October 9, 2013 and April 15, 2014, with both resulting in modified plans being filed to cure the delinquency. Debtor provides no explanation for her delinquency within the Motion or Declaration, nor is any information provided as to how Debtor will afford an increased plan payment of $2,737.50. Debtor offers to file an Amended Schedule J at a future time to support the increased plan payment currently proposed.

The Trustee is uncertain Debtor will have the ability to make an increased plan payment when no documentation has been filed to support such an increase, and because Debtor has been delinquent in past, lesser payments.

Based on the information provided by the Trustee, the court is uncertain how Debtor expects to fund the proposed modified plan, when the plan calls for payments that are higher than payments under the original plan that Debtor has been unable to afford. The Debtor has filed not revised schedules or provided evidence that she will be able to make the amended plan payments from July 2014 onward. The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

47. 14-21379-E-13 CYNTHIA SILVERIA **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-1 Gary Ray Fraley **5-13-14 [33]**

CASE DISMISSED 5/28/14

Final Ruling: The case having previously been dismissed, the Objection is denied as moot.

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

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

48. 10-40880-E-13 DIANE ELLIOTT **MOTION TO MODIFY PLAN**
BLG-2 Chad M. Johnson **5-14-14 [45]**

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 14, 2014. By the court's calculation, 41 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 Debtor has 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 14, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order

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

49. 10-20081-E-13 CRYSTAL DIBENEDETTO — CONTINUED MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 4-4-14 [34]

Tentative Ruling: The Motion to Modify Plan 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. Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 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 Trustee having filed an opposition, 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the basis that there is no current statement of income on file. According to the Trustee's records, the last statement of income was filed on January 4, 2010. Dckt. No. 1.

The hearing on the Motion to Modify the Chapter 13 Plan was continued from May 20, 2014, to this hearing date, to permit Debtor to

provide further documentation detailing her income to support the proposed Plan.

The Debtor's original declaration filed with this Motion, Dckt. No. 36 at 1, stated: "I have been on FMLA for year for myself. I just had surgery and am getting back on my feet." ¶ 2, Dckt. No. 36. The Trustee was unclear whether the Debtor's income had changed since the filing of the case.

On May 13, 2014, Debtor's counsel filed a "Reply," arguing that Debtor states that she is a long-term employee of Costco, as stated on Schedule I when this case was filed in 2010, and that she had surgery (at some point in time), "was" on Family leave, but has not returned to work. This "Reply" causes the court to have several concerns. First, no evidence has been presented by the Debtor to support these arguments of counsel. No declaration has been provided, and it appears that the Debtor is carefully attempting to avoid having to make any such statements under penalty of perjury. Second, the "Reply" argues that the Debtor did Family Leave benefits, but does not state what the Debtor's income is now. It merely argues that there were benefits and that the Debtor has since returned to work.

It appears that the Debtor and her counsel have worked hard to keep from clearly stating under penalty of perjury the Debtor's current income. Possibly the Debtor does not have sufficient income to fund a plan. Possibly the Debtor's income is higher and the plan payments should be higher. The court will not just "guess what is right" and just assume what the Debtor's truthful and accurate income is in 2014.

SUPPLEMENTAL DECLARATION OF CHARMAINE JONES IN SUPPORT OF OBJECTION

Charmaine Jones, an employee of the Chapter 13 Trustee, asserts in her declaration (Dckt. No. 51) that as of June 11, 2014 no further documentation and pay stubs to support the Debtor's proposed modified plan had been submitted.

SUPPLEMENTAL DECLARATION OF CRYSTAL DIBENDETTO

On June 21, 2014, however, Debtor filed a Declaration and a copy of her most recent "EDD statement dated May 7, 2014." Debtor states that she was hoping to be back at work and on normal pay, but currently still on disability. Dckt. No. 53.

The Exhibit provided, which appears a statement of weekly benefits from the Employment Development Department of California (stamped on the right hand corner of the page), Dckt. No. 54 at pg. 2, indicates that Debtor is receiving $530.00 in weekly benefits. The statement was issued on May 7, 2014, with a claim effective date of April 10, 2014. The Debtor is proposing plan payments of $260.00 to begin on March, 2014, for 10 months. The plan payments were calculated after Debtor subtracted her monthly expenses, as reflected on her updated Schedule J as $1,843.58, from her monthly income on Schedule I (listed as $2,103.58), for $260 in monthly net income.

