UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 30, 2015 at 3:00 p.m.

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1. 10-44204-E-13 IRMA SANCHEZ
MOH-6 Michael Hays
MOTION TO MODIFY PLAN AND/OR MOTION FOR ENTRY OF DISCHARGE
5-19-15 [91]

Final Ruling: No appearance at the June 30, 2015 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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court 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 21, 2015. On or before July 10, 2015, Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee a Points and Authorities directing the court to the applicable law and providing cogent, organized arguments why the evidence in this Contested Matter supports granting such relief.

Irma Sanchez ("Debtor") filed the instant Motion to Modify Chapter 13 Plan , Conclude Case, and Grant Discharge on May 19, 2015. Dckt. 91. The Debtor is seeking for the court to confirm the proposed plan, conclude her case with $19,159.00 being paid in and that the Debtor be granted discharge.

In the Motion, the Debtor provides a lengthy narrative of recent developments, including health problems, loss of job, moving to more affordable housing, and gaining employment at a lesser salary.

The Debtor states that she was in a 60 month plan, even though she qualified for a 36 month plan, so that the Debtor could pay the $9,624.00 value portion of the car claim, plus 6% interest and no less than 1% dividend to the

unsecured creditors, plus the Trustee's and her attorney's compensation. The Debtor asserts that the obligation has been satisfied in less than 60 months because the amount of unsecured claims actually filed came to $11,579.25 instead of the original estimate of $56,619.00.

The Debtor argues that because she has satisfied her original commitment to her creditors in less time, was not legally required to be in a 60 month plan, and due to decrease in income, the Debtor is requesting to have her case concluded with the $19,159.00 already paid in with no further payments required.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 97. The Trustee argues that the Motion does not comply with applicable law because it is requesting multiple forms of relief. Additionally, the Trustee notes that the Debtor's Motion does not cite any applicable code sections, in violation of Local Bankr. R. 9014-1(d) and Fed. R. Bankr. P. 9013.

DISCUSSION

The court begins its analysis with the basic pleading issues identified by the court.

Failure to Comply with Fed. R. Bankr. P. 9013

At this court has repeatedly discussed, Federal Rule of Civil Procedure 7(b) and Federal Rules of Bankruptcy Procedure 7007 and 9013 require that a motion state with particularity both the grounds upon which the relief is based and the relief itself. In the fast-paced world of the bankruptcy law and motion calendar (in which most substantive law matters upon which a party's rights are determined, terminated, or modified) with fourteen to forty-two days notice, clear, accurate, and complete pleading in the motion is a necessity.

The Motion, Dckt. 91, now before the court states (as distilled by the court) the following grounds and relief with particularity: FN.1.

a. Debtor is a below median income Debtor, with an applicable commitment period of three years. Motion ¶ 1.

b. Under the existing confirmed plan Debtor is obligated to make payments of $9,625.00 for 60 months. Motion ¶ 1

c. Under the plan the Debtor was to surrender her residence and projected her ongoing rent to be $1,000.00. Motion ¶ 1

d. In 2013 Debtor began suffering from health issues which required surgery and prevented her from being employed. Debtor's disability benefits were $2,343.60 a month. Motion ¶ 2. FN.2. This is about $1,000 a month less than the Average Monthly Income show on Schedule I which Debtor stated on Schedule I.

e. When Debtor returned to work her employer laid her off in March 2014, allegedly due to "lack of work" and that a "full time employee [was] no longer required." Motion ¶ 3.

f. Debtor's unemployment benefits were approximately $1,680 a month. Motion ¶ 4.

g. In April or May 2014 Debtor obtained new employment, earning income in an unstated amount. Motion ¶ 4.

h. Debtor's employment income is now "quite a bit lower" than her former employment. Motion ¶ 5.

i. Her earning shown on the April 24, 2015 statement are $12,527.62 for the year to date, which average $3,132 monthly. Motion ¶ 5.

j. Debtor cannot explain the amounts for the deductions by her employer from her gross earnings. Motion ¶ 5. In projecting her current income, Debtor has used the lower deduction amounts shown on her pay statements. Motion ¶ 5.

k. While her income has been reduced by around $800 a month, so have her expenses, as she only has one child residing with her. Motion ¶ 6.

l. Debtor remains separated from her husband, and in the past twelve months he has provided only $2,000.00 in spousal and child support. Motion ¶ 7.

m. Debtor originally confirmed a 60 month plan in order to have an affordable payment, based on her income and expenses, to pay the $9,625 secured claim (car loan) and a minimal 1% divided to creditors with unsecured claims. Motion ¶ 8.

n. Debtor has been able to pay the secured claim in full and the 1% minimum dividend has been paid because the general unsecured claims filed in this case were only $11,579.35, much lower than the $56,619.00 Debtor projected in her plan. Motion ¶ 8.

o. Debtor has paid $19,159.00 into the Plan. This is alleged to have fund the plan in full (because of the much lower general unsecured claims) without the payments having to be made over the full 60 months originally required. Motion ¶ 9.

p. Therefore, the relief requested is that:

    i. The bankruptcy case not be dismissed (which is not the subject of the present Motion);

    ii. The bankruptcy case be concluded with the $19,159.00 paid into the plan by Debtor (which is relief that the court cannot identify to any specific Bankruptcy Code sections); and

iii. Debtor be granted a discharge (which is something separate from the court addressing whether a plan has been completed).

Motion unnumbered, untitled paragraph after paragraph 9.

FN.1. The court notes that some of the confusion over the present Motion appears to arise because rather than stating with particularity the grounds upon which modification of the plan is proper (stating the grounds as required by 11 U.S.C. §§ 1329, 1325, and 1322), the motion is drafted in a manner in which long paragraphs argue multiple factual issues. Also, rather than stating grounds, the Motion contains arguments, which properly should be in the points and authorities in the context of legal authorities upon which the relief is based.

FN.2. Debtor states in the Motion that the benefits were $558.00 a week, which the court has extended to a monthly amount by multiplying the weekly amount of $2,343.60.

No Points and Authorities has been filed with the Motion. This leads to further confusion about what relief is being requested, as well as what grounds exist under applicable law for the relief requested. While the motion is titled (which is not part of the pleadings) "Motion to Modify," no such relief is requested in the Motion. While one might "assume" that such can be inferred from the Motion, to do so requires the court to redraft the pleading for Debtor.

