UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 28, 2016 at 3:00 p.m.

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1. 14-26567-E-13 SAMUEL TAPIA — **MOTION TO APPROVE LOAN MODIFICATION**
JGD-4 John Downing — **5-16-16 [74]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2016. By the court's calculation, 43 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 continued to 3:00 p.m. on July 19, 2016.

INCOMPLETE INFORMATION PROVIDED TO AND BY DEBTOR

The court cannot rule on the Motion due to the Debtor not having, and not providing, evidence of the actual person with whom this consumer Debtor is purporting, and is being told, it is entering into a contract to modify the loan. The court discusses below this shortcoming and non-disclosure by Ocwen Loan Servicing, LLC.

It may be that Debtor has the information and evidence and quickly provide it to the court. If so, notwithstanding Ocwen Loan Servicing, LLC having provided incomplete (and misleading) documents, the court could structure an order properly exercising federal judicial power with the real parties in interest who have an actual claim or controversy before the court.

If Debtor has further documentation or evidence identifying the other party to this loan modification, the creditor to whom the obligation is owed, the court can address the non or misleading disclosures in the Loan Modification Agreement by separate order to appear and order to show cause, if necessary and appropriate.

Therefore, the court continues the hearing to July 19, 2016 (the next available Chapter 13 law and motion date) to afford this consumer debtor the opportunity to get the loan modification locked down.

If Ocwen Loan Servicing, LLC has not provided, or does not promptly provide the Debtor with a completed Loan Modification Agreement and identify the real party in interest with whom this consumer Debtor is contracting, the court may continue this hearing further. The court will not, so long as this consumer Debtor is attempting to prosecute the Motion in good faith; which includes propounding written discovery in this Contested Matter or through a written interrogatories 2004 examination (there appearing to be little utility in this consumer Debtor being forced to incur the cost and expense of an oral deposition or 2004 examination), just deny the Motion. Such may cause the actual lender to withdraw from the promised loan modification, which could possibly be part of a larger scheme of that creditor and Ocwen Loan Servicing, LLC to deprive consumer borrowers of a loan modification they are otherwise entitled.

REVIEW OF MOTION

The Motion to Approve Loan Modification filed by Samuel Tapia ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing ("Ocwen"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,102.52 (including escrow). The modification provides for a modified principal balance of $311,678.84. $75,128.64 of the modified principal shall be deferred, no interest will be paid on that amount and it is forgivable if Debtor does not default on payments for the first three years of the loan. The remaining $236,500.00 of the modified principal balance shall earn 2% interest.

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

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on June 13, 2016. Dckt. 92.

Identity of Creditor

Owen Loan Servicing, LLC has appeared many times in this court and has been ordered to appear and address the failure to identify the actual creditor in contracts and loan modifications it is presenting to consumer debtors. As in the present case, Ocwen Loan Servicing, LLC would prepare contracts in which it is ambiguously identified as “Lender/Loan Servicer/Agent for Loan Servicer.” Ocwen Loan Servicing, LLC was preparing and presenting to consumer and consumer attorneys loan modification agreements which were not with the creditor and for which Ocwen Loan Servicing, LLC was not identified as executing the agreement for a disclosed principal.

Two of the cases in which the court has order Ocwen Loan Servicing, LLC to appear and address it preparing and presenting contracts to be approved in this federal court which did not include the real parties with a case or controversy are *In re Nissen*, Bankr. E.D. Cal, 11-30546, and *In re Raposo*, Bankr. E.D. Cal. 09-27153.

No Proof of Claim has been filed. There is no indication on the actual Modification Agreement as to who is the real creditor in interest. The balloon payment agreement only identifies Ocwen as "Lender/Servicer or Agent for Lender/Servicer," appearing to be nothing but a "catch-all" in order to cover all possible roles Ocwen may be playing in a certain transaction without stating explicitly and affirmatively who they are in terms of the transaction.

Notably absent from the Motion itself is the identity of the creditor. Rather, the Motion remains silent as to what entity the Debtor is attempting to enter a modification. The Debtor, appearing to "hide the ball" instructs the court to search the "Motion, on the Declaration of Samuel Tapia and Exhibit" to discern the parties of the modification; the respective roles of the party (i.e. Ocwen as servicer or creditor); the actual change in mortgage payments and principal balance; etc. The court declines such invitation.

As discussed supra, Ocwen Loan Servicing, LLC has been ordered to appear before and, as the court has emphasized on these occasion, understands the creditor must be identified. However, notwithstanding Ocwen Loan Servicing, LLC's prior appearances, it appears that the modification documents in the instant case have been prepared to intentionally hide the identity from the court and circumvent the obligations of parties in federal court.

In light of the above, and Ocwen Loan Servicing, LLC's history at failing to identify the real creditor in interest, the court will issue an Order to Appear, in person, no telephonic, for Ocwen Loan Servicing, LLC to address (1) why the identify of the creditor is not disclosed and (2) why the documents do not have any completed signature blocks for the creditor.

The court continues the instant Motion 3:00 p.m. on August 23, 2016 to be heard in conjunction with the Order to Appear that the court will issue.

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 Samuel Tapia having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on July 19, 2016. Supplemental pleadings if any, including a amended loan modification agreement, shall be filed and served on or before July 14, 2016.

2. 14-26567-E-13 SAMUEL TAPIA **AMENDED MOTION TO MODIFY PLAN**
JGD-5 John Downing **5-25-16 [85]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m on July 19, 2016.

Samuel Tapia ("Debtor") filed the instant Motion to Modify Chapter 13 Plan on May 25, 2016. Dckt. 85. FN.1.

FN.1. This is the amended Motion filed by the Debtor.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 10, 2016. Dckt. 89. The Trustee opposes the Motion on the following grounds:

1. The Debtor's Motion does not comply with applicable law and does not cite 11 U.S.C. § 1329.

Though a motion is not a points and authorities providing extensive citations, quotation, arguments, conjecture, and speculation, it should at least identity the statutes and law upon which the relief is requested. Here, the Motion seeks confirmation pursuant to 11 U.S.C. § 1325. Since there is already a confirmed plan in this case, confirmation of a modified plan is pursuant to 11 U.S.C. § 1329 (which includes the requirements of §§ 1325, 1323, and 1322. This part of the Trustee's Opposition appears to, correctly, be more informational for counsel to update his motion to confirm a modified plan form, as opposed to a substantive opposition.

2. The Debtor is $1,201.00 delinquent in plan payments under the

proposed plan.

3. The Trustee is uncertain of monthly payment for attorney fees to be paid through the plan. The Debtor's confirmed plan called for attorney fees of $3,000.00 to be paid through the plan. The box complying with Local Bankr. R. 2016-1(c) was checked. The order confirming authorized a monthly dividend of $200.00 as none was specified in the plan. The Debtor's proposed plan states additional fees of $4,750.00 shall be paid through this plan, which appears to be $1,750.00 of additional fees to the fees already approved. The box filing and serving a motion in accordance with 11 U.S.C. § 329 and 330 is checked. The plan does not specify in 2.07 a monthly amount to be paid. The attorney is owed $765.19 of the original $3,000.00 allowed.

4. The treatment of the secured Class 1 creditor is contingent on the court granting the Debtor's Motion fo Loan Modification set on the same calendar.

DISCUSSION

Failure to Properly Serve

The only address served for creditors was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Additionally, Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100

Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the P.O. Box address. The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

Unfortunately, due to the failure to properly serve the Motion, the Motion is denied without prejudice.

Fails to Comply with 11 U.S.C. § 1329

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The substance of this part of the Opposition is that Debtor appears to ignore that the modification must be sought pursuant to 11 U.S.C. § 1329, which incorporates portions of 11 U.S.C. §§ 1325, 1323, and 1322. While the difference are subtle, there is a difference. It appears that Debtor is using a motion to confirm an original Chapter 13 plan in the place of motion to confirm a modified plan.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $1,201.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's third objection, the court's review of the proposed plan as well as the docket in total indicates that the Debtor is attempting to include additional unanticipated and substantial fees that the Debtor is seeking in the Motion for Additional Fees. Dckt. 94. The court granted the Motion for Additional Fees. Therefore, the Trustee's third objection is overruled.

As to the Trustee's final objection, the court has been forced to continue the hearing and Order Ocwen Loan Servicing, LLC because the identity of the creditor with which the loan modification is proposed is not disclosed and the modification documents presented are devoid of any identification as to who is signing the agreement and who affirmatively states that they have a claim in this case.

While not all, a portion of Debtor's problems relate to Ocwen Loan Servicing, LLC failing to disclose the identity of the creditor with whom Debtor is to enter into a loan modification agreement. See Civil Minutes for June 28, 2016 hearing on Motion to Approve Loan Modification, Docket Control Number JDG-4.

The court continues the hearing to afford Debtor and Debtor's counsel to address the loan modification issue, correct the notice deficiencies, and address with the Trustee the delinquency in payments.

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 Plan is continued to 3:00 p.m. on July 19, 2016.

3. 14-26567-E-13 SAMUEL TAPIA
JGD-6 John Downing

MOTION FOR COMPENSATION FOR JOHN G. DOWNING, DEBTORS ATTORNEY(S)
6-14-16 [94]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The hearing on the Motion for Allowance of Professional Fees is continued to 3:00 p.m. on July 19, 2016, to be schedule for further proceedings in conjunction with the motion to approve loan modification and motion to confirm modified plan (the fees requested relating to these matters which are pending).

John Downing, the Attorney ("Applicant") for Samuel Tapia the Debtor in Possession ("Client"), makes a Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 24, 2016 through May 25, 2016. The order of the court approving employment of Applicant was entered on June 24, 2014, Dckt. 7. Applicant requests fees in the amount of $1,750.00.

Unfortunately, the Applicant failed to provide the 21 days' notice that is required for a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000. Fed. R. Bankr. P. 2002 (a)(6). The Applicant filed the Application for Additional Attorney's fees on June 14, 2016. Dckt. 94. Only 14 days' notice was provided.

While notice could be "fixed," there is a more significant impediment to granting fees now - the two items for which fees are requested, the motion to approve loan modification and motion to confirm modified plan, cannot be concluded. While the shortcomings in the motion to modify rest with the Debtor, it may well be that the Debtor and the bankruptcy estate may incur further substantial legal fees due to Ocwen Loan Servicing, LLC having failed (or intentionally hidden) the identify of the actual creditor with whom the consumer Debtor must enter into the loan modification.

The court continues the hearing and will schedule it further to be conducted in conjunction with the hearings on the Motion to Confirm and the Motion to Approve Loan Modification (which fees Ocwen Loan Servicing, LLC can significantly reduce by promptly disclosing the identity of the creditor with whom the consumer Debtor will have to enter into the loan modification agreement).

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 John Downing ("Applicant"), Attorney for the Debtor in Possession 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 3:00 p.m. on July 19, 2016.

4. 16-22100-E-13 DAVID/DEANNA TIBBETT
SJS-1 Matthew DeCaminada

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
4-13-16 [18]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is dismissed without prejudice.

The Motion to Value filed by David and Deanna Tibbett ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4724 Winter Oak Way, Antelope, California ("Property"). Debtor seeks to value the Property at a fair market value of $254,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

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

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

APPLICABLE LAW

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

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

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

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

No Proof of Claim Filed

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

MAY 24, 2016 HEARING

JP Morgan Chase Bank, N.A. requested that the court continue the hearing so that it may conduct discovery and obtain it's expert opinion as to value so that it may properly determine its interest in the Property. The court continued the instant Motion to 3:00 p.m. on June 28, 2016. The Creditor shall file supplemental papers on or before June 14, 2016. Any replies or opposition shall be filed and served on or before June 21, 2016.

DISCUSSION

First, to address the Creditor's objection as to the admissibility of the Debtor's opinion of the Property, the objection is overruled. As has been discussed by the Ninth Circuit, as the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> "JPMorgan objects to **Debtors' valuation as it lacks competency** and is based on **inadmissible lay opinion** under the Federal Rules of Evidence Rule 701. A lay opinion is admissible under FRE 701 as

follows:

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

Opposition, p. 3:8-18.

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

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

> § 701.03 Requirements for Admissibility
>
> [1] Opinion Must Be Based on Personal Perception
>
> To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.
>
> In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations. **In this regard, homeowners and owners and officers of businesses are allowed to offer lay opinions about the value of the home or business.** [FN.]5
>
> Some courts, however, have been more expansive in their interpretation of Rule 701. These courts admit opinion testimony from lay witnesses based not only on their own observations and personal perceptions respecting the incident in question and, perhaps, others like it, but also on the witness's experience and

specialized knowledge obtained in his or her vocation or avocation.

WEINSTEIN'S FEDERAL EVIDENCE, § 701.03.

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

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

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

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

As noted by the Tenth Circuit Court of Appeal, so long as the landowner's opinion as to value is not based on "technical or specialized knowledge, it may be admitted as lay opinion testimony." This precludes using Federal Rule of Evidence 701 for lay person opinion to circumvent the requirements of Federal Rules of Evidence 702 for expert witness opinions. *James River Insurance Co. V. Rapid Funding, LLC*, 648 F.3d 1134, 1149 (10th Cir. 2011).