The modified Plan appears to now comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 4, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

50. 14-23084-E-13 DPC-1 ROBERT LEWIS Michele M. Poteracke

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 5-21-14 [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, Chapter 13

Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor and Counsel for the Debtor failed to appear to be examined at the First Meeting of Creditors held on May 15, 2014. Debtor is required to attend the meeting under 11 U.S.C. § 343. The Meeting was continued to June 12, 2014 at 10:30 am.

   The June 16, 2014 Docket Entry Report by the Trustee from the June 10, 2014 Continued First Meeting of Creditors is that the Debtor and Debtor's counsel did not appear.

2. It appears that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $110,862.92. To date, Trustee has not received any plan payments from the Debtor, where one payment has come due. The next scheduled payment of $80.00 is due on May 25, 2014.

3. Debtor's Plan, specifically Section 2.06, states that $5,071.00 in attorney fees were paid. The Schedule I shows that Debtor has no business income. Debtor's Plan, filed April 9, 2014, Dckt. No. 11, and the Disclosure of Attorney Compensation, Statement Pursuant to Federal Rule 2016 (B) filed on March 26, 2014, Dckt. No.9, page 27, both indicate that $5,071.00 in attorney fees have been charged in this case. Only $4,000 is allowed in a non-business case.

   Additionally, the Disclosure of Compensation of Attorney for the Debtor appears to list in item 6 that the attorney services do not include some services required under Local Bankruptcy Rule 2016-1(c), such as relief from stay actions. The Trustee believes that the Attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, which requires a motion for any attorney fees.

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.

51. 14-23084-E-13 ROBERT LEWIS
LBG-1 Michele M. Poteracke
OBJECTION TO CONFIRMATION OF PLAN BY LAURIE BURTON
5-21-14 [28]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Laurie Burton, who identifies herself as a priority creditor ("Creditor"), objects to the confirmation of Debtor's Chapter 13 Plan on multiple grounds. Creditor's opposition to the Plan is based on the following grounds:

1. Creditor argues that Debtor's plan does not comply with 11 U.S.C. §1325(a)(4) as the unsecured creditors (and more specifically the priority unsecured creditors) would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C there are $195,582.92 of assets that are not exempted. However, Creditor asserts that there are assets that are undisclosed (including a brand new truck) in the plan and therefore not included in the total liquidation analysis. Creditor also believes the debtor has undervalued the real property by no less than $30,000.00, and she rejects the exemption claimed on Debtor's life insurance proceeds. Creditor states that she not been able to examine the debtor to determine if the exemption is valid. The debtor only proposed to pay $195,582.92 to unsecured creditors. Creditor maintains that the unsecured creditors would be better treated in a Chapter 7 case.

2. Creditor states that it is unable to determine if the plan complies with 11 U.S.C. §1325(a)(3) and (4). The creditor has been informed of potential additional assets that were not disclosed but has been unable to question the debtor as he did not appear at the 11 U.S.C. §341 meeting of creditors.

3. Creditor argues that the plan fails to provide for her priority claim in total pursuant to 11 U.S.C. §1322(a)(2). The provision requires that full payment of all claims entitled to priority under 11 U.S.C. § 507. This creditors claim was been filed on April 4, 2014 for domestic support in the amount of $330,255.07. Creditor argues that the full claim is entitled to priority and has not been objected to by the debtor, therefore is entitled to treatment under 11 U.S.C. §1322(a)(2).

   Debtor's plan was filed after the objecting creditors claim, therefore the priority claim amount was known. The filed plan only proposes to pay $195,582.92 even though the priority creditor has filed a claim for $330,255.07 (Court Claim #1).

4. Creditor asserts that the plan was filed in bad faith because fails to address a known claim. The plan states in additional provisions "The balance unpaid to either of the support obligations in section 2.13 shall remain non-dischargeable upon completion of the plan and survive the plan."

   However, while the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtors either cannot afford the payments called for under the Plan because they have additional debts, or that Debtor wants to conceal the proposed treatment of a creditor.

5. Creditor argues that plan does not comply with 11 U.S.C. §1322(a)(4), which would allow for the less than full payment of a

priority claim because the plan is not proposed as a 5-year plan as required, and because the priority debt is not subject to 11 U.S.C. §507(a)(1)(B) as the debt has not been assigned by the creditor to any governmental unit nor is the debt owed directly to a governmental unit.