As the Trustee notes in his opposition, while the court or Trustee could assume, or state for the Debtor, the proper law, such is not the duty of either. As the court has phrased it in other unrelated cases, it is not the role of the court to advocate for parties in federal judicial proceedings, but rule on the matters presented to the court. It is inappropriate for a party to assign legal work to the court, such as in the present case, to advance relief for a party in the way the court best thinks it allows that party to prevail over other parties to the litigation.

Debtor may respond, "hey judge, I've regurgitated a bunch of really good sounding facts, you pick through it and find the parts you think sound the best, then assemble the law for me, and grant me the relief you advocate for me." This highlights the deficiency in the pleading strategy of Debtor – wanting to turn the court into one of Debtor's legal team. It appears that Debtor does not know why or how relief should be granted, and thinks that it should not be Debtor's counsel's duty to provide such services for Debtor.

CONCLUSION

The court declines the opportunity presented by Debtor to provide her with legal services. From the Motion, the court is left guessing what the legal basis is for the relief requested (conclude the case for the money paid to date) and how the grounds line up with the legal requirements for such relief. While the court could, as it has in other cases, deny such relief and require a whole new motion, that does not appear to be appropriate under these circumstances. Rather, the court continues the hearing and orders Debtor's

counsel to file a points and authorities citing to the legal authorities upon which the motion is based, apply the grounds to the requirements of the legal authorities, and then clearly state the relief which may be granted on those legal authorities. (The court is unaware of a Bankruptcy Code provision which states, "and relief may be granted in the form of an order stating that the case is concluded based on whatever payments have been made to date." FN.3.

FN.3. As the Trustee notes, the court previously drew a roadmap for Debtor and counsel having stated in continuing the motion to dismiss, either cure the default, modify the plan, or request a hardship discharge. Each of those are relief provided for under the Bankruptcy Code. Debtor has not sough such relief, but made up relief to be requested from the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on July 21, 2015. Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee a points and authorities directing the court to the applicable law and relief provided for under the Bankruptcy Code, and providing cogent, organized arguments why the evidence in this Contested Matter supports granting such relief.

2. 10-44204-E-13 IRMA SANCHEZ
DPC-2 Michael O'Hays

CONTINUED MOTION TO DISMISS CASE
1-21-15 [58]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 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 court's decision is to continue the hearing on the Motion to Dismiss to 3:00 a.m. on July 21, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is $782.00 delinquent in plan payments, which represents multiple months of the $391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Irma Sanchez ("Debtor") filed a reply to the instant Motion on February 3, 2015. Dckt.62. Debtor replies as follows:

Debtor's confirmed Chapter 13 plan called for monthly payments of $391.00 for 60 months to pay the $9,625.00 value portion of the $18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total $56,619.00. The $9,625.00 claim is being paid with 6% interest with a monthly dividend of $186.00 and a total of $11,16000 would have been paid at $186.00 monthly. The Debtor's plan also calls for payment of $2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to $11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor.

Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of $14,752.38 which is in excess of the $11,160.00 called for in the plan. No explanation has been provided for this overdisbursement to the car creditor and apparent underdisbursement to the creditors holding general unsecured claims.

Debtor asserts that it should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of $391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.

2. Debtor is currently delinquent in the amount of $1,173.00.

3. January was month 52. A total of $20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of $19,159.00 with last payment of $391.00 on November 13, 2014.

4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.

5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to allow counsel to meet with his client and determine whether it is in the Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to allow the Debtor to file a proposed modified plan. Dckt. 86.

JUNE 24, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm.

JUNE 30, 2015 HEARING

At the hearing, the court further continued this matter due to deficiencies in the pleadings in the related motion by which Debtor seeks to remedy the default.

3. 14-30704-E-13 KEVIN FLOYD — MOTION TO MODIFY PLAN
SDB-1 Scott de Bie — 5-12-15 [30]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 12, 2015. 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.

Kevin Floyd ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 12, 2015. Dckt. 30.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 39. The Trustee states that the Debtor is delinquent in plan payments in the amount of $2,630.00. The Trustee states that the last payment received was on April 27, 2015 with plan payments of $2,630.00 per month.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor is delinquent in plan

payments. The Debtor has not provided any evidence showing that he has cured the delinquency. Failure to make plan payments is evidence of the Debtor's inability to comply with the terms of the plan. See 11 U.S.C. § 1325(a)(6). Therefore, there is cause to deny confirmation.

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.

4. 14-29505-E-13 JOHN/CAROLIN FUNDERBURG MOTION TO INCUR DEBT
DJC-2 Diana Cavanaugh 6-16-15 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. 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 2015 Chevrolet Malibu Sedan 4DR ("Vehicle"), which the total purchase price is $19,990.00, with monthly payments of $286.72. FN.1. The Motion states that the interest rate would be 10.55%, the financing would be for 72 months, and the Debtor's would put down $1,500.00 from savings.

FN.1. The Motion actually requests that the court approve the purchase of the Vehicle or "similar vehicle from John L. Sullivan Chevrolet in Roseville, CA."

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition on June 18, 2015. Dckt. 32. The Trustee objects to the instant Motion on the following grounds:

1. The Debtor's proposed modified plan continues to list the Debtor's 2002 Nissan Altima is Class 2A. It is not clear why the Debtor does not use the 2002 Nissan Altima as a possible trade in vehicle.

2. The Debtor fails to provide a copy of the finance agreement that lays out the specific terms of the agreement.

3. The Debtor fails to state how many vehicles they looked at prior to this one, how many dealerships they visited in their attempt, or that this particular financing is the best they could receive.

DISCUSSION

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

The Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 2002 Nissan Altima . The Debtor states that the Nissan Ultima is unreliable and has required numerous repairs, with the total costs being around $7,000.00. However, as the Trustee points out, the Debtor does not state whether they have tried to use the Nissan as a trade-in.

The Debtor does not provide the proposed financing agreement for the court and Trustee to review to determine if the terms are actually in the best interest of the Debtor. The Debtor merely states the bare bones of the financing agreement but does not provide the specific agreement. Additionally, the Debtor appears to seek a "carte-blanche" approval to purchase a vehicle given that the motion requests authorization for the Vehicle or "similar vehicle." This is not proper.