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

> "In the absence of contrary evidence, **an owner's opinion of property value may be conclusive**. *In re Brown*, 244 B.R. 603, 611 (Bankr. W.D. Va. 2000). Thus, **since the Bank provided no contrary evidence, the**

> **bankruptcy court was well justified in relying on the debtor's affidavit of value**. To allow the Bank to contest valuation on appeal would be manifestly unfair and an abuse of the appellate process. As we observed in another, similar bankruptcy appeal, "federal courts are not run like a casino game in which players may enter and exit on pure whim." *Investors Thrift v. Lam (In re Lam)*, 192 F.3d 1309, 1311 (9th Cir. 1999). The Bank has forfeited its right to challenge value of the collateral as determined by the bankruptcy court."

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

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

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

DEBTOR'S WITHDRAWAL

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

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

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

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

IT IS ORDERED that the Motion is dismissed without prejudice

5. 16-22600-E-13 MICHAEL HANKS
DPC-1 Mary Ellen Terranella
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-1-16 [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 June 1, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor is delinquent in plan payments.

The Trustee’s objections are well-taken.

The basis for the Trustee’s objection is that the Debtor is $2,166.00 delinquent in plan payments. According to the Trustee, the Debtor has paid $0.00 into the plan to date. The Debtor’s delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

6. 15-29404-E-13 TAEVONA MONTGOMERY **MOTION TO CONFIRM PLAN**
RJ-5 Richard Jare **4-29-16 [99]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2016. By the court's calculation, 60 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 April 29, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

7. 16-22404-E-13 RAYMOND MCCLELLAN — MOTION TO CONFIRM PLAN
RLC-2 Stephen Reynolds — 5-16-16 [20]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

Raymond McClellan ("Debtor") filed the instant Motion to Confirm the Amended Plan on May 16, 2016. Dckt. 20.

UNITED STATES'S OBJECTION

The United States, on behalf of its agency the Internal Revenue Service, ("IRS") filed an objection to the instant Motion on June 7, 2016. Dckt. 27. The IRS objects to the plan on the following grounds:

1. The Debtor has failed to file his 2012, 2013 and 2015 federal income tax returns.

2. The Debtor's plan fails to correctly list and provide for full payment of the IRS's secured claim.

3. The plan is not feasible because the monthly plan payment proposed is insufficient to pay the IRS's secured claim.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 14, 2016. Dckt. 29. The Trustee objects to confirmation on the following grounds:

1. The plan relies on the resolution of the IRS claim. The Debtor lists the claim in Class 4 as a disputed claim. The Debtor indicates he will be amending his 2012 tax return to detail investment losses that will eliminate the tax liability or will file an objection to the IRS claim.

2. The Debtor cannot make payments under the plan because the plan fails to provide a monthly dividend to be paid to the Class 1 mortgage arrears.

3. Debtor cannot afford to make the payments because the Debtor's budget indicates that his net disposable income is -<$1,280.72>. The Trustee found that the Debtor erroneously deducts $985.72 on Schedule J for his monthly mortgage payments, since the Trustee will be paying the ongoing mortgage pursuant to Class 1 of the plan. This results in the Debtor's net income to be a -<$295.00>. Additionally, at the Meeting of Creditors, the Debtor admitted that the Debtor's spouse has not yet returned to work.

   The Trustee is also concerned with the amounts of expenses on Schedule J. Debtor and his non filing spouse state that they can live on $663.00 a month to pay their living expenses which is an unrealistic amount for the Debtor's household.

4. The Motion to Confirm and the Declaration contain information which conflicts with the plan. The Motion states that the plan is proposed for 60 months but the plan proposes 36 months.

DISCUSSION

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

The Trustee and the IRS's objections are well-taken.

First, 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same

treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

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

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

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

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

Here, the Debtor provides for the IRS claim but fails to fully provide for the IRS's full secured claim by means of the Federal Tax Lien. This failure is grounds to deny confirmation.

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). As discussed by both the Trustee and the IRS, the Debtor is proposing a plan that proposes $1,040.00 for 36 or 60 months (an unknown since the Motion and Plan offer conflicting statements as to the plan length). However, in order for the plan to pay out the IRS claim, the minimum plan payment would need to be $2,885.17 over 60 months. The Debtor's Schedule J shows a negative net income. Therefore, the plan is not feasible because the Debtor is unable to make the necessary payment amount. Further, the Debtor's conflicting information in the plan and Motion in conjunction with the unexplained extremely low expenses, such as gas and electricity, the Debtor appears to have used numbers to give the illusion that a plan is feasible. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

The court's concerns are further exasperated by the fact that the plan does not provide for an arrearage dividend to be paid to Class 1 claims, when Wells Fargo Bank has a pre-petition arrearage that needs to be cured through the plan. Therefore, the plan cannot be confirm.

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. 16-20005-E-13 BEVERLY BAUER — MOTION TO CONFIRM PLAN
GHB-1 George Bye — 5-6-16 [71]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2016. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. 15-26207-E-13 JDM-2 | **TODD/MELISSA MANES** | **John Maxey** | **OBJECTION TO CLAIM OF WFFNB, CLAIM NUMBER 14** | **5-18-16 [51]**

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor and Chapter 13 Trustee on May 18, 2016. By the court's calculation, 41 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 14 of Wells Fargo Financial National Bank is overruled without prejudice.

Todd and Melissa Manes ("Objector") requests that the court disallow the claim of Wells Fargo Financial National Bank ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The sum total of all of the grounds upon which Debtor states the claim should be disallowed (much as a consumer would plead in a complaint against a creditor to determine the correct amount of an obligation) is the following:

> "The grounds for objecting to said claim include, but are not limited to:
>
> (I) The claim is inaccurate and/or false. In said claim, WFFNB overstates the secured claim of $2,716.08. Debtors assert the amount of the secured claim is $1,845."

Dckt. 51.

Thus, Debtor's sole basis is an allegation that the obligation is overstated, in some unidentified way, based on some uncomputed calculation, under some unidentified contract or statutory provision.

The Debtor filed a declaration in support of the Objection. Dckt. 53. The Debtor testifies that she and her husband purchased household items from Closet Dimensions back in 2014. Debtor states that in 2014 the account balance was approximately $1,845.00.

The Debtor further testifies that having reviewed the proof of claim, and based on that review she states "the secured claim amount is *inaccurate and/or false*." This is curious language for someone who is testifying under penalty of perjury, not to clearly state that is incorrect, but merely it could be something, and/or something else.

Debtor then testifies that she "asserts" that the amount of the claim is $1,845.00 (which is exactly the amount Debtor states the obligation was two years earlier). This too is curious language for a person to provide under penalty of perjury. Though having the time to calmly organize her testimony, review it with her counsel, and then finalize it, she cannot testify affirmatively the amount of the claim and how it is computed, as opposed to merely wanting to "assert" an amount. This sounds in the nature of not wanting to provide testimony under penalty of perjury, but merely allege allegations, as in a complaint, for which the Debtor is not making the statements under penalty of perjury.

Debtor then make a general statement that she does not "believe" that the claim accurately represents the value of the property (which she does not clearly identify, but possibly could be referring to the merchandise). However, she does not testify as to any value for such *property*. Further, neither the Objection nor the Declaration make any reference to why such value is relevant to the present Objection.

Debtor finally provides testimony that her bankruptcy plan provides for paying the Claim as a Class 2 Claim, with a $31 monthly dividend computed on a claim amount of $1,845. It is not clear why Debtor is providing testimony under penalty of perjury as to the Chapter 13 Plan. The Objection does not assert any grounds for the Objection based on the Chapter 13 Plan.

APPLICABLE LAW

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).

DISCUSSION

The Debtor has facially failed to state with particularity the grounds for which relief is sought. The Debtor merely states that the claim is "inaccurate and/or false" because it is not the amount the Debtor remembers the debt to be.

Failure to Properly Serve the Motion

The only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Failure to Provide Sufficient Notice

Fed. R. Bankr. P. 3007(a) and L.B.R. 3007-1(b)(1) requires a minimum of 44-days notice for an Objection to Claim. Here, the Debtor improperly sets the Objection on Local Bankr. R. 9014-1(f)(1) on 28-days notice. This is insufficient for an Objection to Claim.

Failure to State Grounds Upon Which Relief May be Granted

The Objection does not state with sufficient grounds upon which the requested relief is based. The Objection merely states that the Debtor disagrees with the Proof of Claim. This is not sufficient. Even if all the allegations of the Objection are taken as true, the Objection fails to allege the grounds that would justify sustaining the Objection. The Debtor's disagreement with the Proof of Claim is not, in and of itself, a basis to disallow it.

Contested matter practice in bankruptcy court demonstrates why such pleading is necessary for motions and other contested matters. Many of the substantive legal proceedings are conducted in the bankruptcy court through contested matters. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim, abandonment of property from the estate, relief from stay, motions to avoid liens, objections to plans in Chapter 13 cases, use of cash collateral, and secured and unsecured borrowing.

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

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket

> to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

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

Not pleading with particularity the grounds in a contested matter can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. It may also be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Failure to Meet Burden

Lastly, the Debtor has failed to meets their burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim. Reviewing Proof of Claim No. 14, it appears that the amount in dispute is the amount of interest. The Debtor does not assert in the Objection nor the Declaration as to how the calculation of interest is not permitted to be part of the Creditor's secured claim.

The Debtor appears to be seeking to use an Objection to Claim in order to value the secured claim of the Creditor pursuant to 11 U.S.C. § 506(a). But no such motion has been filed. The Chapter 13 Plan expressly provides that in the absence of such valuation, the proof of claim filed by creditor controls. Chapter 13 Plan ¶ 2.04, Dckt. 26. FN.1.

FN.1. The gaps in Debtor's Objection and Declaration peaked the court's curiosity with respect to Proof of Claim No. 14. The Proof of Claim states that the amount of the obligation as of the commencement of the case was $2,781.73. The date the case was commenced is August 8, 2015. The collateral is stated to be "Items Purchased From - Closet Dimensions." The secured amount of the claim is asserted to be $2,716.08 and the unsecured claim is $65.65.

The attachment to the Proof of Claim breaks the $2,781.73 claim as follows:

A.	Interest.....	$ 871.73
B.	Late Fees.....	$ 65.00
C.	Principal.....	$1,845.00

It is interesting that Debtor's *belief* stated in the declaration that the amount of the debt as of the commencement of the case was $1,845.00 - exactly the amount of principal balance stated by Creditor. Such a *coincidence* on an independent *belief* seems highly unlikely.

It is further stated that:

A. Date Account Opened.....February 8, 2014
B. Date of Last Transaction.....June 3, 2014
C. Date of Last Payment.....April 30, 2015
D. Date of Charge Off.....August 7, 2015

The attachments do not include an accounting of the credit extended, computation of interest, and application of payments.

Therefore, based on the evidence before the court, the Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Financial National Bank, Creditor filed in this case by Todd and Melissa Manes 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 14 of Wells Fargo Financial National Band is overruled without prejudice.

10. 16-22614-E-13 PAULA GREER
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-1-16 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 1, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor has failed to make plan payments to date and is delinquent $320.00.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her federal income tax return with attachments for the most recent pre-petition tax year for which a return was required.

3. The Debtor has failed to provide the Trustee with the answers

to certain questions about the Debtor's business including recent profit and los, a list of employees, and other questions set on in the Business Case Questionnaire as well as documents such as bank statements, business tax returns, licenses, and any insurance policies.

4. The Debtor's plan relies on a Motion to Value Collateral of Citibank N.A. The court granted such motion (Item 8 on court's June 28, 2016 Calendar).