6. The Debtor did not file all schedules in a timely manner. The Debtor originally filed on March 26, 2014 by filing an incomplete petition. That incomplete petition failed to include the credit counseling certificate pursuant to 11 U.S.C. §109(h)(1). The Debtor was given the courts 14 days to complete all schedules (although the debtor was not excused from the failure to file the credit counseling certificate and exhibit form). On April 9, 2014 (the last day to file schedules) the debtor still failed to file the necessary Exhibit and Certificate. Creditor argues that on this basis, the case should be subject to dismissal for twice failing to meet this requirement.

   Late-filed schedules, however, are not grounds for denying confirmation of a Chapter 13 Plan.

7. The Debtor failed to appear at the Meeting of Creditors pursuant to 11 U.S.C. §341 and 11 U.S.C. §343. The Debtor is required to attend the meeting under 11 U.S.C. § 343. The Meeting of Creditors has been continued.

8. The Debtor has failed to make first payment under proposed plan in derogation of 11 U.S.C. §1325(a)(6). In reviewing the payment record of this case, the first payment of $110,862.92 has not been remitted to the Trustee. Creditor argues that this is shows that the Debtor is not performing the plan in good faith.

9. The creditor has been informed that the Debtor has not paid $110,862.92 because the Debtor has made a preferential transfer of that asset on May 8, 2014 in violation of 11 U.S.C. §541 and 11 U.S.C. §549. The objecting creditor (not counsel) was contacted by the debtor who admitted that he gave a cashiers check for $70,000.00 to the grandfather of his girl friend as a business loan.

   Creditor states in her declaration that Debtor admitted that he made the transaction on May 8, 2014, after the bankruptcy estate was created; that he received no promissory note, interest in title, or other exchange that would thereby secure the transfer; that the recipient of the funds now would not execute a promissory note; and that the recipient has already spent the funds. This was money taken from the debtor’s bank account listed on Schedule B and not able to be exempted. Creditor argues that Debtor violated the terms of 11 U.S.C. §541 and 11 U.S.C. §549 which made this asset property of the estate on March 26, 2014 and “gave the debtor no right to transfer such assets without express court permission pursuant to 11 U.S.C. §549.” Dckt. No. 30.

   Creditor states further in her declaration that Debtor states that his attorney knew of the transfer and tried to have the recipient sign a promissory note.

10. Creditor states that she is currently investigating these claims and has gained cooperation from the recipient of the funds. Creditor mentions but does not make a request for protective orders against dissipation of the assets of the estate.

11. Creditor states that Debtor was recently incarcerated and posted a bond for payment of bail, and that Creditor had not had the opportunity to investigate the source of the funds for bail. Creditor fears that the Debtor has either further dissipated funds of the assets of the estate for his own benefit, or has borrowed money without permission of the court while in a Chapter 13 proceeding.

Based on the foregoing, and the concerns regarding confirmation of the Plan filed by the Chapter 13 Trustee and covered by the court in its ruling on the Trustee's Objection, DPC-1, 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.

52. 14-23685-E-13 DPC-1 PAUL LUDOVINA Lucas B. Garcia

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 5-27-14 [24]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, 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 Objection to Confirmation of Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's** Objection to Confirmation of Plan.

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee 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 Objection to Confirmation of Plan is dismissed without prejudice.

53. 14-24186-E-13 MG-1 RICHARD/JUDY HUTCHINSON Matthew J. Gilbert MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 5-12-14 [15]

Final Ruling: No appearance at the June 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 12, 2014. By the court's calculation, 44 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 JPMorgan Chase Bank, N.A., "Creditor," is granted.

The Motion to Value filed by Richard Hutchinson and Judy Hutchinson, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor Judge Hutchinson's declaration. Debtors are the owner of the subject real property commonly known as 3224 Arroyo Dr., Fairfield, California, "Property." Debtor seeks to value the Property at a fair market value of $353,000.00 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 first deed of trust secures a claim with a balance of approximately $390,741.02. Creditor's second deed of trust secures a claim with a balance of approximately $154,752.41. 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 Richard Hutchinson and Judy Hutchinson, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 3224 Arroyo Dr., Fairfield, California, 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 $353,000.00 and is encumbered by senior liens securing claims in the amount of $390,741.02, which exceed the value of the Property which is subject to Creditor's lien.