Lastly, the Debtor does not address their efforts at seeking other vehicles, such as used vehicles. Instead, the Debtor merely focuses on the Vehicle or "similar vehicle" without any explanation of the other vehicles the Debtor reviewed and researched to determine that the instant terms were the best available. The court takes judicial notice of the fact that new vehicles suffer significant depreciation during the first two to three years of ownership, and that purchasing a three year old vehicle can be very financially advantageous as opposed to purchasing a new vehicle. This seems to be even more financially proper when someone is unable to pay their bills and needs to seek relief under the Bankruptcy Code in which they can only pay their creditors 26% of what is owed on their unsecured claims.

Seeking to purchase a brand new vehicle, in light of the tremendous financial pressures the Debtor is under, does not comport with a good faith filing and good faith prosecution of a plan in a Chapter 13 case.

Debtor's Response

Debtor responded to the Trustee's Opposition. Dckt. 35. This response is summarized as follows:

A. Debtor's original intent was to use the existing vehicle as a trade-in, but thought they could not since they still owed $399.82 on the claim secured by that vehicle.

B. Debtor proposes to put $1,500.00 down (from some source) in lieu of using the existing vehicle as a trade-in.

C. As part of the Reply, Debtor provides a copy of the actual financing agreement.

D. As part of the Reply, Debtor provides a declaration of the efforts to consider other vehicles. The court is directed to read the Declaration, as Debtor does not attempt to state why and how purchasing a brand new, 2015 vehicle is reasonable and in good faith.

The Declaration of John Funderburg III, a Debtor, is provided as part of the Reply. Dckt. 36. The testimony under penalty of perjury provided by Debtor, is summarized as follows:

A. He visited four car dealerships during a two to three week period in May 2015. Declaration ¶ 1.

B. Debtor's goal was to find a vehicle which would get at least 30 miles to the gallon. Declaration ¶ 3.

C. At the Paul Blanco dealership, the interest rate for the financing was going to be 18%.

D. At the Elk Grove Nissan dealership, the interest rate for financing was 20% for either a new or used car.

E. At Car Max the interest rate for a purchase of a used vehicle was 18%.

F. The 2015 Chevrolet Malibu is actually a "used" car, it having been a loaner used by the John L Sullivan dealership. The vehicle has 17,255 miles on it. The interest rate for this vehicle offered by the Sullivan dealership is 10.99%.

G. The monthly payment is $286.72.

H. Debtor has discovered that the Malibu has been sold, but has identified a 2012 Honda Civic EX L, with 66,000 miles on it. The monthly payment is $286.01. The interest rate is 10.99%.

From the Retail Installment Contract; Exhibit B, Dckt. 8; the court sees the following information:

A. The sales price is $16,990.

B. The down payment (trade-in and cash) is $4,000.

C. After taxes and fees, the amount financed is $14,962.72.

D. The monthly payment is $286.01 for 72 payments.

Debtor has not provided the court with an NADA or Kelly Blue Book valuation for this type of vehicle. Kelly Blue Book reports that the retail purchase price for this type of vehicle, in just "good" condition, in the Sacramento Region is $14,843. This is close to the sales price, with the court not knowing what upgrades or options may be included. This additional information further validates Debtor's efforts in attempting to purchase a reasonable vehicle during this Chapter 13 case.

FN.1. http://www.kbb.com/honda/civic/2012-honda-civic/ex-l-coupe-2d/?condition=good&vehicleid=371045&intent=buy-used&category=coupe&mileage=66000&pricetype=retail

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The Motion is approved and Debtor is authorized to obtain credit and to purchase a vehicle on the terms and conditions set forth in the Retail Installment Contract filed as Exhibit B in support of the Motion, Dckt. 38.

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 John L. Funderburg III and Carolin P. Funderburg, the Debtors, are authorized to obtain post-petition credit and purchase a vehicle on the terms and conditions set forth in the Retail Installment Contract filed as Exhibit B in support of the Motion (Dckt. 38). The vehicle authorized to be purchased is a 2012 Honda Civic EX-L coupe, or similar vehicle, with the cash sales price of the vehicle (without required tax, license, and fees) to not be more than $17,500 (if the Honda Civic is not available to purchase due to it being sold prior to this order being issued), and the interest rate not exceeding the amount stated in Exhibit B.

5. **15-22909-E-13 JENNIFER RIANDA** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-1 **Lucas Garcia** **5-21-15 [25]**

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

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

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

6. 13-24415-E-13 ANTONIO/MARIA HERNANDEZ MOTION TO MODIFY PLAN
CAH-6 Nekesha Batty 4-27-15 [126]

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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2015. By the court's calculation, 64 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 April 27, 2015. Dckt. 127.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on June 16, 2015. Dckt. 137. The Trustee states that the Debtor filed a late declaration on June 11, 2015. Dckt. 135. The Trustee states that he has no objection to the late filed declaration or the Motion.

CREDITOR'S OBJECTION

Tri Counties Bank ("Creditor") filed an objection to the instant Motion on June 16, 2015. Dckt. 140. The Trustee objects on the ground that the Debtor

is in default under the proposed modified plan because it required them to make $307.30 monthly payments to the Creditor, yet the Debtor is almost two years in default on these payments. Additionally, the Creditor asserts that the proposed plan improperly modifies the Creditor's claim because it does not cure the arrearage.

DISCUSSION

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

The Creditor is listed as a Class 4 claimant with a payment of $307.30 to be paid directly by the Debtor. This is based on a stipulation reached by the parties in connection with the Creditor's claim, where the court valued the Creditor's secured claim to be $40,000.00 Dckt. 76. The Creditor states that the Debtor has only made three payments of $310.00 since September 2013, putting the Debtor in nearly two years of delinquency.

Original Confirmed Plan

On June 28, 2013, the court's order confirming the original Chapter 13 Plan was filed in this case. Order, Dckt. 54; Plan, Dckt. 5. That plan provides for Tri-Counties Bank to be paid $0.00 through the Chapter 13 Plan. In reviewing the Proofs of Claim, the court cannot identify one having been filed by Tri Counties Bank.