5. The Debtor's plan may not be her best efforts:

   a. The Debtor lists herself as a self employed bookkeeper. It is not clear if the income listed on Schedule I is her net or gross income as the Debtor failed to attach a statement showing business receipts and expenses. The Debtor failed to disclose any information on the Statement of Financial Affairs. The Debtor indicates that she did not have a business or any connection to one within the four years preceding the filing of the bankruptcy.

   b. Expenses:

      i. Schedule J lists an expense in the amount of $373.97 for additional mortgage expense for your residence. Debtor's plan relies on the Motion to Value Collateral for CitiCards, listed in Class 2C and if this expense is for CitiCards it appears unnecessary. If the expense is for some other secured debt, it appear to not have been disclosed so it is not clear if the Debtor can pay a sufficient amount to satisfy this secured debt.

      ii. Schedule J lists the Debtor's monthly food expense in the amount of $200.00. The IRS National Standards for Allowable Living Expenses for Food, for 1 person, is $315.00. It is not clear how the Debtor's food allowance is only $200.00 per month.

      iii. Schedule J lists an expense of $550.00 per month for charitable contributions where Schedule I shows income of $4,200.00. The information on the Statement of Financial Affairs conflicts with the amount listed on Schedule J, as she indicated she did not make any charitable contributions.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $320.00 delinquent in plan payments. The Trustee reports that the Debtor has paid $0.00 into the plan to date. The Debtor's delinquency indicates the Plan is not

feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6)

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

The Debtor has failed to timely provide the Trustee with business documents including: questionnaire; profit and loss statements, bank account statements; proof of license and insurance or written statement of no such documentation exists]. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting these required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Lastly, the Trustee asserts that the plan, as presented, may not be the Debtor's best efforts given the conflicting information apparent in the Debtor's schedules. The Debtor indicates on Schedule I that she is a self-employed bookkeeper yet reports that she has not owned or been a part of a business in the past four years prior to filing the bankruptcy. This is just further exasperated by expenses listed on Schedule J that appear to have no justification or they fail to provide a livable amount. For instance, the Debtor's Schedule J lists food expense at $200.00 when the national allowable pursuant to the Internal Revenue Service is $315.00. Though the Debtor indicates that she is able to survive on less than the allowable amount, the Debtor then reports a $550.00 monthly charitable donation that she does not report later on Statement of Financial Affairs. These are all indications that the plan is not the Debtor's best efforts and therefore is not confirmable.

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

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

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

11. 16-22614-E-13 PAULA GREER
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
5-27-16 [13]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 27, 2016. By the court's calculation, 32 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 Citibank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Paula Ann Greer ("Debtor") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7666 Lily Mar Lane, Antelope, California ("Property"). Debtor seeks to value the Property at a fair market value of $160,661.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is

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

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

No Proof of Claim Filed

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $188,336.00. Creditor's second deed of trust secures a claim with a balance of approximately $16,000.00. 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 Paula Ann Greer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 7666 Lilly Mar Lane, Antelope, 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 $160,661.00 and is encumbered by senior liens securing claims in the amount of $188,336.00, which exceed the value of the Property which is subject to Creditor's lien.

12. 13-24415-E-13 ANTONIO/MARIA HERNANDEZ — MOTION TO MODIFY PLAN
CAH-7 C. Anthony Hughes — 5-10-16 [163]

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 10, 2016. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

Antonio and Maria Hernandez ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 10, 2016. Dckt. 163.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 13, 2016. Dckt. 173. The Trustee opposes confirmation on the following grounds:

1. The Trustee is uncertain Debtor has the ability to make the increased plan payment in month 56 as proposed. Debtor's modified plan proposes a plan payment of $56,468.12 total paid in through month 37 (April 2016, where Debtors petition was filed March 30, 2013), $1,443.00 for months 38 through 55, then $1,657.76 for months 56 through 60. Debtor does not indicated how the increased plan payment will be funded and Supplemental Schedules I and J support a monthly net income of $1,445.44

   Section 6.01 of Debtor's Plan filed March 13, 2014 and confirmed on June 28, 2013, proposed an increased payment in month 56 from $1,550.00 to $1,765.00 due to a 401K loan ending in month 55.

   Debtor's original Schedule I reflect monthly 401K loan payments of $216.88 for Antonio Hernandez, and $574.64 ($142.48 + $432.16 (2 loans)) for Maria Hernandez. The same schedule states "Debtor's 401(k) loan has 56 months left on his loan as of March 2013 which ends in Month 55 of Chapter 13 Plan." Debtors also state Joint Debtors first 401K loan ends in January 20117 but will be applied to normal monthly expenses and the second loan ends in 2022.

   Debtor's supplemental Schedule I reflects monthly 401K loan payments of $405.51 ($188.63 increase) for Antonio Hernandez and $588.68 ($14.03 increase) for Maria Hernandez.

   It appears Debtors have borrowed additional funds from their 401K account. The Trustee is unable to locate within the docket that Debtors obtained permission to borrow additional funds. The Trustee is uncertain Debtors 401K loan will be paid off in month 55 to allow an increased plan payment in month 56, since it appears additional funds have been borrowed.

2. Debtor's proposed modified plan does not address the objection raised by Tri Counties Bank concerning Debtors default in payments by nearly 2 years under the proposed modified plan where Debtor was to pay $307.30 per month to Tri Counties Bank, and the proposed plan provided no means to cure the arrearage.

   In Debtor's originally confirmed plan, Tri Counties Bank regarding Debtor's second deed of trust was provided for as a Class 2 claim reduced to $0.00 based on value of collateral. Debtor filed a Motion to Value on May 1, 2013 requesting the secured portion of the claim held by Tri Counties Bank be $0.00.

   Tri Counties Bank filed opposition on May 20, 2013 indicating the value of the property exceeded the amount owed on the superior lien. The parties later stipulated to a value of $40,000.00 to be paid outside the plan at $307.30 per month beginning September 25, 2013 and that the plan would be amended accordingly. The court's civil minute order regarding the parties' stipulation and Debtor's Motion to Value only valued Tri Counties Bank secured claim at $40,000.00 and provided the

balance to be treated as a general unsecured claim.

Debtor's first modified plan filed August 12, 2014 provided for Tri Counties Bank concerning Debtors second deed of trust as a Class 4 creditor where there is no default. The court confirmed the first modified plan on October 7, 2015. Dckt. 95.

The court's June 30, 2015 civil minutes stemming from Debtor's prior Motion to Modify indicated the evidence presented by Tri Counties Bank showed substantial default under the first modified plan and the proposed second modified plan and that Debtors representation that the claim provided for in class 4 was not in default was materially false.

Debtor's proposed third modified plan continues to provide for Tri Counties Bank in Class 4 without addressing Tri Counties Bank's objection or the concerns of the court. Debtor has provided no evidence to reflect that the nearly 2-year delinquency in payments has been cured, although Debtor's Supplemental Schedule J budgets $307.30 per month for the expense.

DEBTOR'S RESPONSE

The Debtor filed a response on June 21, 2016. Dckt. 176.

Debtor states that they wish to continue and finish the plan. The Debtor states that they will need to review, with counsel, various documents pertaining to their 401K.

As to the Tri Counties Bank objection, the Debtor states that Debtor's counsel will seek an amended stipulation.

The Debtor requests a continuation.

DISCUSSION

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

The Trustee's objections are well-taken.

The Debtor's exhibit supplemental Schedule J, filed May 10, 2016 (Exhibit B, Dckt. 167), lists a $1,445.55 monthly net income, while the Plan provides for an eventual step up in payments to $1,657.76 monthly payment. The Debtor gives no indication as to how the Debtor will be able to make this step up plan payment when the Debtor's schedules all indicate that the Debtor does not have sufficient income to make such a payment. Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

The court is also troubled by what appears to be the Debtor having taken out an unauthorized 401(k). The Debtor's supplemental schedules reflect monthly 401K loan payments of $405.51 ($188.63 increase) for Antonio Hernandez and $588.68 ($14.03 increase) for Maria Hernandez. The court has not authorized any further additional loans nor has the Debtor requested such relief. Rather, it appears that the Debtor has acted unilaterally and outside the Bankruptcy

Code to withdraw more money, without regard to the law. This is ground to deny confirmation.

As to the Trustee's second objection, the court in its prior civil minutes stated:

> The evidence presented by Tri Counties Bank shows that Debtor is substantially in default under not only the confirmed First Modified Plan, but also the proposed Second Modified Plan. Declaration, Dckt. 142. Debtor has made only three payments to Tri Counties Bank during the thirty months (and thirty payments) since February 2013. Debtor's representations in the Second Modified Plan the Tri Counties Bank claim provided for in Class 4 is "not it default" is materially false.
>
> While the court could "ignore" this misrepresentation and leave Tri Counties Bank free to exercise its rights since the automatic stay has already been terminated for this claim and the property through the confirmation of the First Modified Plan, there is something more afoot here. The court has not approved any modification of the Tri Counties Bank claim and there is nothing in the record showing that the claim was not in default and was only $40,000.00. That may be what the Bank and Debtor intended, but such relief was not sought from the court. It has only been ordered that the value of the secured portion of this claim is $40,000.00.

Dckt. 144. The Trustee is correct as the Debtor's plan does not appear to address this concern.

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

The court does not continue the hearing as requested by Debtor. The issues before the court are basic issues which should properly be addressed prior to and in support of the motion to confirmation. These "shortcomings" are now being addressed only because of the opposition of the Chapter 13 Trustee. If the court were to continue the hearing, it could appear that parties have an incentive to file defective pleadings and lack of sufficient evidence in an attempt to "slip it by" the court and parties in interest. Then if "caught," the only downside is being given more time to recast the motion and evidence. While the court is not determining that the "shortcomings" were intentional, the deficiencies are more than merely clerical errors which should be corrected by supplemental 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 to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

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

13.	**16-22617-E-13** **DPC-1**	**ARTIS SOUZA** **Michael Lee**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-1-16 [15]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 1, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

1. The Debtor failed to appear at the First Meeting of Creditors. The Debtor's counsel sent an email to the Trustee that the Debtor would be unable to attend the May 26, 2016 due to chemotherapy treatment.

2. The Debtor has improperly classified Wescom Credit Union regarding the 2014 Jeep Compass in Class 4 of the Plan. The Creditor filed Proof of Claim 3-1. It appears that this debt may be entitled to treatment under 11 U.S.C. § 506(a) and should be listed in Class 2B of the plan. Schedule D shows the collateral is worth $14,611.00 and $17,595.00 is owed, so failure to value the collateral appears to unfairly discriminate against general unsecured claims in favor of the unsecured portion of this creditor's claim.

3. The Debtor lists the Internal Revenue Service on Schedule E for $0.00 entitled to priority for her 2011-2012 federal income. On May 9, 2016, the creditor filed a priority claim (No. 1-2) in the amount of $794.58 and $673.46 secured. The Debtor's plan does not comply with 11 U.S.C. § 1322(a)(2) and 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 Debtor cannot afford to pay the claim as well as the plan payments. As such, the Trustee calculates that the plan will take 66 months to complete.

The Trustee states that the Meeting of Creditors was continued to 11:00 a.m. on June 23, 2016. The Trustee requests that the court continue the instant Objection to a date after the continued Meeting of Creditors to allow the Debtor the opportunity to address these issues.

JUNE 23, 2016 CONTINUED MEETING OF CREDITORS

The Trustee reports that neither Debtor nor Debtor's counsel appeared at the June 23, l2016 continued First Meeting of Creditors. June 23, 2016 Docket Entry Report. The Trustee does not state any reason for the failure to appear. Counsel for Debtor had communicated to Trustee that Debtor was undergoing medical treatment.

In light of the substantial plan defects stated by the Trustee, sustaining at Objection is proper. The Debtor, if physically able, will need to start with a clean slate and advance an amended plan.

The court sustains the Objection and denies confirmation of 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 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 is sustained and the Chapter 13 Plan is not confirmed.

14. 16-21919-E-13 DPC-2 THERON CONNELLY Rupert Corkill

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
5-27-16 [26]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 27, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on May 27, 2016. Dckt. 26.

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

The Debtor filed a Chapter 7 bankruptcy case on August 6, 2014. Case No. 14-28025. The Debtor received a discharge on February 2, 2015. Case No. 14-28025, Dckt. 43.

The instant case was filed under Chapter 13 on March 28, 2016.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if

a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on February 2, 2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 14-28025, Dckt. 43. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-21919), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-21919, the case shall be closed without the entry of a discharge.

15. 13-36120-E-13 GEORGE GRAHAM **MOTION TO MODIFY PLAN**
SJD-2 Susan Dodds **5-20-16 [41]**

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2016. By the court's calculation, 39 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.

George Graham ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 20, 2016. Dckt. 41.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 13, 2016. Dckt. 47. The Trustee opposes confirmation on the following grounds:

1. The Debtor failed to turn over income tax refunds pursuant to the order confirming the plan. The order confirming requires that the Debtor pay into the plan his income tax refunds for the life of the plan. Dckt. 38.

The Debtor's declaration indicates that the Debtor used the tax refund to repair his truck and home. The Debtor's declaration states that he has made adjustments to his tax withholdings so that he will be receiving minimal to no tax refund going forward.

The Trustee, however, notes that the vehicle maintenance expense on the supplemental Schedule J mirrors the same $25.00 per month expense as the Debtor's last filed Schedule J. The Trustee is concerned with the Debtor not paying in the tax refunds as required by the order confirming and requests a detailed explanation of how money was spent, why it was needed, and receipts for how the money was spent.

2. The total amount paid stated in the Debtor's proposed plan differs from the Trustee's records. The Debtor reports that the Debtor has paid into the plan through April 25, 2016 is $2,900.00. However, the Trustee's records reflect that the Debtor has paid in $2,900.00 through month 29, which is May 2016 where this case was filed on December 28, 2013 so the first payment was due on January 25, 2014.

3. The Trustee requests clarification of the additional provisions. The additional provisions stated "Beginning May 25, 2016, the Debtors plan payment shall be $100.00 for the remainder of the plan." The Trustee would not oppose the following correction to this language in the order confirming the plan, "Beginning May 25, 2016, the Debtors plan payments shall be $100.00 per month for the remaining 31 months of the plan."