54. 14-24089-E-13 DPC-1 — ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER — Gordon G. Bones — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-27-14 [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 and Debtor's Attorney on May 27, 2014. By the court's calculation, 23 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 Chapter 13 Trustee opposes confirmation of the Plan on the basis the following grounds:

1. The Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan fails to provide for Green Tree's secured lien against real property at 9388 Trebbiano Circle, Elk Grove, California, listed on Schedule D. Also, on May 5, 2014, the Internal Revenue Service filed Proof of Claim No. 1, which claims $8,342.26 in secured taxes which are not provided for in the Debtors' Plan.

   While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtors either cannot afford the payments called for under the Plan because they have additional debts, ro that Debtors want to conceal the proposed treatment of a creditors.

   Debtors' plan fails to provide for the secured claim of the Internal Revenue Service (Proof of Claim No. 1), which indicates that the IRS has a secured lien of $8,342.56 against Debtors' real and personal property. This claim should be provided for an paid in Class 2 of the plan. While the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtors either cannot afford the payments called for under the Plan because they have additional

debts, or that Debtors want to conceal the proposed treatment of a creditor.

2. Debtors list on Schedule D three liens held against the real property located at 9388 Trebbiano Circle, Elk Grove, California; Nationstar Mortgage at $368,196.53; Bank of America at $23,098.60; and Green Tree at $39,730.01. Debtors report on Schedule A the value of real property is $379,164.00. It appears that there may not be sufficient equity to secure the third deed held by Green Tree, so that Debtors and unsecured claim holders may benefit from the Debtors filing a motion to determine the value of the secured claim of Green Tree.

3. Debtors have failed to use the new Official Form B6I (Schedule I) and Official Form B 6J (Schedule J), which became available on December 1, 2013.

4. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors' projected disposable monthly income listed on Schedule J is $3,782.28, and the Debtors propose a plan payment of $5,007.06. Debtors also deduct $413.30 on Schedule J (Dckt. No. 1, page 32), for an auto payment. The only debt secured by a vehicle on Schedule D is to Wells Fargo Dealer Services, which is provided for in Class 2 of the Plan. It appears that the Debtors have either failed to list all debts, or this expense is a duplicate of the debt being paid in the plan as Class 2.

5. All sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). The Debtors are $5,007.06 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $5,007.06 is due on June 25, 2014. Debtors have paid $0.00 into the plan to date.

6. Debtors' plan proposes to allow $4,500 in attorney fees, all of which was paid up front. The Schedule I shows that Debtors have no business income. Only $4,000.00 is allowed in a non-business case under Local Rule 2016-1(c)(1). Debtors' counsel should not be allowed an order approving the fees absent a separate motion.

7. On May 5, 2014, the Internal Revenue Service filed Proof of Claim No. 1, which indicates that Debtors have not filed returns during the 4 year period preceding the filing of the Petition. Specifically, 2011, 2012, and 2013. 11 U.S.C. § 1308 and 11 U.S.C. § 1325(a)(9).

8. The Debtors have 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(2)(2)(A) and Federal Rule of Bankruptcy Procedure 4002(b)(3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I).

9. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, specifically the

2012 Tax Return, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

10. At the 341 Meeting held on May 22, 2014, Debtor Phillip Holden indicated that he did operate a business, which was closed on December 2011. This information is not reported on the Statement of Financial Affairs.

Based on the foregoing, 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.

55. 14-24089-E-13 MDE-1 | **ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER** **Gordon G. Bones** | **OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC** **5-13-14 [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, the Chapter 13 Trustee, and Office of the United States Trustee on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor Nationstar Mortgage, LLC ("Creditor") opposes confirmation of the Plan on the basis that the Plan fails to provide for the curing of the default on Creditor's claim.

Creditor states that it will file its Proof of Claim in the approximate amount of $382,297.17, including arrearage in the approximate amount of $18,132.70. The claim is secured by the real property commonly known as 9388 Trebbiano Circ, Elk Grove, California 95624 (the "Property").