First Modified Plan

On August 12, 2014, Debtor filed the proposed First Modified Plan. Dckt. 79. However, for the First Modified Plan the Tri Counties Bank Claim secured by a second deed of trust was provided for as a Class 4 claim, for which there was no pre-petition or post-petition default. The automatic stay is terminated for the Class 4 Claims. The Motion to Confirm (Dckt. 77) does not state the reason for the change in treatment of this claim. The court confirmed the First Modified Chapter 13 Plan. Order, Dckt. 95.

Second Modified Plan

On April 27, 2015, Debtor filed a Second Modified Plan and Motion to Confirm. Plan, Dckt. 129; Motion, Dckt. 126. The motion states that Debtor seeks only to modify the plan to move the Bank of America, N.A. claim from Class 1 to Class 4, based on Debtor having obtained a loan modification. The court's order authorizing Debtor to enter into the loan modification was filed on May 21, 2015. Dckt. 134.

Tri Counties Bank has responded on June 16, 2015, objecting to the Second Modified Plan. Dckt. 140. The Bank states that Debtor is also two year in default in the $307.30 in payments required under the confirmed First Modified Plan and under the proposed Second Modified Plan.

Tri Counties Bank Claim

The Tri Counties Bank Claim, though no proof of claim has been filed, is the subject of a stipulation on a motion to value. The Tri Counties Bank opposition to the motion to value alleges that the Bank's claim is $104,087.21. The Stipulation, Dckt. 65, provides:

A. The “collateral” will be valued at $40,000.00

B. The Tri Counties Bank claim secured by the second priority lien on unspecified property will be paid outside the plan at 6% interest. The payments shall be $307.30 a month through February 25, 2031.

C. If the Debtor does not receive a discharge, the Stipulation is null and void.

This Stipulation resolved an evidentiary hearing and an order thereon was signed without the court having the benefit of a hearing. The court’s order on the motion to value only values the Tri Counties Bank secured claim at $40,000.00 and provides that the balance shall be treated as a general unsecured claim.

In retrospect, it appears that the parties may not have merely been resolving the motion to value (for which the court only values the secured claim of the creditor) but to actually be entering into a loan modification by which Tri-Counties Bank waived all obligations in excess of the $40,000.00. It is not clear from the Stipulation that such is the case.

DECISION

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.

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.

7.	**15-22019-E-13 JAP-2**	**KATHY COARD James Pixton**	**MOTION TO VALUE COLLATERAL OF KELLOGG COMMUNITY FEDERAL CREDIT UNION 5-23-15 [32]**

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 26, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Kellogg Community Federal Credit Union ("Creditor") is granted and the secured claim is determined to have a value of $16,329.00.

The Motion filed by Kathy Coard ("Debtor") to value the secured claim of Kellogg Community Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Volvo C70 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $16,329.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in February, 9, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,597.15. 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 $16,329.00. *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 Kathy Coard ("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 Kellogg Community Federal Credit Union ("Creditor") secured by an asset described as 2011 Volvo C70, ("Vehicle") is determined to be a secured claim in the amount of $16,329.00, 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 $16,329.00 and is encumbered by liens securing claims which exceed the value of the asset.

8. 15-22019-E-13 KATHY COARD
JAP-3 James Pixton

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
5-19-15 [29]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 27, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kathy Coard ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 462 East E Street, Benicia, California ("Property"). Debtor seeks to value the Property at a fair market value of $395,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $410,404.92. Proof of Claim No. 5. Creditor's second deed of trust secures a claim with a balance of approximately $102,000.00. 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 Kathy Coard ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 462 East E Street, Benicia, 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 $395,000.00 and is encumbered by senior liens securing claims in the amount of $408,000.00, which exceed the value of the Property which is subject to Creditor's lien.

9. 14-27422-E-13 LONNIE/SHARON SHURTLEFF MOTION TO MODIFY PLAN
CAH-2 Nekesha Batty 5-1-15 [87]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2015. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

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

Lonnie and Sharon Shurtleff ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 1, 2015. Dckt. 87.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 95. The Trustee objects on the ground that the Debtor is delinquent in plan payments. The Trustee argues that the Debtor is delinquent in the amount of $2,295.00 under the proposed plan.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor is delinquent under the proposed plan. The Debtor has not provided any evidence to show that they have

cured the delinquency. As such, the delinquency is evidence of the Debtor being unable to make the payments under 11 U.S.C. § 1325(a)(6). Therefore, the plan is not confirmable.

Therefore, because of the Debtor's delinquency, 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.

10. 14-26329-E-13 HATTIE FERRETTI **MOTION TO VALUE COLLATERAL OF**
LBG-101 Lucas Garcia **PNC BANK, N.A.**
4-29-15 [31]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 1, 2015. By the court's calculation, 60 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 PNC Bank N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Hattie L. Ferretti ("Debtor") to value the secured claim of PNC Bank N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 11842 Tabeaud Road, Pine Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $137,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's**

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

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

RESPONSE

David P. Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on June 16, 2015. Dckt. 46. The Trustee states that Creditor filed a proof of claim for a secured amount of $96,588.07. Debtor is requesting a secured claim of Creditor, for the Second Deed of Trust, to be valued at $0.00. A total of $4,108.84 has been disbursed to the Creditor. Therefore, the Trustee requests that should the instant Motion be granted, these payments be authorized by the debtor.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $236,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $96,588.07. 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 in the secured amount of the claim 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.

Debtor confirmed the Chapter 13 Plan in this case on August 27, 2014. Order, Dckt. 21. The Chapter 13 Plan provides for the secured claim of PNC Bank as a Class 2 claim, for which the dividend is to be $0.00. Dckt. 5. However, had not obtained an order valuing the claim and the proof of claim amount controls absent there being an order valuing the claim. Plan Section 2, ¶ 2.04. The monthly payment due on the note upon which the PNC Bank claim is based is $539.70 a month. Proof of Claim No. 1, Attachments 1 and 4.

The Trustee reports that he has disbursed $4,108.84, which is slightly more than 7 months of payments. The Trustee requests that the Debtor be required to "authorize" the payments as a condition of granting the present motion.