DEBTOR'S REPLY

The Debtor filed a reply on June 21, 2016. Dckt. 50.

First, the Debtor addresses the concerns over the tax refunds. The Debtor states that Debtor's counsel has been in regular communication with the Chapter 13 Trustee's office for each of the two prior tax yeas at issue as well as the present. The Debtor states that he has provided the Trustee his tax returns, proof of income, receipts for repairs, medical expenses, and vehicle repairs that he had expected or did incur. The Debtor asserts that the Trustee indicated an understanding that those tax refunds would not be paid into the plan.

For tax year 2013, the Debtor argues that there were informal conversations with the Trustee's office that was never memorialized. However, the Debtor asserts that the Debtor did provide the return and receipts for use of his refunds as was agreed between the parties. The tax refund at issue for the 2013 taxes was in the amount of $1,707.00 for the Internal Revenue Service and $1,319.00 for the State of California.

For tax year 2014, the Debtor asserts that he once again provided his tax return, receipts for vehicle repairs, and evidence of significant medical issues with Debtor's wife. Additionally, the Debtor states that he was on

disability for a few months due to medical issues. The Debtor once again states that an un-memorialized, informal agreement was reached with the Trustee. The tax refund for 2014 was anticipated to be in the amount of $2,655.00 for the Internal Revenue Service and $1,635.00 for the State of California.

For the present year, the Debtor is filing an amended plan, amended budget, and made changes to his withholdings so he will receive little to no refund going forward. The Debtor is proposing to offer in the order confirming plan that any future tax refunds shall be paid into the plan to address the Trustee's concerns. The Debtor states that his home had a sudden and unanticipated water pip issue that needed emergency repair. For tax year 2015, the refund was anticipated to be $410.00 for the Internal Revenue Service and $1,773.00 for the State of California.

Next, the Debtor states that while the Debtor does not expect to receive a refund moving forward, the Debtor proposes the following language for the order confirming:

> As of May 25, 2016, the Debtor shall have paid into the plan $3,000.00. Beginning June 25, 2016, the plan payment shall be $100.00 for the remainder of the plan.
>
> The Debtor shall pay a lump sum payment from his tax refund during the course of the plan for the benefit of unsecured creditors.
>
> The Debtor shall pay into the plan his income tax refunds for the life of the plan, each year on May 25, 2017, and May 25, 2018.

Lastly, the Debtor states that the proposed corrected language should resolve the Trustee's final opposition.

DISCUSSION

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

The Trustee's opposition is well-taken.

Review of Motion to Confirm Modified Plan and Supporting Pleadings

The Motion to Modify (Dckt. 41) provides no clue as to why the Debtor is now seeking to modify the prior confirmed plan in this case. It states that he as paid $2,900.00 into the plan, and then beginning in May 2016 will pay $100.00 a month for the unstated period remaining under the plan. The Motion is clear that Debtor promises to pay a 0.00% dividend to creditors holding general unsecured claims.

In Paragraph 11 of the Motion, it makes the "factual" statement that Debtor had been previously receiving tax refunds that he utilized for home maintenance and car repairs. No mention is made that Debtor improperly took the tax refunds, diverting the money from the Trustee and Creditors. This paragraph further states that Debtor has now made "adjustments" to his withholding and has "budgeted" for repairs and maintenance throughout the year.

Id. But the Motion makes no contention that the repairs and maintenance were unexpected or unusual. The Motion makes no contention that when the Debtor, in good faith and under penalty of perjury provided the court, Chapter 13 Trustee, and Creditors with his income and expenses, he and his counsel were unaware of his actual income, his actual taxes, and that he had greater projected disposable income because Debtor was receiving tax refunds (which he then intended to divert to spending which was not on his bona fide, good faith budget).

In his Declaration, Debtor *explains* the reason for seeking to modify the plan as follows:

> "I am filing this modified Chapter 13 plan because in the past I had received a tax refund which I used to repair my truck and my home. I have made adjustments to my tax withholdings so that I will be receiving minimal to no tax refund going forward. I will now be budgeting throughout the year for home maintenance expenses as well as vehicle maintenance. I have attached as Exhibit A a true and accurate updated reflection of my income and expenses. (Exhibit A)"

Declaration ¶ 12, Dckt. 43.

Debtor states under penalty of perjury that there was "a tax refund" (indicating one) and that there were some non-specific repairs and maintenance he paid for with "a tax refund." Debtor is unable, or unwilling, to disclose the repairs or provide any testimony as to the necessity of diverting the money.

Debtor also is unable, or unwilling, to testify as to why now, merely because he had diverted "a tax refund" that he is now seeking to modify the plan. But Debtor is able to testify that the will be "no tax refund going forward." While Debtor previously stated under penalty of perjury that he did not receive any tax refunds, and did, he now asks the court to accept the "no tax refund" testimony to again be accurate.

As pointed out by the Trustee, the Debtor's "repair and maintenance" story is not consistent with his prior or current budgets. While Debtor stating that he is "now" budgeting for vehicle maintenance, he is budgeting exactly the same $25.00 a month now as he did in the prior budget relied upon by the court. The court compares the February 25, 2015 filed Amended Schedule J (Dckt. 31) with Debtor's latest revised expenses (Exhibit A, Dckt. 44 at 4-5):

Expenses	Amended Schedule J (Dckt. 31)	Latest Statement of Expenses (Dckt. 44)	Increase/ (Decrease) in Expense
Rent/Mortgage	$966.69	$966.69	$0.00
Home Maintenance	$40.00	$160.00	$120.00
Electricity/Gas	$250.00	$250.00	$0.00

Water/Sewer/ Garbage	$0.00	$0.00	$0.00
Internet/Phone	$70.00	$70.00	$0.00
Food/Housekeeping Supplies	$300.00	$300.00	$0.00
Clothing/Laundry	$145.00	$145.00	$0.00
Personal Care Products	$50.00	$50.00	$0.00
Medical/Dental Expenses	$0.00	$0.00	$0.00
Transportation	$300.00	$300.00	$0.00
Vehicle Maintenance	$25.00	$25.00	$0.00
Entertainment	$50.00	$50.00	$0.00
Charitable	$70.00	$70.00	$0.00
Hunting License	$14.97	$14.97	$0.00
Work Safety Equipment	$20.00	$20.00	$0.00
Property Tax	$3.50	$3.50	$0.00
Property Road Maintenance	$7.50	$7.50	$0.00
	----------	----------	
Total Expenses	$2,312.66	$2,432.66	$120.00
Stated Income After all Proper Taxes and Withholding	$2,414.10	$2,533.44	
Debtor’s Computation of Monthly Net Income	$101.44	$100.78	

Debtor comes in which his new budget, which once again results in there being only $100.00 of Monthly Net Income to fund a Plan. The only change in expenses is quadrupling the home maintenance expense from $40 a month to $160.00 a month, which is $1,920.00 a year for this expense. Debtor offers no explanation as to what these expenses are, why they did not exist before, and

how now they have become “necessary.”

Debtor also states in the Amended Schedule J and the current expenses that he has no medical or dental expenses. However, he has $160.00 a month withheld from his pay for a Health Savings Account. That indicates that he has $160.00 a month of such expenses, which equates to $1,920.00 a year. In his original Schedule I Debtor stated that he had $150.00 a month withheld for his Health Savings Account. Dckt. 1.

On the one hand, Debtor purportedly has no medical expenses, but does have monthly withheld each month so he can be reimbursed for medical expenses. This is an inconsistency, and as with the undisclosed tax refunds, Debtor could well be stating that such withholding exists when obtaining confirmation of the plan, and then cancelling the withholding and diverting the money around the bankruptcy case.

Substance of Debtor’s Plan

The Debtor’s Chapter 13 Plan, the original confirmed plan and now the modified plan (for which the court cannot identify any reason for modification, other than to possibly obtain absolution for diverting $3,000 of undisclosed tax refunds) promises to pay creditors nothing. It does provide that it will pay Debtor’s counsel for this Chapter 13 Plan which does not reorganize any of the Debtor’s obligations. With a $100 a month payment and Debtor’s counsel to obtain an original $3,000.00 through the Plan and likely seeking an additional amount (for discussion purposes estimated to be $2,000), then Debtor’s counsel exhausts all of the plan monies.

Considering the totality of Debtor’s statements concerning his finances, he actually has at least $220.00 a month to fund a plan (the $100.00 he computes, plus the additional $120.00 of income which, after getting caught with the tax refund, he seeks to use to inflate the home maintenance expense he previously testified under penalty of perjury was only $40.00 month. Debtor offers no testimony for any reason for a 300% increase in this expense.

Debtor’s various, conflicting statements under penalty of perjury (which when made are only advantageous to Debtor) raises the specter that Debtor is not proceeding in good faith. Further, that other financial information is false. One item which the Debtor will need to prove is that he actually has made $70.00 a month charitable contributions - both in the year prior to and during this Chapter 13 case. The court is concern, as with the excessive withholding, the charitable “contributions” may be a paper entry for which the actual effect is that Debtor puts the money in his own pocket.

Denial of Motion to Confirm

While the court agrees that the concerns over the actual language in the plan’s additional provisions as to the amount paid into date and future commitment of tax refunds can be corrected in the order confirming, the larger and more concerning part is the Debtor’s failure to pay the tax refunds into the plan.

The Debtor, in his response, seems to believe that informal conversations with the Trustee as to using the refunds that were explicitly ordered to be paid for the benefit of unsecured creditors somehow excuses the

Debtor from complying. There is no Motion on the docket the requests the court authorize the use of the tax refunds. There is no modified plan to account for the tax refunds being used for other reasons.

The Debtor, in an effort to excuse his violations, proposes to add language that the Debtor will commit the next two years of tax refunds to the plan for the benefit of unsecured creditors. However, the Debtor fails to provide any evidence or declaration that states how and why, this time around, the Debtor does not anticipate needing to use the refund for some anticipated reason without court permission.

Even more significantly, Debtor states that he has changed his withholding so there will be no tax refunds. Debtor having taken the money in the past, now promises tax refunds which are equally promised to be nonexistent.

Debtor also seek to excuse his improper taking of the tax refunds by contending "he thought" he was acting properly. But Debtor has been represented by an attorney. Even if not represented by an attorney, Debtor is obligated to comply with the plan and the Bankruptcy Code. Here, Debtor took the money, violated the plan and Bankruptcy Code, and now seeks to just have it excused so he can have all fo the benefits of the bankruptcy, as well as an illegal bonus from taking the tax refunds (rather than properly funding his plan).

Debtor's attorney is being paid to represent the Debtor and properly should be, or have been, communicating with the Trustee. There is no possibility that Debtor, in good faith as represented by counsel, could not be aware of his legal obligation to turn over the tax refund (nor to accurately state the correct tax withholding, not have excessive withholding so as to get a tax refund rather than paying the higher monthly amount to the Trustee).

The court is not convinced that the plan is proposed in good faith nor that the Debtor can comply with the terms of the plan given the Debtor's history of failing to comply with orders confirming and to comply with the Debtor's duties.

Further, Debtor's conduct may demonstrate such substantial bad faith that he has poisoned this Chapter 13 case. Having obtained confirmation of the Chapter 13 Plan based on false financial information and having benefitted from that misrepresentation for almost three years, merely disclosing and taking the money through an inflated expense for the remaining two years of the plan, the bad faith continues to be demonstrated.

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.

16. 16-23623-E-13 KIMBERLY THOMPSON
MET-1 Mary Ellen Terrenella
MOTION TO EXTEND AUTOMATIC STAY
6-5-16 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 5, 2016. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Kimberly A. Thompson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-23033) was dismissed on May 31, 2016, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 16-23033, Dckt. 13, May 31, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, has filed a Response to the instant motion. The Trustee's Response states that he is uncertain of the debtor's ability to pay or that the plan is confirmable.

APPLICABLE LAW

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

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

1. Why was the previous plan filed?

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

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

DISCUSSION

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed: due to her previous filing being done *pro se*, debtor was unaware that she was required to file a Certificate of Counseling or receive a waiver of the counseling requirement. If the automatic stay is not in place, debtor fears her home family home will be foreclosed upon.

Debtor testifies that her efforts to make her Chapter 13 case successful are sincere and she wants to protect her home and obtain a fresh start. Debtor has sought the assistance of an attorney and does not anticipate any further problems providing documents to the court.

Debtor is now represented by an experienced consumer attorney who

regularly appears in this court. While as a pro se party Debtor may have lacked the knowledge of some of the basic requirements of a debtor, that will not reoccur in the present case.

As to the Trustee's concerns, it appears to be more akin to an Objection to Confirmation of Plan and does not relate to the determination of good faith for the automatic stay. While the Trustee may end up being correct that the Debtor cannot propose a feasible plan, the determination of extending the automatic stay does not require such consideration. Rather, the Debtor has provided testimony that in the instant case she is now represented by competent counsel and intends to comply with all the requirements..