Pursuant to 11 U.S.C. §1322(b)(5), the plan fails to provide for the curing of the default on Secured Creditor's claim. According to the plan, Debtors have provided for the arrears in the amount of $9,293.56. However, the arrearage on Secured Creditor's claim is in the approximate amount of $18,132.70. Creditor argues that the Plan fails to provide for the curing of the remaining default of $8,839.14.

On May 30, 2014, the Creditor filed Proof of Claim No. 7. Attached to the claim is a Mortgage Proof of Claim Attachment, showing an arrearage amount of $18,577.28. The Debtors have not provided for the full amount of the amount necessary to cure the default as of the petition date in their proposed plan. Thus, 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 Creditor Nationstar Mortage, LLC, having been presented to

the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. 14-23793-E-13 TUAN DOAN
DPC-2 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-27-14 [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 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. The Plan does not pay unsecured claim holders what they would receive in the event of a Chapter 7 under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $35,299.78, and the Debtor is proposing a 17% dividend to unsecured claim holders totaling $19,787.00.

   Debtor claims on Schedule C an exemption under Civ. Proc. Code § 704.100 to exempt Ameriprise Variable Universal Life Policy with a value of $18,390.64 (after loans) and exempts $12,200 on Schedule C. However, based on the code, the Debtor is only entitled to a $9,700.00 exemption, leaving $8,690.04 of the policy not exempt. The Trustee's Objection to Exemptions, NLE-1, is set for hearing on July 1, 2014.

   The non-exempt property listed on Schedules A and B total $25,850.85, which includes $4,440.21 in real property, $20 in cash, $100 in bank accounts, $4,600 in household goods, $8,690.64 in life insurance, $6,400 in education accounts, $1,100 in automobiles and $500 in a timeshare.

   On Schedule B, Debtor reports $100 in his USAA checking account. Based on a review of the Debtor's bank statement, the beginning balance on April 14, 2014, was $9,548.93. This is the amount that should be reported on Schedule B and is now considered a non-exempt asset, causing Debtor's nonexempt equity total $35,299.78.

2. Debtor may not have properly completed the B22C form. Debtor is above median income. Form 22C shows line 59, the debtor's disposable income, $706.80, and has proposed a plan payment of that amount. The Trustee has run an independent review and calculation of the form based on the information Debtor has provided in his schedules, and determined that Line #59 should be positive $7,945.19. Based on the applicable commitment period of 60 months, the unsecured creditors would be entitled to $476,711.40.

   On Line #16a, Debtor reports a household size of 6. Trustee objects to the household size as according to the Debtor's own bank account statements, one of his sons has moved to an apartment in Davis. Debtor's household size should be no more than 4. Exhibit B, cancelled checks for deposit to the Ramble Apartments, dated January 18, 2014. The household median income for a household of 5 totals $83,211. Debtor also admitted that his other son is living and going to school in Santa Cruz. The household median income for a household of 4 totals $75,111.

   On Line #24b, Debtor reports a household of 6, including the Debtor, and his three children ages 20, 18, 14l as well as his girlfriend and her 9 year old son. A review of Debtor's bank account statements reveals that on January 18, 2014, the Debtor paid a rental deposit for his son to move into the Ramble Apartments located at 1580 Jade Street, Davis, California. Debtor also admitted that his other son is living and going to school in Santa Cruz. It appears that two sons do not reside with the Debtor and that his actual household size is not 6. The deduction on Line #24b should be 60 times 4- $240. $120 should be added back into line #59.

On Line #28, Debtor deduct $517 for ownership cost of vehicle 1. On Schedule D, Debtor reports debt on 1 vehicle, a 2006 Mercedes SLK 350 which is provided for in Class 2 of the plan, at $282.13 per month. After deducting the payment amount of $282.13 from the standard ownership cost allowance of $518, Line #28 should be $234.87. $282.13 should be added back onto Line #59.

On Line #29, Debtor deducts $517 for ownership costs for vehicle 2. Debtor does not report or claim ownership/lease expenses for a second vehicle, and should not be allowed the deduction.

On Line #30, Debtor deducts $11,771.51 for a tax withholding, which calculates to be approximately 41% of Debtor's income. According to Debtor's 2013 Tax Returns, Debtor received $3,594 federal and $6,419 state tax refunds for a combined total of $10,013. It appears that the Debtor is overwithholding of taxes and may not be entitled this entire deduction. The Trustee also points out that Debtor claimed only a household of 3 on his 2013 returns.