Such "authorization" by the Debtor, or the court, is not a condition of valuing a secured claim under 11 U.S.C. § 506(a). Presumably, the Trustee has

made required disbursements under the Chapter 13 Plan. Now that the claim has been valued, the Trustee will continue to make proper disbursements. If the Debtor, or any other party in interest, believes that this order retroactively renders payments made under the plan recoverable, they may so prosecute such contentions (to the extent they are a party in interest with standing).

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 Hattie Lucille Ferretti ("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 PNC Bank N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 11842 Tabeaud Road, Pine Grove, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $137,000.00 and is encumbered by senior liens securing claims in the amount of $236,000.00, which exceed the value of the Property which is subject to Creditor's lien.

11. 15-21629-E-13 SCOTT/KARLA GABLE — MOTION TO CONFIRM PLAN
RAH-1 Richard Hall — 5-18-15 [22]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 14, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

12. 15-22829-E-13 DANIEL/MALIA PALU **MOTION TO CONFIRM PLAN**
SJS-2 Scott Johnson **5-19-15 [29]**

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. 15-23331-E-13 SARAH GWALTNEY
DPC-1 Mary Ellen Terranella
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-3-15 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent in plan payments in the amount of $439.00. The Debtor has paid $0.00 into the plan to date.

2. The Debtor failed to appear at the Meeting of Creditors on May 28, 2015. The Meeting has been continued to June 25, 2015.

The Trustee's objections are well-taken. The Debtor is delinquent under the proposed plan. The Debtor has not provided any evidence to show that they have cured the delinquency. As such, the delinquency is evidence of the Debtor being unable to make the payments under 11 U.S.C. § 1325(a)(6). Therefore, the plan is not confirmable.

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

Debtor's Response

On June 25, 2015, Debtor filed a Response to the Objection to Confirmation. Response, Dckt. 18. Debtor states that she appeared at the continued First Meeting on June 25, 2015. However, the meeting has been further continued to July 23, 2015, to allow the Debtor to provide evidence that Debtor's 2014 tax return has been (by the time of the further continued First Meeting) filed.

Further, that due to a mis-communication with her counsel, Debtor did not receive the information on where to send her payments. Debtor is acting to cure these payments.

DECISION

While the Debtor may be working to cure the defects, the court has not been presented with evidence that they have been cured.

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

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

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

sustained and the proposed Chapter 13 Plan is not confirmed.

14. 15-23332-E-13 KATHERINE GERRARD
DPC-1 David Silber
OBJECTION TO DISCHARGE BY DAVID P. CUSICK
5-22-15 [21]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. By the court's calculation, 39 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). 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 court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Debtor's Discharge on May 22, 2015. Dckt. 21.

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

The Debtor filed a Chapter 13 bankruptcy case on August 4, 2013, which was converted to a Chapter 7 on September 30, 2013. Case No. 13-30311, Dckt. 37. The Debtor received a discharge on March 19, 2014. Case No. 13-30311, Dckt. 88.

The instant case was filed under Chapter 13 on April 23, 2015.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on March 19, 2014, which is less than four-years preceding the date of the filing of the instant case. Bankr. NO. 13-30311, Dckt. 88. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-23332), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-23332, the case shall be closed without the entry of a discharge.

15. 12-28434-E-13 JOHN/KARIN WESCOM MOTION TO MODIFY PLAN
RAC-2 Richard Chan 5-14-15 [40]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The Motion to Confirm the Modified Plan is dismissed without prejudice.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Confirm, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm**. It appears that the new modified plan filed and motion to confirm (Dckts. 54 and 51) are part of an effort in good faith to address the issues raised by the Trustee in objecting to confirmation of this plan (and not part of a scheme to delay prosecution of the case by filing a series of bankruptcy cases).

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

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

16. 10-53637-E-13 G./KATHLEEN ULBERG
JGD-10 John Downing

MOTION TO SET ASIDE DISMISSAL OF CASE AND/OR MOTION FOR ENTRY OF DISCHARGE
6-16-15 [210]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Set Aside Dismissal 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 Set Aside Dismissal is ----------.

Wendell and Kathleen Ulberg ("Debtor") filed the instant Motion to Set Aside Dismissal on June 16, 2015. Dckt. 210. The Debtor requests that the court set aside the dismissal entered on December 4, 2015 and to enter the Debtor's discharge. FN.1.

FN.1. The court notes that the Motion is improperly requesting multiple forms of relief in a single motion in violation of Fed. R. Civ. P. 18. The court will deny without prejudice the request for discharge and will construe the instant Motion as a request to vacate the dismissal. Whether a discharge should

properly be entered will be subsequently addressed as provided by the Local Bankruptcy Rules and General Orders of this court.

The Debtor request the court pursuant to Fed. R. Civ. P. 60(b) to vacate the dismissal because Debtor's counsel believed that the Motion to Dismiss was made moot by the filing of modified plan and that , regardless, creditors had been paid in full under the terms of the operative Chapter 13 Plan.

After a review of the case history and the related adversary proceedings, the Debtor states that the Chapter 13 Trustee filed a Motion to Dismiss on November 3, 2014 due to the Debtor being delinquent. Dckt. 180. On November 11, 2014, Debtor filed a motion to Modify the Chapter 13 Plan to provide for distribution of what should have been over $3,000.00 in funds that Debtor's counsel believed would not have been disbursed. The Debtor's counsel believed that filing the Motion to Modify made the dismissal moot. FN.2.

FN.2. As discussed in greater detail below, Debtor offers no explanation as to why counsel believed that a pending motion could just be ignored. For more than five years the judge in Department E has made it clear that motions, including motions to dismiss, cannot be ignored. Merely because an attorney may believe that an opposition to a motion could be filed which would result in the motion being denied is not a basis for ignoring the motion and believing that the opposing party or court will assemble such an opposition for that attorney.

The court granted the Motion to Dismiss on December 3, 2015. Dckt. 192. Neither Debtor nor Debtor's counsel responded to the Motion to Dismiss nor did either make an appearance at the hearing date on the Motion.

The Debtor states that the reason for the delay in filing the instant Motion to Vacate was due to discussions between Debtor and Debtor's counsel over whether they wished to file a Chapter 7 or to seek the reinstatement of the Chapter 13. The Debtor decided that the latter would be preferable since the holder of secured loan against the Debtor's Mazda is refusing to provide title. Now, after more than six months have passed, the Trustee and counsel have expended time and effort in closing this case, Debtor now comes forward seeking to have the dismissal vacated.