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

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

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

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

17. 13-30624-E-13 NAOMI BROWN
PGM-2 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
5-18-16 [35]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 18, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Naomu M. Brown the Chapter 13 Debtor("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period December 11, 2015 through May 10, 2016. The order of the court approving substitution of Applicant in as Debtor's counsel was entered on October 6 2015, Dckt. 26. Applicant requests fees in the amount of $1,230.00.

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

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including filing a Motion to Purchase Real Property. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

...

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

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. Applicant prepared the order confirming the Plan.

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

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

The Applicant substituted into the case as of August 6, 2015 following the transfer of Chapter 13 cases from Hughes Financial Law, with client approval. The Applicant is seeking reimbursement of post confirmation work.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Purchase Real Property: Applicant spent 4.10 hours in this category. Applicant assisted Client with reviewing the Plan, preparing and filing a Motion to Purchase Real Property, and corresponded and met with client to discuss the case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso	4.1	$300.00	$1,230.00
Total Fees For Period of Application			$1,230.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the substitution of counsel and the post-confirmation Motion to Purchase Real Property all raise substantial and unanticipated work for the benefit of the estate, Debtor, and parties in interest. The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Request for Additional Fees in the amount of $1,230.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,230.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees in the amount of $1,230.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

18. 16-22524-E-13 DPC-1 | **THOMAS EKUNWE AND NAHID FALAHATI** | **Seth Hanson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **5-25-16 [16]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

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

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

19. 15-27427-E-13 KENNETH/JULIENNE RILEY MOTION TO SELL
JMC-1 Joseph Canning 5-26-16 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2016. By the court's calculation, 33 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is granted.

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

A. 201 Sunridge Way, Vacaville, California

The proposed purchaser of the Property is Raymond and Carmen Smith and the terms of the sale are:

1. Purchase price of $375,000.00.

2. $8,000.00 initial deposit.

3. The purchase price will be sufficient to satisfy all known liens and encumbrances on the Property as well as the closing and escrow costs involved in the sale

4. The purchase price will also be sufficient to pay 100% of all filed claims in the Chapter 13 case.

5. Closing costs and escrow costs will be deducted from the purchase price.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on June 6, 2016.

CREDITOR'S NON-OPPOSITIONS

Caliber Home Loans, Inc. Filed a Conditional Non-Opposition to Motion to Sell on June 15, 2016. Dckt. 25. The Creditor states that as long as the Creditor's lien is paid in full, the Creditor has no objection.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed sale is an arms-length transaction. The purchase price is sufficient enough to pay off all liens and encumbrances on the Property as well as to satisfy all filed claims in the case. Therefore, the proposed sale is in the best interest of the Debtor, estate, and creditors. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kenneth and Julienne Riley, 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 Kenneth and Julienne Riley, the Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Raymond and Carmen Smith or nominee ("Buyer"), the Property commonly known as 201 Sunridge Way, Vacaville, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $375,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 21, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. 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.

5. 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.

20. 12-38028-E-13 JANIS FORCE **MOTION TO SELL**
WW-1 Mark Wolff **5-25-16 [84]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

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

A. 8124 Sheehan Way, Antelope, California

The proposed purchaser of the Property is Platinum Holdings, LLC and the terms of the sale are:

1. Purchase price of $154,000.00

2. All liens and security interest encumbering the Property will be paid in full. The escrow fees, title insurance, and broker's commission will be paid in full from the sale proceeds.

3. Property taxes and utilities will be paid through the sale of

the Property.

4. The sale is all cash

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on June 14, 2016. Dckt. 95. The Trustee is not opposed to the transaction but requests to be provided a final closing statement.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed sale will satisfy all encumbrances and liens as well as paying all fees and costs associated with the sale through the proceeds. The court finds that the sale will benefit the estate, Debtor, and parties in interest.

Therefore, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Janis Force, 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 Janis Force, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Platinum Holdings, LLC or nominee ("Buyer"), the Property commonly known as [Street Address, California/description of personal property]("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $154,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 87, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to

effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor.

5. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

21. 13-20028-E-13 GREGORY/ELISA WYATT MOTION TO MODIFY PLAN
EJS-23 Eric Schwab 5-17-16 [242]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2016. 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 xxxx the Motion to Confirm the Modified Plan.

Gregory and Elisa Wyatt ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 17, 2016. Dckt. 242.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 10, 2016. Dckt. 253. The Trustee opposes confirmation on the following grounds:

1. The Debtor's Motion fails to cite applicable law, specifically 11 U.S.C. § 1329.

The Trustee's point is that the Motion states that the confirmation of the modified plan is proper because the plan complies with 11 U.S.C. § 1325(a). While that code section provides a substantial part of the requirements, the

confirmation is actually sought pursuant to 11 U.S.C. § 1329 (confirmation of a modified plan when there is a prior confirmed plan in the case). It is important to recognize, and state that confirmation is so requested, as the grounds are slightly different.

2. The Debtor's Supplemental Schedule I is not sufficient. The Debtor is a realtor and has failed to attach a statement to line 8a. which shows $9,040.00 of net income. The Debtor previously had filed a statement of business income and expenses that showed a net of $8,905.00 of income with $3,667.00 of expenses, but that was three years ago.

3. The Debtor's declaration fails to provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a).

The Trustee believes that the modified plan by the Debtor can be confirmed if the Debtor established for the court:

1. The total amount the Debtor has paid into the plan as of a date certain.

2. The amount of non exempt equity, where the Debtor valued the property and claimed the amount of exemptions.

3. Whether the Debtor has any Domestic Support Obligations.

Based on the Trustee's review, the Trustee shows $167,783.00 paid to date with the last payment on March 15, 2016 in the amount of $4,600.00, with no non-exempt equity or domestic support obligation.

DISCUSSION

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

<discussion>

The modified Plan complies [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.]~~
>
> ~~[**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on xxxx is confirmed. Counsel for the~~

~~Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.]~~

22. 15-23930-E-13 CHRISTOPHER/GAIL BROWN
MMM-5 Mohammaed Mokarram

MOTION TO APPROVE LOAN MODIFICATION
6-10-16 [76]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Christopher and Gail

Brown ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank National Association, as Trustee for Master Asset Backed Securities Trust 2006-HEI, Mortgage Passed-Through Certificates, Seried 2006-HE1 ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,102.55 starting July 1, 2016 at 3.50% interest.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 court authorizes Christopher and Gail Brown ("Debtor") to amend the terms of the loan with U.S. Bank National Association, as Trustee for Master Asset Backed Securities Trust 2006-HEI, Mortgage Passed-Through Certificates, Seried 2006-HE1, which is secured by the real property commonly known as 260 Sumatra Drive, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 76.

23. 11-23535-E-13 ARSENIO/MARILOU SORIANO — MOTION TO AVOID LIEN OF DISCOVER BANK
PGM-1 Peter Macaluso — 5-31-16 [85]

The Court suspends the application of Federal Rule of Civil Procedure 41(a)(1) for this Contested Matter, which may be dismissed only upon further order of the court.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The hearing on the Motion to Avoid Judicial Lien is continued to 3:00 p.m. on July 19, 2016, to afford counsel for Debtor and counsel for the Chapter 13 Trustee the opportunity to file supplemental pleadings setting forth the legal basis for the relief requested and non-opposition of the Chapter 13 Trustee.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Arsenio F. And Marilou R. Soriano ("Debtor") commonly known as 947 Bauman Court, Suisun City, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,286.89. An abstract of judgment was recorded with **Solano** County on February 3, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $221,000.00 as of the date of the petition. The unavoidable consensual liens total $375,797.00 as of the commencement of this case are stated on Debtor's Schedule D.

Debtor has not claimed the property as exempt on Schedule C. Dckt. 1 at 27.

While the Motion seeks to have the court "avoid" the judicial lien because there is no value in the property to secure the claim of creditor through the judgment lien. However, the Motion fails to identify any statutory basis for the court to avoid the judicial lien.

In the Points and Authorities Debtor makes reference to 11 U.S.C. § 506(a) providing that the a secured claim has a value of the creditor's interest in the debtor's interest in the collateral. However, the Points and Authorities are devoid of any legal authority to "avoid" the judicial lien. Points and Authorities, Dckt. 88.

Interestingly, the Chapter 13 Trustee has filed a statement of "non-opposition" to the Debtor's request that the court "avoid" the judicial lien. June 10, 2016, Docket Entry of Non-Opposition. Presumably, in filing the statement of non-opposition the Chapter 13 Trustee is indicating to the court that the Chapter 13 Trustee represents that a legal basis to "avoid" the judicial lien exists.

The court is not aware of any authority that merely because a claim is valued pursuant to 11 U.S.C. § 506(a) the court, pursuant to 11 U.S.C. § 506(a), to "avoid" a judicial lien. The avoiding of a lien, after valued pursuant 11 U.S.C. § 506(a), can be accomplished after completion of a bankruptcy plan. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

The court continues the hearing to afford counsel for Debtor and counsel for the Chapter 13 Trustee to advance the court's understanding on this issue by filing supplemental pleadings stating the legal basis for the relief requested being proper. FN.1.

FN.1. The court has expressed its concern, which continues to grow, with the legal work and documents being presented by Debtor's counsel. The quality of such work has declined, and the court has previously stated that for some of the matters it appears that para-professionals or clerical staff are preparing pleadings, typing a "/s/" name for counsel's signature (without Debtor's counsel having reviewed the pleadings and documents), and then filing the pleading. The court is considering issuing an order to show cause why it should not suspend counsel's authorization to file pleadings with "/s/," digital, or computer generated signatures until the court is convinced that non-attorneys are not drafting and filing pleadings and documents, misrepresenting that the documents are signed by a licensed attorney in California.

The court shall issue a minute order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid Judgement Lien is continued to 3:00 p.m. on July 19, 2016.

IT IS FURTHER ORDERED that on or before July 12, 2016, Peter Macaluso, counsel for the Debtor, and counsel for Chapter 13 Trustee David Cusick, and each of them, shall file supplemental pleadings providing the court with the legal basis and authorities for granting the requested relief, the avoiding of the judicial lien, based upon 11 U.S.C. § 105(a).

IT IS FURTHER ORDERED that the application of Federal Rule of Civil Procedure 41(a)(1) is suspended for this Contested Matter and it may be dismissed only upon further order of the court.

24. 15-23635-E-13 STANLEY/PATRICIA COVELL MOTION TO MODIFY PLAN
DEF-1 David Foyil 5-11-16 [27]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 11, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. 14-25740-E-13 MARIO RILEY — MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso — 5-24-16 [77]

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 24, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

Mario Riley ("Debtor") file the instant Motion to Confirm the Modified Plan on May 24, 2016. Dckt. 83.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on June 10, 2016. Dckt. 83. The Trustee responds as follows:

1. The modified plan is proposing to increase the total plan payment from the original plan by $16,625.00.

2. According to the Trustee's calculations the proposed plan will pay approximately 40% to general unsecured creditors where the original plan proposed 1%.

3. The Debtor's proposed plan payment has increased by %515.00. The Debtor is paying in about one half after taxes of the increased income which the Trustee believes is normally a reasonable response.

4. The Debtor now includes a new vehicle payment which was approved by the court. Dckt. 37. This is to be paid by the father. The declaration discloses transfers to father for debts incurred in the past.

5. Other expenses have changed including the reduction of charity by $500.00 per month and transportation by $1,066.45 per month, and addition of college tuition for $1,500.00 per month.

DEBTOR'S REPLY

The Debtor filed a reply on June 21, 2016. Dckt. 86. The Debtor states the following:

1. The Debtor acknowledges that the total plan payment will increase by $16,625.00.

2. The Debtor acknowledges that he must keep a close eye on his taxes so to avoid any end of the year tax issues. The Debtor has increased his plan payment by $515.00.

3. The Debtor's vehicle payment was approved by the court. Dckt. 33.

4. The Debtor has had some significant changes in expenses in order to pay for the college tuition by lowering the charity and transportation.

DISCUSSION

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

It appears that the proposed plan is confirmable. The Trustee's response flags some unusual proposals in the modified plan, in what the court construes as an attempt to flag these for both the Debtor and court. The Debtor responds stating that these changes were intentional and due to changes in circumstances.

The Debtor's updated Schedules I and J that are attached as exhibits show that the Debtor has re-analyzed the expenses, in light of the new vehicle and college tuition expense, and proposed a new budget. While the court agrees that the Debtor will need to keep a close eye on his tax liability, the proposed budget and plan appear to be feasible. In fact, the proposed modification proposes to increase the dividend to unsecured 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 24, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 15-27943-E-13 JULIENE ALEXANDRE **MOTION TO MODIFY PLAN**
SNM-5 Stephen Murphy **5-18-16 [63]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2016. 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 Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

27. 15-22449-E-13 LUCIANO/MAGELIN VENTURA — MOTION TO MODIFY PLAN
WW-1 Mark Wolff — 5-23-16 [38]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on May 23, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 14-20150-E-13 MICHAEL/DEBORAH SOUZA — MOTION TO MODIFY PLAN
DJC-3 Diana Cavanaugh — 5-11-16 [59]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on May 11, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. 16-20252-E-13 LEONARD SCROGGINS MOTION TO CONFIRM PLAN
MWB-5 Mark Briden 5-4-16 [71]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2016. By the court's calculation, 55 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.