On Line #33, Debtor deducts $5,361.41 for court ordered payments. On Schedule J, Debtor also deducts $5,361.41 for support. Debtor supplied the Trustee with a Marriage Settlement Agreement, showing that Debtor was ordered to pay $824 per month toward child support. $4,537.41 should be added back into Line #59.

On Line #34, Debtor deducts $633 for education for employment or a physically or mentally challenged child. The Trustee has requested evidence of such expense, but has not been provided with any. Until evidence of the expense is provided, the Trustee objects to the deduction of $633 and this amount should be added into Line #59.

Debtor did supply the Trustee with evidence of expense for schooling for Thomas Doan. The statements also show that a portion of his education costs are paid by the Department of Veteran Affairs. Debtor fails to show what portions of that were paid out of the Debtor's pocket versus paid by the 529 accounts listed on Schedule B.

On Line #37, Debtor deducts $307 for telecommunication services, excluding basic home and cell phone services necessary for his and his dependent's health and welfare. On Schedule J, Debtor deducted $385.00 for telephone, cell phone, internet, satellite, and cable services. Debtor has not supplied the Trustee with information on what portion of the Schedule J deduction qualifies as a deduction on Line #37. Until evidence of the expense is provided, the Trustee objects to the deduction in its entirety. $307 should be added back into Line #59.

On Line #43, Debtor deducts $312.50 for education expenses. Line 43, specifically states that Debtor must provide Trustee with documentation of the actual expense and an explanation of why it is reasonable and necessary. Debtor has failed to comply and no evidence of expense has been provided. Until evidence of the expense is provided, the Trustee objects to the deduction in its entirety. $312.50 should be added back into Line #59.

On Line #47(a), Debtor deducts $315.54 for average monthly payments to USAA for his 2006 Mercedes, however, the payment over the life of the plan in Class 2 are $282.13. $33.41 should be added back into Line #59.

On Line #50, Debtors deduct $132.23 for Trustee fees, calculating the Trustee fees from a payment of $3,148.28 and a Trustee percentage of 4.20%. Debtor has a proposed plan of $706.80 a month. The administrative expense of $706.80 at 4.20% is $24.32. $107.91 should be added back into line #59.

On Line #55, Debtor deducts $925.76 for qualified retirement deductions. On Schedule I, Debtor deducts $925.76 for repayment of the 401K loan. Debtor did provide the Trustee with a statement for his 401K, which shows a loan balance of $32,263.76 as of April 21, 2014. The balance of $32,263.76 divided by 60 months equates to $637.73 per month. No less than $388.03 should be added back into Line #59.

3. It does not appear that the plan provides all of Debtor's projected disposable income into the plan for the applicable commitment period. 11 U.S.C. § 1325(b).

   a. Support Order: On Schedule J, Debtor deducts $5,361.41 for support. Debtor supplied the Trustee with a Marriage Settlement Agreement, which shows that Debtor is ordered to pay $824.00 per month toward child support. It appears that the Debtor has an additional $5,537.41 per month to contribute toward the plan and general unsecured claim holders.

   b. 401 K Loan May be Repaid before the End of the Plan: On Schedule I, Debtor deducts $925.76 for repayment of a 401K loan. Debtor fails to propose to increase the plan upon payoff of the loan, which ends on July 17,2017. The plan should be increased $925.76 effective on August, 2017.

   c. Tax Refunds Not Contributed: On Schedule I, Debtor reports his gross earnings at $28,648.96, and deducts $11,771.51 for tax withholding, which is approximately 41% of the Debtor's gross income. According to the Debtor's 2013 Tax Returns, Debtor received $3,594.00 from the Internal Revenue Service for a federal refund, and received $6,419.00 from the Franchise Tax Board for a state refund. Debtor's combined income totals $10,013 with what would average an additional $834.42 per month if divided over 12 months. Tax refunds should be considered income and contributed toward Debtor's plan.

   d. Debtor's bank statements reveal that Debtor receives a monthly payment of $130.94 per month from the United States Treasury, for what appears to be a VA benefit. Debtor admitted at his 341 that he does receive this income monthly. Debtor's plan should be increased an additional $130.94.