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

After nearly seven months, the Debtor filed the instant Motion seeking to vacate the order dismissing the case due to the Debtor's delinquency. The Debtor argues that due to the failure of the Debtor to file an opposition to the Motion to Dismiss, the failure of the Debtor to read the posted tentative disposition prior to the hearing on the Motion to Dismiss, the failure of the Debtor to attend the hearing on the Motion to Dismiss, and Debtor's counsel assuming that the filing a Motion to Confirm without responding to the Motion to Confirm was based on counsel's independent conclusion that he had rendered the Trustee's motion Moot.

While the Motion is long in reciting facts about the case, the grounds stated with particularity (Fed. R. Bankr. P. 9013) upon which Debtor relies is stated as,

> "Grounds for the Motion are set forth in detail below but include that counsel believed that the Motion to Dismiss was made moot by the filing of modified plan and that regardless, creditors had been paid in full under the terms of the operative Chapter 13 Plan.

...

> Unfortunately, given the belief that the Motion to Modify made the dismissal moot and given the fluid situation in both the main case and the Adversary Case (in which a motion was pending regarding compliance with the Release and Settlement Agreement), counsel for Debtors did not calendar an opposition and on December 3, 2014, the Court issued a pre-hearing final ruling dismissing the case for failure to make payments."

Motion pp. 2:1-4, 6:1-6; Dckt. 210.

The Debtor's Motion does not cite to any specific section of Federal Rule of Civil Procedure 60(b) as grounds for the vacating. Instead, the Debtor merely cites to the general Rule for vacating orders in hopes the court will choose the right subsection to justify the relief sought.

No points and authorities is provided to the court setting forth the proper law and then applying the grounds to such law. In the Motion the court is told that Debtor is relying on "case law arising thereunder (Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024), including without limitation, *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993) and *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004)." Motion p.1:21-24.; *Id.* This is little more than an instruction to the court to undertake the legal research, analysis, strategy development, and then advocate the position for Debtor.

It appears that the Motion to Confirm a Modified Plan (Dckt. 184) upon which counsel concluded that the Motion to Dismiss was rendered moot and no response was necessary, fails to demonstrate a likelihood of success on that motion. In reviewing that motion, after stripping out the long narrative review of the long, long, long history of the case, the grounds stated with particularity upon which Debtor asserted that confirmation of a modified plan pursuant to 11 U.S.C. §§ 1329, 1325, and 1322, consists of the following:

> "Based on this settlement and the resulting eviction of the Ulbergs, good cause exists for a modification of the plan, as the current plan was premised on the ongoing litigation and the Ulbergs continuing to reside at their house. Based on the Chapter 13 Statement of Current Monthly Income filed January 10, 2011 (Docket #20), Debtors income fell below the median and the applicable commitment period was three (3) years.
>
> After the injunction funds have been paid out, Debtors believe there will be $4,989.50 on hand with the trustee, more than sufficient to pay off the remaining $1828.15 owed to creditors.
>
> Wherefore, Debtors, G. WENDELL ULBERG, JR. and KATHLEEN ULBERG, request the court confirm the 2nd Modified Plan."

Motion to Confirm Modified Plan p. 4:6-16; Dckt. 184. Even if the court, without regard to the evidence or the truthfulness of the above, were to assume it was all true, Debtor fails to state grounds by which the court could confirm

a modified plan pursuant to 11 U.S.C. §§ 1329, 1325, and 1322.

Interestingly, the Chapter 13 Trustee filed an opposition to the Motion to Confirm. Dckt. 189. The grounds for the opposition included: (1) the Plan failed to provide for the priority claim of the Internal Revenue Service, (2) misstated the amount of payments made by Debtor into the case ; and (3) the Debtor's declaration was misleading by stating to an exhibit which was not filed with the court. The opposition was filed on November 20, 2014. The hearing on the Motion to Dismiss was not conducted until December 3, 2014. The opposition having been filed, it does not seem reasonable that anyone could have thought that the filing of the plan and motion make the Motion to Dismiss moot (to the extent that a party can elect not to respond to a motion merely having unilaterally determined that the motion is moot and can be ignored).

DAMAGES CAUSED BY DEBTOR

The judge now sitting in Department E was shocked when he first began hearing matters in 2010 that attorneys would routinely ignore motions to dismiss cases and wander into court the day of the hearing to state "well, we're going to think about something to do that would be an opposition, so continue the hearing so we can think about it some more." (It was equally shocking that such a practice was allowed to exist in a federal court.) After breaking it gently to the attorneys over a six month period that they actually respond to motions to dismiss, the court has required such a response.

In cases where the attorney has elected to ignore the motion or believed that the court will go through a several hundred page docket, find pleadings that might be a basis for a motion to dismiss, then believed that the court would pull from the hundreds of docket entries grounds for opposing the motion, then the court would state those grounds, and finally advocate for the court to deny the motion, there has not been a showing that relief should be granted for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P 60(b)(1); Fed. R. Bankr. P. 9024. The attorney and client made the knowing, intentional act of not opposing the motion, allowing their default to be entered and then the court ruling on the merits. The default having been entered and not having been set aside, Rule 60(b) is not a backdoor appeal as a substitute for first vacating the default. *Consorzio Del Prosciutto Di Parma v. Domain Name Clearing Co.*, 346 F.3d 1193, 1195 (9th Cir. 2003); *In re Lam*, 192 F.3d 1309, 1311 (9th Cir. 1999).

This court also considers the impact on the debtor. Often times the debtor can easily refile a new case and proceed with obtaining the relief. Here, Debtor is losing a case which was four years old when it was dismissed. Four years of payments into a plan which are loss may cause substantial harm (and damages) to the Debtor.