Leonard Scroggins ("Debtor") filed the instant Motion to Confirm the Amended Plan on May 4, 2016. Dckt. 71.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 10, 2016. Dckt. 85.The Trustee opposes confirmation on the following grounds:

1. The Debtor's plan fails to list a plan term of either 36 or 60 months.

2. The Debtor's plan is not feasible because it will not complete within 60 months as required. Wells Fargo Home Mortgage is listed in Class 4 with a monthly payment of $1,233.00.

According to Creditor's Proof of Claim No. 6-1, the claim lists an arrears of $63,072.06. However, the Plan does not propose the payment of any arrearage and the monthly plan payment is only $100.00. The Creditor should be listed in Class 1 or 3 of the plan.

3. The Debtor's plan is not the Debtor's best efforts. The Debtor proposes to retain real property with negative equity and negative cash flow of at least $1,233.00 per month to the detriment of unsecured creditors.

Debtor's Schedule I does not list any rental income from his property. Debtor's declaration states that he intends to retain this property and indicates that the Debtor resided in Stockton due to illness and location of medical treatments. The Trustee argues that it appears that Debtor intends to continue to reside in a rented home in Stockton for the foreseeable future at a cost of $1,100.00 per month and propose to retain an empty property in Redding at a cost of at least $1,233.00 per month.

4. Certain secured debts are not provided for in the plan. Section 6.01 of the plan indicates that four creditors are not provided for in the plan. According to the Debtor's declaration, this is intentional because the Debtor intends to develop these building lots in the future. Not other details are offered as to when Debtor intends to develop them, or how he intends to fund such development, given that he only has $100.00 in disposable income every month.

5. The plan and petition may not be filed in good faith because there does not appear to be an attempt at reorganizing. The Trustee argues that the instant plan is not significantly different than the original plan.

6. The Debtor has failed to use the new Official Forms in the district.

DEBTOR'S REPLY DECLARATION

The Debtor filed a reply declaration on June 20, 2016. Dckt. 89.

First, the Debtor states that the plan is 36 months.

Second, the Debtor states that he is seeking a loan modification with Creditor. The Debtor asserts that he has always considered the residence in Redding to be the personal residence. But for the health problems, the Debtor would be at the Stockton house. The Debtor states the long term plan is to return to the Redding property.

Third, the Debtor states that in the declaration in support of the Motion, the Debtor indicated that he purposely left out (1) Lake California Property Association; (2) Tehama County Tax Collector; and (3) former wife, Naomi Helene Whitcher. The Debtor states this was based on counsel instructing him that once the plan is confirmed, these creditors would have the right to exercise their secured rights to the respective collateral.

Forth, the Debtor states, based on his present income, the disposable income is $100.00. The Debtor, referencing the original declaration, the reason why expense are higher is due to the Debtor's wife having serious medical problems including surgery and stomach cancer. The expenses are higher due to the 160-mile round trip for treatment from the Stockton apartment.

DISCUSSION

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

The Trustee's objections are well-taken.

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

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

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

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

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

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

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

an actual reason why these claims are not provided for. Rather the Debtor merely responded with a vague response as to allowed the creditors to go after the collateral. This seems in conflict with the Debtor's other statements of intention to develop. This is reason to sustain the objection.

The creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $63,072.06 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in excess of 60 months due to the Debtor failing to provide for the Creditor's pre-petition arrears that must be paid in full through the plan. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

This then leads to the determination that the plan is not feasible, in light of the Debtor only proposing $100.00 monthly payments (which is also his disposable income) and not considering the need to cure the Creditor's arrears. Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

As to the Debtor's bad faith, the court previously addressed this at the April 12, 2016 hearing:

> **Debtor's Good Faith**
>
> The Bankruptcy Code requires that not only the Plan be proposed in good faith, but the Debtor commenced the case in good faith. 11 U.S.C. § 1325(a)(3) and (7). In this bankruptcy case, the Debtor's conduct may well establish that Debtor has not filed, nor prosecuted, this case in good faith, or proposed this Plan in good faith. Debtor has completed the Schedules and filed declarations under penalty of perjury which appear to contain inaccurate information. Debtor, represented by counsel, does not have the luxury of contending that he "doesn't understand what under penalty of perjury means."
>
> Improper conduct, and providing inaccurate (false) information under penalty of perjury may well not be grounds for merely denying confirmation of this one plan, but all plans in this case, and possibly other cases. It maybe grounds to dismiss the bankruptcy case with prejudice - rendering all of the debts non-dischargeable in future bankruptcy cases.
>
> While parties may advance arguments in good faith and present evidence (including good faith testimony, even though the court may not find it persuasive in the end), testimony is

> given under penalty of perjury, pleadings filed, and arguments made subject to the certifications under Federal Rule of Bankruptcy Procedure 9011. The federal judicial process is not one in which false or misleading statements are made or arguments presented, and then when "caught," the response is "oops, ok, I'll be honest or follow the law now."
>
> It appears that the Plan, as filed, is merely a thinly veiled attempt to circumvent established Supreme Court law that 11 U.S.C. § 506(a) cannot be used to "lienstrip" in a Chapter 7 case and the Congressional prohibition on obtaining discharges in repeat Chapter 7 cases during specified periods of time. The proposed "plan" in this case offers no financial "rehabilitation" or "restructure," ignores secured claims, and appears to intentionally overstate or list expenses for which there is no *bona fide* purpose.

Dckt. 53. Not much has appeared to change with the instant filing.

In his Amended Schedule J, this Debtor, with a family of only two persons, purports to have reasonable, necessary monthly expenses of $6,137.00 Dckt. 91. With these expenses, Debtor than purports to have only $100.00 of monthly net income with which to fund his plan. Under the proposed Plan, this allows Debtor to promise to pay his creditor nothing. Dckt. 74.

While the court has great sympathy for the parties who come before the court, often suffering from personal and financial traumas, this Debtor appears to view the situation where he can maintain his life to the maximum, keeping two homes, and not pay his creditors. To accomplish this, Debtor and his counsel present a fatally defective plan, ignoring secured claims.

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.

30. 16-21854-E-13 KENNETH TABOR **CONTINUED MOTION TO CONFIRM PLAN**
SNM-2 Stephen Murphy **4-25-16 [25]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is continued to 3:00 p.m. July 19, 2016.

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

TRUSTEE'S OPPOSITION

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

1. The Debtor appeared at the Meeting of Creditors but failed to timely file the necessary documents to review. The Trustee has received an itemized list of vehicles that the Debtor listed on Schedule A/B as 87 vehicles worth $20,000.00. The Trustee is seeking additional information.

2. The Debtor failed to provide business documents.

3. The Debtor lists Seterus as a Class 2 debt. However, the Debtor's Schedule D indicates that the loan is secured by Debtor's residence. It appears that this debt should be provided for in Class 1 or that the debt should be provided for in the Additional Provisions to clarify that the Debtor is accelerating this debt to pay in full over the plan. (The Trustee does not otherwise object to the acceleration of the debt).

4. The Debtor testified at the Meeting of Creditors that he owns a collection of about 100 vehicles that he restores as a hobby. These vehicles are not individually listed and may not be

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

DEBTOR'S REPLY

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

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

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

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

TRUSTEE'S REPLY

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

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

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

JUNE 14, 2016 HEARING

At the hearing, in light of the Trustee's reply and the unique facts of the case, the court continued the hearing to 3:00 p.m. on June 28, 2016.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a supplemental declaration on June 21, 2016. Dckt. 46. The Trustee states that the following objections remain:

1. The Trustee has not received copies of tax returns. On June 7, 2015, Debtor filed a declaration which indicates that due to an accident in August 2011, Debtor did not work through the beginning of 2015. He explains that his former spouse may have filed joint tax returns during this period, but the Debtor has no records of returns. Debtor claims to have requested his

transcripts from the Internal Revenue Service for 2011-2014. The Trustee has not received the transcripts to date.

DEBTOR'S REPLY

The Debtor filed a reply on June 22, 2016. Dckt. 49. Debtor states that he has provided his most recently filed tax return and the tax returns for earlier years either do not exist or are not available. Debtor attempted to order tax transcripts for tax returns that may have been filed by his former spouse for earlier years. He did not earn income during the earlier years, so he did not make any tax filings himself. Debtor's request was rejected by the Internal Revenue Service due to an address discrepancy. Pursuant to the instructions on the tax transcript form, Debtor listed the address he uses for tax filings (the address used on his 2015 tax return). He has not used any other address for his tax filings. Hence it is unclear why the request was rejected. Debtor is in process of submitting another request.

DISCUSSION

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

In light of the Debtor's response and the administrative issue in getting the transcript, the court finds that additional time to get copies of the transcript is necessary. The Debtor has made active attempts to cure the Trustee's objections. Therefore, the Motion is continued to 3:00 p.m. on July 19, 2016.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to 3:00 p.m. on July 19, 2016.

31. 11-29457-E-13 ABEL/NORMA CHAVEZ
AFL-2 Steele Lanphier

MOTION TO RECONSIDER DISMISSAL OF CASE
6-7-16 [59]

DEBTOR DISMISSED:
11/09/2015
JOINT DEBTOR DISMISSED:
11/09/2015

ATTENDANCE OF ASHLEY R. AMERIO OR JULIE GUSTAVSON ATTORNEYS FOR DEBTOR NORMA CHAVEZ REQUIRED FOR HEARING

NO TELEPHONIC APPEARANCE PERMITTED

FAILURE TO APPEAR SHALL RESULT IN THE DENIAL OF THE MOTION

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's former Attorney, 13 Trustee,, parties requesting special notice, and Office of the United States Trustee on June 7, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Reconsideration of Order was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest

were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Reconsideration of Order is granted.

Abel Chavez and Norma Alicia Chavez ("Debtors") filed the instant Motion For Reconsideration of Order on June 7, 2016. Dckt. 59.

History of Chapter 13 Case

The instant case was filed on April 15, 2011. Dckt. 1. A plan was confirmed on October 11, 2012, and an order confirming the plan was entered on June 16, 2011. Dckt. 17.

On October 7, 2015, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to Debtor's delinquency in plan payments in the amount of $2,100.00. Dckt. 30.

Debtors claim that they made timely plan payments for four and one-half years until September 2015. The Debtors state in their declaration that they legally separated entered divorce proceedings during the bankruptcy case. Abel Chavez states that it was during these proceedings that he was late in getting his payment in. He stated that his bankruptcy attorney, Steele Lanphier, contacted him about the arrearage and instructed Mr. Sanchez to pay his share. Abel Sanchez claims that he did not trust Steele Lanphier's advice and therefore instructed him to speak to his divorce attorney. According the Debtor, it was only after both of his attorneys spoke that he agreed to pay his share of $800.

Both debtors state that Abel Sanchez gave a check for $800 to his divorce attorney to be forwarded to Steele Lanphier to pay the Trustee. However, the Debtors claim that the Trustee never received the check because Steele Lanphier's office lost the check. The Debtors state that after learning their case had been dismissed they contacted Steele Lanphier who admitted that his office lost the check.

On November 9, 2015, a hearing on the Motion to Dismiss was held and the Motion was granted. Dckt. 36. The ruling was final, as the Debtor had filed no opposition. Abel Sanchez states in his declaration that Steele Lanphier did not offer any explanation of why he did not file an opposition to the Motion or even appear at the hearing on the Motion.

On November 21, 2015, Debtor's bankruptcy attorney filed a Motion for Reconsideration of Order blaming the delinquency solely on the husband and moved the court to reconsider the decision to dismiss the case because "Codebtor has given money to debtor to pay for the Plan, and now she wishes to pay."

No evidence was filed in support of the motion to vacate the order dismissing the case. No representation was made as to how the default causing the dismissal would be cured. The default was in excess of $2,100, and by January 2016 (when the motion to vacate was set), Debtor would have to not only

have to cure five months of payments, $3,500, but also pay the December and January payments.

In looking at the motion to vacate, the court first noted that there was no notice of hearing on the motion, nor were any creditors provided notice. Civil Minutes, Dckt. 45. No evidence was provided in support of the motion to vacate. *Id.* The motion failed to state grounds with particularity upon which the relief was requested. *Id.* Even looking to the merits of what was alleged, the court concluded that no grounds for vacating the dismissal were shown. *Id.* The order denying the motion to vacate was filed on January 19, 2016. Dckt. 47.