4. Trustee is unable to confirm the attorney fees charged and paid in this case. Debtor has filed multiple documents which conflict with one another. In Section 2.06 of Debtor's Plan, Debtor reports attorney fees of $2,000 that have been paid, and a balance of $2,000 is owed and to be paid in the plan.

Debtor's 2016(b), Disclosure of Compensation of Attorney for Debtor conflicts with the Debtor's plan and shows the fees charged as a total of $2,000, which was paid prior to filing. Debtor's Statement of Financial Affairs #9 fails to report the payment of any bankruptcy related fees, thus conflicting with both the plan and 2016b.

Debtor's Rights and Responsibilities, Dckt. No. 7, agrees with the plan and indicates that the total attorney fees is $4,000.00, of which $2,000.00 has been paid.

5. Debtor lists on Schedule E, Dorothy Louise Pitman, but fails to provide an address for the creditor. It appears that Ms. Pittman has not had notice of the pending plan or that Debtor has filed for bankruptcy relief. Schedule E should be amended to provide a valid address for this creditor.

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.

57. 14-23793-E-13 TUAN DOAN
MRG-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS BANK
4-30-14 [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, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2014. By the court's calculation, 54 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.

USAA Federal Savings Bank ("Creditor"), objects to the confirmation of the Debtor's Chapter 13 Plan. On or about April 30, 2014, Creditor filed its Proof of Claim in the amount of $30,482.21. Creditor's claim is secured by the real property commonly known as 8050 Golden Vista Way, Antelope, California 95843 (the "Property").

Creditor argues that pursuant to 11 U.S.C. §1322(b)(5), the plan fails to provide for maintenance payments on Creditor's claim, on which final payment is due after the proposed final payment under the plan. Debtor has omitted the Creditor's claim, failing to provide for the

maintenance payments on Secured Creditor’s claim of approximately $30,482.21 either directly or through Trustee plan payments.

The Plan also fails to provide how Debtor will be able to make all payments under the Plan and to comply with the Plan under 11 U.S.C. §1325(a)(6). According to the plan, Debtor will make monthly payments of $706.80 per month for 60 months to the Trustee. However, according to the Debtor’s Schedules, Debtor has a monthly net income of only $706.89. This amount will be insufficient to fund the plan once Secured Creditor's claim, an additional $30,482.21, is fully provided for.

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 Creditor USAA Federal Savings 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

58. 12-41394-E-13 GINA DOMINGUEZ
DPC-5 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-13-14 [60]

Tentative Ruling: The Objection to Debtor's Claim of Exemptions 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 Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 13, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor amended Schedules B and C on May 1, 2014, Dckt. No. 59. It is not clear to the Trustee what the Debtor is exempting. It is not clear if the life insurance has matured. Schedule B changes the value of the Met Life Insurance-Term Policy from $1.00 to $100,000.00.

Debtor specifies an exemption under Civ. Proc. Code § 703.140(b)(8) on Schedule C, and it is not clear of the Debtor is entitled to exempt $12,860.00 under this code, which in part states "...in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract

owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent."

If the Debtor is exempting a surrender value of the policy, the Debtor should be estopped from exempting a surrender value of the property, as the Plan filed on December 13, 2012 was confirmed on March 18, 2013.

REPLY OF DEBTOR

Debtor responds by acknowledging that the date of filing is the effective date for exemptions. At the time of filing, Debtor had available claims of exemptions for which the exemption had "not been taken," but was available. Debtor states that in this instance, both Civ. Proc. Code § 603.104(b)(8) and (5) had $12,860.00 and $18,280.00 available to exempt. As a result, there is $58,170.54 for which no exemption is available, and $31,140.00 that is exempt.

DISCUSSION

California Civil Code of Procedure § 703.140(b)(8) permits Debtors to claim exemptions on a debtor's aggregate interest,

> not to exceed in value twelve thousand eight hundred sixty dollars ($12,860), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

The Trustee has expressed the concern that it is not clear whether the insurance policy that Debtor claims as exempt in her Amended Schedule C, which is simply listed as "Met Life Insurance - Term Policy," has matured. The Debtor may not claim an exemption if the policy has matured, or if Debtor is attempting to exempt the surrender value of the policy, as the Plan was confirmed in March of 2013.