In such situations, the court will consider whether the relief should be granted under Federal Rule of Civil Procedure 60(b)(6), "any other reason that justifies relief." However, in considering such "reason," the court also considers how the conscious decision of Debtor and Debtor's attorney has cause damages to the Chapter 13 Trustee – wasted attorneys' fees in having to deal with the order dismissing the case (not the motion itself or the hearing), the legal issues relating to the closing of the case, and now the motion to vacate the dismissing. While operating cost-effectively, even the Chapter 13 Trustee's counsel does not work for free. The Debtor's conscious decision to

delay taking any action for six months caused even greater damages to be incurred by the Trustee.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

In similar situations where a debtor could suffer significant damages if the dismissal was not vacated, notwithstanding the debtor having intentionally failed to act, the court has required that the debtor or debtor's counsel reimburse the Chapter 13 Trustee for a reasonable amount of attorneys' fees. Such reimbursements are accounted to the U.S. Trustee as monies recovered for expenses and not a "bonus" for the Chapter 13 Trustee.

In this case, the court is first willing to assume a low $250.00 hourly rate for the Trustee's experience bankruptcy counsel. The court then will conclude that counsel spent 1.5 hours addressing post-dismissal legal issues after the hearing, then an additional 2 hours in considering the present motion, and 1 hour for the hearing on the present motion. That results in 4.5 hours, which at $250.00 an hour is $1,125.00 in an expense recovery for the Chapter 13 Trustee.

After the six month break-in period, requiring the expense reimbursement has had the corrective effect of all but doing away with a strategy of just ignoring motions to dismiss. When the debtor or counsel agree to pay the expense reimbursement, the court characterizes this as merely a payment of costs and not sanctions, such that it is not a reportable sanction to the State Bar if paid by counsel. If neither debtor or counsel choose to pay the damages caused by the fail to respond strategy, the court would deny the motion to vacate. To date, the court has not been required to deny the motion to vacate, as all attorneys have elected to reimburse this very modest, and otherwise unnecessary, expense to the Chapter 13 Trustee.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxx.

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 Set Aside Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxx.

17. 15-24737-E-13 CHARLES DEADERICK **MOTION TO VALUE COLLATERAL OF**
MOH-1 Michael O. Hays **WELLS FARGO BANK, N.A.**
6-16-15 [12]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Charles Deaderick ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 430 Locksley Court, Paradise, California ("Property"). Debtor seeks to value the Property at a fair market value of $132,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not

the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $138,416.04. Creditor's second deed of trust secures a claim with a balance of approximately $29,733.21. 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 Charles Deaderick ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 430 Locksley Court, Paradise, 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 $132,000.00 and is encumbered by senior liens securing claims in the amount of $138,416.04, which exceed the value of the Property which is subject to Creditor's lien.

18. 15-23238-E-13 KATRINA NOPEL
DPC-1 Peter Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-28-15 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor has failed to provide the Trustee with a tax transcript or copy of the Federal Tax Return with attachments for the most recent pre-petition tax year.

2. The Debtor's plan relies on valuing the secured claim of Ocwen Loan Servicing, LLC on a second deed of trust on Debtor's residence and to avoid the secured liens of the Internal Revenue Service and Employment Development Department. The Debtor has failed to filed either a Motion to Value or Motion to Avoid Lien.

3. The plan will not complete within 60 months. Based on the Proof of Claim No. 1 filed by the Internal Revenue Service, the total debt owed is $197,020.37, with $7,375.32 being secured, $111,563.93 being priority unsecured, and $78,081.12 being general unsecured. The plan would require 102 months to pay the priority unsecured debt alone.

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

As to the Trustee's second objection, the Debtor's plan relies on the court avoiding the judicial lien of the Internal Revenue Service and to value the secured claim of the holder of the junior deed of trust on Debtor's residence. However, neither a Motion to Value nor Motion to Avoid Lien have been filed. Furthermore, the court questions whether the Debtor has named the correct holder of the second deed of trust since Ocwen is a loan servicer. Since the plan relies on the court granting these motions, the debtor cannot make the payments under the plan and is grounds to deny confirmation. 11 U.S.C. § 1325(a)(6).

Lastly, the Trustee is correct that based on the Internal Revenue Service's Proof of Claim No. 1, the Debtor's plan will take longer than 60 months to complete. Pursuant to 11 U.S.C. § 1322(d), the maximum allowed time for a plan is 60 months. Since the Debtor's proposed plan would take longer than 60 months to complete, 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 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.

19. 15-23241-E-13 DPC-1 — STAN/VICKY MARSHALL — Ashley Amerio — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 5-28-15 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. The Debtor's plan may rely on a Motion to Avoid Lien of Cach LLC.

2. Debtor is $921.00 delinquent in plan payments. The Debtor has

paid $0.00 into the plan to date.

The court granted to Motion to Avoid Lien of Cach LLC on June 16, 2015. Dckt. 34. As such, the Trustee's first objection is overruled.

As to the Trustee's second objection, the Trustee had filed a Motion to Dismiss the Bankruptcy Case on June 5, 2015. Dckt. 26. On June 12, 2015, the Trustee filed a Notice of Withdrawal of the Motion to Dismiss, stating that the Debtor is now current under the plan. Dckt. 30. As such, the Trustee's second objection is overruled.

Therefore, with no objections remaining, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 21, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 14-21142-E-13 THOMAS LISLE AND BARBARA TREAT — MOTION TO MODIFY PLAN
LBG-10 Lucas Garcia — 4-24-15 [124]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2105. By the court's calculation, 67 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.

Thomas Lisle and Barbara Treat ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 24, 2015. Dckt. 124.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 135. The Trustee objects on the grounds that the proposed plan increases attorney's fees from $4,476.66 under the confirmed plan to $8,000.00. No language regarding additional attorney's fees is included in the additional provisions and Debtor has not filed a Motion for additional fees. The Trustee has disbursed $4,476.64 in attorney's fees.

DEBTOR'S REPLY

The Debtor filed a reply on June 24, 2015. Dckt. 138. The Trustee states that the $8,000.00 listed is an estimation of fees and not an attempt to

confuse the issue. The Debtor states that they can address the attorney's fees issue in the order confirming by stating in the order that the attorney's fees are $4,476.64 approved as of the filing of the Motion to Modify. Subsequent to confirmation, Debtor's counsel will make application for the additional fee and expenses incurred since the granting of the first application. The Debtor states that this will likely be a final application for fees since the Trustee currently has sufficient funds to pay all creditors.