Review of Current Motion

On June 7. 2016, Debtor's new Attorney filed this instant Motion for Reconsideration of Order (Dckt. 59) claiming the delinquency was caused by mistake or negligence of the bankruptcy attorney. In support of this Motion the Debtors both provided declarations. Dckt 61 and 62.

In the Motion, the Debtors allege that Steele failed to notify them about the Motion to Dismiss filed by the Trustee, failed to file an opposition, failed to attend the hearing, and failed to seek the assistance of his clients in the form of declarations to be submitted with his inadequate Motion to Reconsider. The Debtors claim this Motion was inadequate because it was not filed with supporting Declarations or Points and Authorities, and contained "little more than a misstatement of the facts surrounding the delinquency and a simple request to change the Order." Furthermore, the Debtors allege that Attorney Lanphier failed to properly serve a Notice of Motion which was sufficient in and of itself for denial of the Motion.

The Debtor seeks to have the order dismissing the case vacated, per Rule 60(b), on the ground that the Debtor was delinquent due to mistake, inadvertence, surprise, or excusable neglect on the part of their former attorney, Steele Lanphier.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on June 15, 2016. Dckt. 66. The Trustee states that he is concerned that the Motion does not include proof of Mr. Chavez' portion of the September 2015 payment and there is no indication if Steele Lanphier returned those funds to the debtor. The Trustee also states that the Motion does not state their intention on how they will address the payments that have come due under the operative plan. The amount to complete Debtors plan is $5,000.00.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

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

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

DISCUSSION

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

Although the case was dismissed in November of 2015 and the Motion to Reconsider was not filed until June of 2016, this is a reasonable amount of time considering the circumstances of the Debtors' divorce and eventual falling out with their bankruptcy attorney.

The sole ground for the Motion to Dismiss was the Debtor's delinquency. As a Local Bankr. R. 9014-1(f)(1) motion, the Debtor and Debtor's counsel were required to oppose the Motion in writing 14-days prior to the hearing. Instead, Debtor's attorney filed no Opposition and let the court make a final ruling without any argument.

The attorney's failure to file an opposition provides justification under Fed. R. Civ. P. 60(b)(1) for mistake, inadvertence and excusable neglect. However, the Debtors failed to make plan payments totally $2,100.00 which led to default, not Steele Lanphier's later conduct. The Debtor admitted in his declaration that when Steele Lanphier called him and told him about the arrearage and instructed him to pay, the Debtor did not trust his advice and told Mr. Lanphier to speak to his divorce attorney. Then, instead of paying the Trustee directly, the Debtor gave his divorce attorney $800 to give to Steele Lanphier to give to the Trustee. Even though the Debtors provided declarations as evidence to support their contentions, it took them over six months to communicate these issues with the court. Based on the evidence provided through the declarations it is still unclear whether Steele Lanphier has a meritorious defense as to his role and responsibility in the dismissal of this case.

Grounds for Relief Stated in Motion

The only grounds asserted are "mistake, inadvertence, surprise, or excusable neglect." Motion, p.4:17-21. But taken at face value, there were none of these. Debtor was aware of the default, aware of the need to cure the default, and each of the two debtors were represented by their divorce attorneys who communicated with bankruptcy counsel. No explanation is provided as to why for three attorneys involved, this default was not cured and this issue addressed in November of 2015. Instead, the new attorneys "blame" the bankruptcy attorney, without providing any rationale for the failure of the other attorneys representing Debtor to follow through and make sure that the dysfunction of dissolution did not pollute the bankruptcy case.

The contention that Debtor did not know ignores that Debtor was served personally with the Trustee's motion and court's orders. As this bankruptcy case spiraled down, presumably diligent debtors would communicate the failure of the bankruptcy case to their respective divorce attorneys. It could be inferred that each debtor though that the failure of the bankruptcy case was giving the other his or her just deserts, and their respective dissolution attorneys figured it was a good way to "stick it to the other guy."

Other Grounds for Relief

It appears that each debtor may now be appreciating that letting the bankruptcy case fail to hurt the other guy will have significant negative consequences to each debtor. It may also be that the dissolution attorneys are having it put on their respective desks as to why they allowed the bankruptcy case to fail, why the attorneys did not follow up when the check given to the bankruptcy counsel was not cashed, why the dissolution attorneys didn't engage in "attorney-speak" with the bankruptcy attorney to make sure that their respective client's interests were protected, and why the dissolution attorneys did not refer the two debtors to another bankruptcy attorney if it is so

obvious that the bankruptcy attorney was not acting on behalf of the two debtors.

From the Motion and Declarations, the true story appears to lie somewhere in between "the Debtor's bankruptcy attorney did nothing" and "the Debtor's bankruptcy attorney documented his communications and the two debtors dysfunctional dissolution process caused them to ignore their bankruptcy." One part of Abel Chavez's testimony appears credible, that "Things were very emotionally charged during the divorce...." Declaration ¶ 4, Dckt. 61.

Debtor is correct in stating that they had perform four and one-half years of their five year plan. On the eve of having it completed, they let it be flushed away. Their divorce attorneys did not engage the bankruptcy counsel and did not see that the bankruptcy attorney acted for Debtor or direct their respective clients to new bankruptcy attorneys to protect the Chapter 13 case. It is not unusual when a divorce occurs during a bankruptcy case that the bankruptcy attorney is unable to act due to the two clients bringing the divorce war into the bankruptcy case, putting the attorney in a position where he or she cannot act for either client.

However, the court recognizes that the dysfunction of dissolution appears to be the only rational explanation as to why these two debtors, after making it through four and one-half years of bankruptcy would allow the case to be dismissed. It wasn't surprise - they knew they defaulted, they knew of the motion to dismiss, they knew the case was dismissed, and the they knew the court had not vacated the dismissal. There was no inadvertence, mistake (other than thinking that not acting hurt the other debtor more), or excusable neglect.

To allow the dysfunction of dissolution create a "temporary insanity" which causes these two debtors to waste their four and one-half years of effort is not the right result. With respect to the reservoir of such other grounds as justify relief found in Federal Rule of Civil Procedure 60(b)(6), the Ninth Circuit Court of Appeals has instructed in *Aurich American Insurance Company v. International Fibercom, Inc. (In re International Fibercom, Inc.*) 503 F.3d 933, 941. (9th Cir. 2007),

> "We have stated in the past that Rule 60(b)(6) should be 'liberally applied,' *Hammer*, 940 F.2d at 525, 'to accomplish justice.' *Yanow v. Weyerhaeuser S.S. Co.*, 274 F.2d 274, 284 (9th Cir. 1959) (quoting *Klapprott v. United States*, 335 U.S. 601, 615, 69 S. Ct. 384, 93 L. Ed. 266 (1949)). At the same time, '[j]udgments are not often set aside under Rule 60(b)(6).' *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). Rather, Rule 60(b)(6) should be ''used sparingly as an equitable remedy to prevent manifest injustice' and 'is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment.'' *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)). Accordingly, a party who moves for such relief 'must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with . . . the

> action in a proper fashion.' *Cmty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002).

This court concludes that the totality of the dissolution circumstances prevented these two debtors from complying with the last months of payment under the Plan. It is all but inconceivable that a rational, clear thinking debtor (who is represented by competent dissolution attorneys acting in good faith) would not step up and cure the arrearage, complete the plan and have fresh starts for both their financial and personal lives. The court will give the bankruptcy and non-bankruptcy attorneys the benefit of the doubt and infer that it was the "dissolution blindness" infecting the two debtors, and not part of a "punish the other guy" strategy in which the defaults and dismissals were intentionally allowed to fester as part of the dissolution fight.

The court concludes that grounds pursuant to Federal Rule of Civil Procedure 60(b)(6) exists and relief is granted thereunder.

The court grants the Motion and Vacates the Order dismissing the Chapter 13 case on the condition that the $5,000.00 to cure the defaults and complete the plan payments is delivered to the Chapter 13 Trustee by noon on July 8, 2016. If timely paid to the Chapter 13 Trustee, the Trustee shall lodge with the court an order denying the Motion to Dismiss (DCN: DCP-3). However, if the payment of the $5,000.00 is not timely made, the Chapter 13 Trustee shall file a declaration so attesting; serve the declaration on the two debtors, Steele Lamphier, Charles Poulos, and Ashley R. Amerio; and lodge with the court an order granting the Motion and dismissing the bankruptcy case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reconsider the Order filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the order dismissing this Chapter 13 Case (DCN: DPC-3, Dckt. 36) is vacated. The court shall issue an order conditionally denying the motion as set forth herein.
>
> **IT IS FURTHER ORDERED** that the Motion to Dismiss is conditionally denied, so long as the Chapter 13 Trustee is paid $5,000.00 (the amount necessary to complete the Chapter 13 Plan) on or before noon on July 8, 2016.
>
> **IT IS FURTHER ORDERED** that if the $5,000.00 is timely paid to the Chapter 13 Trustee, said trustee shall lodge with the court an order dismissing the Motion to Dismiss (DCN: DPC-3).
>
> **IT IS FURTHER ORDERED** that if the $5,000.00 is not timely paid, the Chapter 13 Trustee shall file a declaration

so attesting; serve the declaration on the two debtors, Steele Lamphier, Charles Poulos, and Ashley R. Amerio; and lodge with the court an order granting the Motion and dismissing the bankruptcy case.

COURT ORDER CONDITIONALLY DENYING THE MOTION TO DISMISS (DCN: DPC-3)

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

> The court having vacated the Order granting the Motion to Dismiss, the court having conditioned the vacation of the dismissal on the timely payment of $5,000.00 to the Chapter 13 Trustee (the balance of payments necessary to complete the confirmed Chapter 13 Plan), the sixty month period for performance of a plan having been exhausted, Debtor having no ability to complete the plan other than make the $5,000.00 payment to cure the defaults, and good cause appearing;
>
> **IT IS ORDERED** that the Motion to Dismiss is conditionally denied, so long as the Chapter 13 Trustee is paid $5,000.00 (the amount necessary to complete the Chapter 13 Plan) on or before noon on July 8, 2016.
>
> **IT IS FURTHER ORDERED** that if the $5,000.00 is timely paid to the Chapter 13 Trustee, said trustee shall lodge with the court an order dismissing the Motion to Dismiss (DCN: DPC-3).
>
> **IT IS FURTHER ORDERED** that if the $5,000.00 is not timely paid, the Chapter 13 Trustee shall file a declaration so attesting; serve the declaration on the two debtors, Steele Lamphier, Charles Poulos, and Ashley R. Amerio; and lodge with the court an order granting the Motion and dismissing the bankruptcy case.

32. 16-22157-E-13 ROBIN/THOMAS HARLAND **OBJECTION TO CONFIRMATION OF**
DPC-1 Stephen Reynolds **PLAN BY DAVID P. CUSICK**
5-25-16 [19]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

33. 12-24469-E-13 THEODORE/PATRICIA REED
MAC-5 Marc Carpenter

MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR UNDER FBRP 1016; FOR SUBSTITUTION AS THE REPRESENTATIVE (FBRP 25 (B); FOR JOINT DEBTOR TO COMPLETE DEBTORS CERTIFICATES, ETC.
5-9-16 [92]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 9, 2016. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Patricia Reed, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Theodore A. Reed. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on March 7, 2012. On April 5, 2013, the Debtor's Fourth Amended Chapter 13 Plan was confirmed. Dckt. 91. On September 9, 2015, Debtor Theodore A. Reed passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

The Joint Debtor requests authorization to be substituted in for the deceased debtor as personal representative. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative.

A Notice of Death was filed on May 9, 2016. Dckt. 96.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on June 13, 2016. Dckt. 98. The Trustee states that the case should be further administered: the Debtor has sufficient funds available to pay filed and allowed claims; the Debtor has not amended Schedule A, Schedule, B, or Schedule C; and Debtor has not filed supplemental Schedules I or J. For these reasons, the Trustee requests that the motion be granted.

DISCUSSION

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties; waiver of the certificate requirements for joint debtor, Theodore A. Reed; and waiver of post-petition education requirement for entry of discharge. The Suggestion of Death was filed on May 9, 2016. Dckt. 96. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

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

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

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

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

> suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Patricia Reed has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following

the filing of the Suggestion of Death. Dckt. 96. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Patricia Reed, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Theodore A. Reed. The court grants the Motion to Substitute Party.

Unfortunately, the surviving Debtor has failed to show cause why she, as the personal representative for the deceased Debtor, cannot complete the 11 U.S.C. § 1328 Certification. Therefore, this part of the relief is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Patricia Reed is substituted as the successor-in-interest to Theodore A. Reed and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.
>
> **IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor William Johnson is denied without prejudice.

34. 16-22373-E-13 DPC-1 TYFANY FRAZIER Matthew Decaminada

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-25-16 [12]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

35. 16-20374-E-13 KURT/BARBARA DELACAMPA — CONTINUED MOTION TO CONFIRM PLAN
CA-2 Michael Croddy — 4-19-16 [42]

Final Ruling: No appearance at the June 28, 2016 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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

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

TRUSTEE'S OPPOSITION

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

On May 3, 2016, the court sustained an Objection to Debtor's Claim of Exemptions as to the Oregon Property. Schedule C filed April 19, 2016 shows the Debtors have utilized exemption under claim of homestead exemption under California Code of Civil Procedure § 704.730 in the Oregon Property, which appears to be the same property as the one previously disallowed the exemption.