The Debtor has not responded to the Trustee's concerns. Rather, Debtor states that the Debtor is now claiming an exemption that was also available to her previously. Debtor has not stated whether the life insurance contract has matured or is owned by the Debtor under which the insured is the Debtor or the Debtor's dependent, pursuant to the requirements of California Civil Code of Procedure § 703.140(b)(8). Debtor has also not clarified whether the exemption is in the surrender value of the property, which would be barred by the confirmation of her Plan. Debtor would not be able to use the exemption provided for in California Civil Code of Procedure § 703.140(b)(5).

In the absence of an explanation addressing the Trustee's concerns with the subject exemption, the Objection is sustained and the claim of exemption shall be 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 Objection to Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Debtor is denied the $12,869,00 exemption and $18,280.00 claimed in Met Life Insurance - Term Policy pursuant to California Civil Code of Procedure §§ 703.140(b)(8) and (5), respectively.

59. 09-30096-E-13 CAROL DOYLE **MOTION TO SELL O.S.T.**
EJS-8 Eric John Schwab **6-9-14 [133]**

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(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 the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 15 days' notice was provided.

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits the Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as 7642 North Avenue, Tahoe Vista, California.

The proposed purchaser of the Property is the Steventon Trust, which has agreed upon a purchase price of $530,000.00. Upon completion of the sale, BSI Financial services, Inc. (holder of the first mortgage) and Wells Fargo Card Services (holder of the second mortgage) will release their liens on the property. The breakdown of the sales contract is as follows:

A. Sales Price: $530,000.00
B. Settlement Charges to Seller: $41,803.29
C. Payoff of First Mortgage: $467,491.21
D. Payoff of Second Mortgage: $23,246.28
E. Payoff to Placer County Tax Collector: $1,723.01
F. Estimated Settlement Charges: $37,551.81
G. Cash to Seller: $0.00

The real estate company handling this transaction for the buyer and seller is Coldwell Banker Residential Brokerage. The point of contact for the buyer is Susan Daniels, BRE License No. 01066252, and the point of contact for the seller is Tom Mills, BRE License No. 00756102.

A copy of the sales contract and HUD-1 settlement sheet have been included as Exhibits A and B in support of this Motion. The Proposed Purchase Contract, reflecting a purchase price of $530,000.00 to be paid by buyer David B. Steventon as Trustee for the John Carol Doyle Family Trust is attached as Exhibit A, Dckt. No. 136. An estimated settlement statement is attached as Exhibit B. *Id.*

On June 10, 2014, the Chapter 13 Trustee filed a statement of non-opposition to the Motion.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Carol Doyle the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Carol Doyle, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Steventon Trust or nominee ("Buyer"), the Property commonly known as 7642 North Avenue, Tahoe Vista, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $350,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. No. 136, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

4. The Chapter 13 be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

60. 14-20297-E-13 ANDREW LUMPKINS MOTION TO CONFIRM PLAN
TJW-1 Timothy J. Walsh 5-5-14 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 50 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee objects to confirmation of the plan because Debtor is $3,947.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,983.00 is due on June 25, 2015. The case was filed on January 13, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid $3,985.00 into the Plan to date.

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.

61. 14-23997-E-13 DPC-1 — DAVID JARMAN — Daryl J. Lander — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-27-14 [20]

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

62. 13-23599-E-13 PGM-5 — IVAN MONTELONGO — Peter G. Macaluso — MOTION TO AVOID LIEN OF CHARLES CUMMINS, JR. — 5-27-14 [95]

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

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 the respondent creditor, the Chapter 13 Trustee, Debtor, and Office of the United States Trustee on May 27, 2014. By the court's calculation, 28 notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Charles Cummins, Jr. ("Creditor") against property of Ivan Montelongo ("Debtor") commonly known as 4843 Skyway Drive, Fair Oaks, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,330.27. An abstract of judgment was recorded with the Sacramento County Recorder on September 10, 2014, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $170,000.00 as of the date of the petition. The unavoidable consensual liens total $350,149.36 as of the commencement of this case are stated on Debtor's Schedule D.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Charles Cummins, Jr., California Superior Court for Santa Clara County Case No. 4-06-SC-019633, recorded on September 10, 2007 with the Sacramento County Recorder, against the real property commonly known as 4843 Skyway Drive, Fair Oaks,

California (the Property), is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1) as to the Property, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.