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

JUNE 14, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 28, 2016. Dckt. 63.

DEBTOR'S REPLY

The Debtor filed a reply on June 13, 2016. The Debtor states that they have filed an amended Schedule C utilizing California Code of Civil Procedure § 703 et seq. Based on the recent Schedule C, non-exempt equity in real property is $27,251.00 and preferential payments are $5,000.00 for a total liquidation analysis of $32,521.00. This Chapter 13 plan funds the non-priority general unsecured creditors at $75,000.00. The Debtor argues that the plan satisfies 11 U.S.C. § 1325(a)(4). The 25% plan (on $150,403.00) pays $37,600.75 which is greater than the liquidation value.

TRUSTEE'S NON-OPPOSITION

The Trustee filed a statement of non-opposition on June 17, 2016. Dckt. 61. The Trustee states that the Debtor has filed a reply, Amended Schedule C, and exhibits on June 13, 2016. Dckts. 57, 58, 59. The Trustee agrees with the Debtor's attorney's calculations.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. The Trustee has since made a statement of no-opposition in light of the amended Schedule C and supplemental information by the Debtor. No opposition to the Motion has been filed by the 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 April 19, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

36. 16-22175-E-13 LESSIE MCMILLER
SLE-1 Steele Lanphier

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
5-20-16 [21]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 20, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Internal Revenue Service ("Creditor") is granted and the secured claim is determined to be in the amount of $2,970.00 as stated by the Internal Revenue Service in Amended Proof of Claim No. 4.

The Motion filed by Lessie McMiller ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various items of real property and personal property, described in Debtor's Schedule A ("Real Property"), which includes 1918 Orchard View Dr., Fairfield, California and Schedule B ("Personal Property") which includes a 2007 Honda CR-V 4D LX Sport Utility and a 1993 Chevy commercial truck ("Vehicles"). Debtor asserts the value of the Real Property is $482,895.00 as of the petition date, the values of the Vehicles are $4,413.00 and $700.00 respectively, and the Personal Property (including the Vehicles) is $8,083.00. Thus, Debtor seeks to value the Real and Personal Property, without the value of the Vehicles, at a replacement value of $2,970.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed an Amended Proof of Claim #4 on June 7, 2016. Creditor's Proof of Claim asserts that $2,970.00 is secured by the Real and Personal Property, $16,502.27 is an unsecured priority claim, and $44,649.63 is an unsecured general claim.

DISCUSSION

The present Motion was filed on May 20, 2016. At the time of filing, the Internal Revenue Service had not yet filed a proof of claim.

On June 7, 2016, the Internal Revenue Service filed Amended Proof of Claim No. 4 in this case, which asserts claims in the following amounts:

a. Secured Claim.....$2,970.00

b. Priority Claim.....$16,502.27

c. General Unsecured Claim.....$44,649.63

Attached to Proof of Claim No. 4 is a lien notice.

As was recently disclosed, in filing proofs of claim the Internal Revenue Service will make its own § 506(a) calculation based on the assets of the Debtor and self-bifurcate the secured and unsecured portions of the claim. It appears that the Internal Revenue Service has done so in this case.

Upon review of the evidence and the statement of the secured claim amount of the Internal Revenue Service in Amended Proof of Claim No. 4, the court determines the value of the secured claim to be $2,970.00, with the balance to be treated as unsecured claims (whether priority or general unsecured.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Brenda N. Ewing (“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 secured claim of the Internal Revenue Service for which the collateral is the personal property of the Debtor has a value of $2,970.00, with the balance of the claim to be provided for as unsecured claims (whether properly priority or general unsecured claims).

37. 16-22175-E-13 LESSIE MCMILLER
SLE-2 Steele Lanphier

MOTION TO VALUE COLLATERAL OF REDWOOD CREDIT UNION
5-20-16 [25]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 20, 2016. By the court's calculation, 39 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 Redwood Credit Union ("Creditor") is and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Lessie McMiller ("Debtor") to value the secured claim of Redwood Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1918 Orchard View Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $482,895.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $705,876.00. Creditor's second deed of trust secures a claim with a balance of approximately $66,314.87. 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 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 Lessie McMiller ("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 Redwood Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 1918 Orchard View Drive, Fairfield, 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 $482,895.00 and is encumbered by senior liens securing claims in the amount of

$705,876.00, which exceeds the value of the Property which is subject to Creditor's lien.

38. 16-20576-E-13 FF-1 | **DANA MAGWOOD AND TRISHA GUTIERREZ-MAGWOOD** | **Gary Fraley** | **MOTION TO VALUE COLLATERAL OF HCA** | **5-13-16 [47]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Creditor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 46 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 HCA DBA Hyundai Motor Finance ("Creditor") is granted and the secured claim is determined to have a value of $6,363.00.

The Motion filed by Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("Debtor") to value the secured claim of HCA DBA Hyundai Motor Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,363 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 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,697.47. 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 $6,363.00 *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 Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("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 [name of creditor] ("Creditor") secured by an asset described as 2011 Hyundai Sonata ("Vehicle") is determined to be a secured claim in the amount of $6,363.00, 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 $6,363.00 and is encumbered by liens securing claims which exceed the value of the asset.

39. 10-50178-E-13 MARIA DE LA GARZA — CONTINUED MOTION TO MODIFY PLAN
TJW-4 Timothy Walsh — 4-14-16 [64]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 61 days' notice was provided. 35 days' notice is required.

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

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

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

TRUSTEE'S OPPOSITION

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

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

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

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

DEBTOR'S REPLY

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

1. The amount of priority claim for Internal Revenue Service in the amount of $1,316.46.

2. The Debtor's total proposed is $60,636.72 whereas the Debtor has actually paid $60,916.72. It appears that the Debtor has overpaid $280.00.

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

JUNE 14, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 28, 2016. Dckt. 78.

DISCUSSION

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

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

The Trustee's objections are well-taken.

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

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

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

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

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.

40. 10-50178-E-13 MARIA DE LA GARZA **CONTINUED MOTION TO DISMISS CASE**
DPC-2 Timothy Walsh **3-18-16 [56]**

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Dismiss is granted and the case is dismissed.

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

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

DEBTOR'S OPPOSITION

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

TRUSTEE'S REPLY

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

APRIL 20, 2016 HEARING

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

JUNE 14, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 28, 2016. Dckt. 79.

DISCUSSION

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

At the hearing, the court denied the Motion to Confirm.

In light of the proposed plan being denied, the Trustee's arguments are well-taken. A plan is not completed by a mere lapse of the temporal period. To complete a plan, a debtor must make all plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

41. 16-22480-E-13 SEAN/JENNIFER PARSONS
DPC-1 Pro Se
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-1-16 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 1, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtors failed to appear at the Meeting of Creditors held on May 25, 2016. The Trustee reports that he received from Debtor Jennifer Parsons requesting that the Trustee give a continuance of the First Meeting of Creditors.

2. The Debtor is $800.00 delinquent in plan payments and have paid $0.00 into the plan to date.

3. The Debtor offers expenses in the form of estimations, and states that the net income varies from $1,033.00 to $2,683.00.

The Debtor does not state why the net income, the childcare/education, and medical dental expenses range in amounts.

4. The Debtor's plan lists Trinity Financial LLC arrears in Class 1 of the plan for $187,000.00. The Debtor's failed to provide an arrearage divided to the creditor and the interest rate on the arrears is listed at 11.63%. This creditor may not be entitled to 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

5. Ditech is listed in Class 4 in the amount of $530.00 per month. Ditech is not listed on Schedule D and Schedule J lists an additional mortgage expenses in the amount of $525.00 per month. Treatment to and for Ditech needs to be clarifies.

6. The Debtor's plan fails the Chapter 7 Liquidation Analysis. The Debtor's non-exempt equity totals $69,500.00 and the Debtor proposes to pay the unsecured creditors a zero percent dividend. It does not appear the Debtors exempted any personal property to Schedule C.

7. The Trustee cannot determine if the plan is the Debtors best effort under 11 U.S.C. § 1325(b). The Debtors are over the median income and have failed to complete the Statement of Current Monthly Income. Debtor Sean Parsons lists his gross income in the amount of $8,928.00 on Schedule I. The gross income includes overtime pay in the amount of $1,000.00 per month. According to the Statement of Earnings for pay period March 2016 his year to date income is $41,437.70, which would mean substantially more income per month. It appears that Debtor Sean Parsons gross and net income has been understated.

The Trustee's objections are well-taken.

The Trustee states that the Meeting of Creditors was continued to 11:00 a.m. on June 23, 2016. The Trustee requests that the court continue the instant Objection to a date after the continued Meeting of Creditors to allow the Debtor the opportunity to address these issues.

However, given the nature of the objections, the court does not see a reason to continue the instant Objection.

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

The basis for the Trustee's objection is that the Debtor is $800.00 delinquent in plan payments. To date, the Debtor has paid $0.00 into the plan to date. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that while Debtor has reported non-exempt assets in the amount of $69,500.00. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, why non-exempt assets should not be provided for in the plan.

As to the Trustee's remaining objections, they all appear to fall in the argument that the Trustee nor any other party in interest can determine whether the plan is the Debtor's best efforts. The Trustee's objections all deal with the accuracy and truthfulness of the Debtor's financial information. The Trustee notes that claims like Ditech have been provided for in the plan but not provided for in the Schedules. The Debtor has failed to claim any exemption and has failed to give accurate income information as to Debtor Sean Parson's income.

In sum, the failure of the Debtor to provide complete, accurate, and truthful information as to the Debtor's financial reality. As the plan and schedules are presented now, the court cannot determine if the plan is feasible, viable, or best efforts.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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 plan is not confirmed.

42. 16-22480-E-13 JPB-1 — SEAN/JENNIFER PARSONS, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY TRINITY FINANCIAL SERVICES, LLC — 6-2-16 [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 (*pro se*) and Chapter 13 Trustee on June 2, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Trinity Financial Services, LLC ("Creditor") opposes confirmation of the Plan on the basis that:

1. The plan fails to provide for the payment in full of Creditor's pre-petition arrearage.

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $103,769.51 in pre-petition arrearage. The Plan does not propose to cure these

arrearage. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

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

43. 16-21885-E-13 SUSAN REICHARD
HDP-1 Julius Engel

OBJECTION TO CONFIRMATION OF PLAN BY WANG YANG ENTERPRISES, LLC
5-26-16 [40]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

The court having previously sustained the Trustee's Objection to Confirmation and denying confirmation on June 20, 2016 (Dckt. 48) of the Debtor's plan filed on March 25, 2016, the Objection is dismissed as moot, there being no plan now before 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 Objection to Confirmation having been presented to the court, the court having previously denied confirmation of the plan, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed without prejudice as moot, the court having previously denied confirmation of the March 25, 2016 plan.

44. 16-22088-E-13 JAMIE CELAYA **MOTION TO CONFIRM PLAN**
TLA-1 Thomas Amberg **5-6-16 [18]**

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2016. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

45. 11-25898-E-13 CINDY STINSON
MOH-6 Michael O'Dowd Hays
MOTION TO INCUR DEBT
6-14-16 [76]

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

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

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

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

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

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

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 345 Homestead Drive, Red Bluff, California, which the total loan amount is $143,296.00, with monthly payments of $961.32. The interest is 3.875%. The monthly payment includes property tax of $155.21, property insurance of $29.16, and mortgage insurance of $93.12. The mortgage is fixed FHA loan and amortized over 30 years.

The Debtor states that the purchase is being made possible with the assistance financially of the California Housing Finance Agency in the amounts of $5,015.00 at 0% interest and $7,450.00 at 3% interest.

The Debtor states that the down payment assistance is a deferred program.

The Debtor states that her current rent is $720.00, she no longer has the $342.00 monthly obligation for the vehicle, and her annual income is approximately $56,000.00.

The Debtor states that she has made all of her plan payments and a final payment of $175.00 on June 4, 2016 was requested by the Trustee. All of her filed unsecured claims totaling $36,190.30 have been paid in full along with the Franchise Tax Board priority claim of $1,439.00.

The Debtor, without consulting her attorney, got involved in the purchase of a residence. On May 14, 2016, Debtor made an offer to purchase the Property for $145,000.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on June 20, 2016.

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

It is troubling that Debtor began negotiating for purchase of the residence, without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

However, the Debtor has completed her plan payments and has paid all necessary claims through the plan. While the court does not condone a debtor to not comply with the necessary code sections as to incurring debt, the Debtor in this case had little (less than a month) remaining to complete her plan when she began to discuss purchasing the Property.

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

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

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

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

IT IS ORDERED that the Motion is granted and Cindy Stinson ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 78.