DISCUSSION

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

The Trustee raised a similar objection on the last Motion to Confirm in which the court denied the Debtor's previous proposed modified plan for multiple reasons. Dckt. 98. In relevant part to the instant objection, the court stated that:

> The attorneys fees listed in the plan have not been requested nor does the plan outline the justification for the $8,000.00 in attorneys fees listed. While the Debtors reply does state that it is an estimate and not binding, the Plan cannot rely on estimation when determining if the plan is feasible. The proper method of asking for increased fees is to file additional motions for the fee requests.

Dckt. 98. It appears that the court may not have been clear in stating the issues in the prior ruling. While it is typical that when a Debtor lists an amount in § 2.06 of the plan it is from already authorized fees or fees based on an actual pending Motion for Compensation, the language of § 2.06 does not explicitly require either. The Debtor here placed the $8,000.00 in the section as an estimation of what total fees will be sought. Essentially, since the court previously authorized $4,476.64 under 11 U.S.C. § 330, the court reads this estimation to indicate that the Debtor's counsel will be seeking approximately $3,523.36 in additional fees. There is no pending Motion for Compensation for these additional fees, but the Debtor's response indicates that a final application will likely be filed after confirmation of a modified plan.

The reason the Debtor placed this estimation is to give the court, the Trustee, and any other party in interest an estimation of the fees Debtor's counsel will seek in order to aid in the court and other parties to determine the feasibility and viability of the plan.

While the court does not find that putting the estimation of fees grounds to deny confirmation, the court does agree that clarification in the order confirming is warranted. In the order confirming, as the Debtor suggest, adding a provision that specifies that $4,476.64 has been previously approved by the court pursuant to 11 U.S.C. § 330 and that Debtor's counsel will file a supplement Motion for Compensation for any remaining fees requested. This will add clarity of the actual posture of the case in the plan.

With the additional language being added to the order confirming, the court grants the Motion to Confirm.

Therefore, after the order confirming states that $4,476.64 has been

previously approved by the court pursuant to 11 U.S.C. § 331 and that Debtor's counsel will file a supplement Motion for Compensation for any remaining fees requested, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed. FN.1.

FN.1. It appears that the prior approval of fees had to be as interim fees pursuant to 11 U.S.C. § 331, and not a final approval of fees under 11 U.S.C. § 330. The prior fees were not approved as the "final fees" for any and all legal services in the case (as if it were a fixed fee agreement). The court does not expect attorneys to work for free, unless they are consciously intending to do pro bono work.

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 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, clarifying in the order that $4,476.64 has been previously approved by the court pursuant to 11 U.S.C. § 331 and that Debtor's counsel will file a supplement Motion for Compensation for any remaining fees requested, 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.]

21. 14-21142-E-13 LBG-4 THOMAS LISLE AND BARBARA TREAT Lucas Garcia

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BLACKSTAR PAVING 4-24-15 [130]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, credit, parties requesting special notice, and Office of the United States Trustee on April 24, 2015. By the court's calculation, 67 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is granted.

Denise Treat-Lake, in her individual capacity and as the personal representative for deceased co-debtor Thomas Lisle, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Blackstar Paving, Lake of the Pines Association and Chec Systems ("Settlor"). The claims and disputes to be resolved by the proposed settlement are for a personal injury and loss of consortium claim in a state court case at the Sacramento Superior Court, Case No. 34-2013-00150115.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court. However, the Movant has failed to provide a copy of the proposed settlement. Instead, the Movant provides an extremely rough and

difficult to follow outline of the terms. The Motion does not describe any of the releases in connection with the settlement, nor the proposed treatment of the funds for Special Counsel while a Motion for Compensation is pending (which none has yet to be filed).

REVIEW OF MOTION AND SUPPORTING PLEADINGS

From the Motion (14 pages in length), the court teases from the rhetoric the following grounds with particularity (Fed. R. Bankr. P. 9013) upon which the requested relief is based and relief itself: FN.1.

A. The settlement is of the claims asserted in Thomas Lisele and Denise Treat-Lisle v. Blackstar Paving, California Superior Court, County of Sacramento, case no. 34-2013-00150115 ("State Court Action").

B. Movant filed the State Court Action for injuries sustained by Thomas Lisele while riding his bicycle in an area where defendants were repairing the road.

C. After extensive litigation, the state court judge ordered a mandatory settlement conference.

D. Thomas Lisele suffered from an unrelated serious medical condition would could have resulted in his death at any time.

E. When the trial date was advanced due to Thomas Lisele's medical condition a mediation was convened, and in Movant's words, the last "holdout defendant succumbed" and settled.

F. The settlement reached for the claims of the bankruptcy estate being prosecuted in the State Court Action is $450,000.

G. It is subject to the medical lien of Kaiser hospital in the amount of $25,000.

H. State court counsel for Movant will seek to have fees of $180,000 (40% contingent fee) and expenses of $7,489.25.

I. State court counsel also request a 40% contingent fee for having obtained a reduction in the Kaiser medical lien from $55,020 to $25,000. FN.2. This additional contingent fee is computed to be $12,008.00 (40% of $30,020.00).

J. Presuming that the court approves the fees and costs as requested, after payment of the medical lien, there will remain $225,502.75 for the estate.

K. $223,589.00 was turned over to the "U.S. Trustee" as the estate's portion of the settlement proceeds. This was based on there being a miscalculation of state court counsel's expenses.

FN.1. Much of the "motion" has little to do with the grounds upon which relief, authorization to settle the claims, and more to do about what dastardly things were done to Movant by the defendants in the State Court Action. Rather than

a motion to approve a settlement, this pleading reads more like a closing argument to inflame a jury by a strident plaintiff's counsel.

FN.2. In addition to including much irrelevant, argumentative, and name calling statements in the motion, Movant has also eschewed using any commas or dollar signs when stating dollar amount in the chart in which the recover and state court counsel's fees are computed. This make the reading of this portion of the motion unnecessary difficult to wade through.

At the end of the day, the Movant has negotiated a $450,000.00 settlement for the damages incurred by Thomas Lisle. From the information provided, trying the matter would have been very costly (though covered by the contingent fee for state court counsel, experts and other trial expenses would have been required). Further, due to his illness, Mr. Lisle was bedridden from October 2014 until his death in early December 2014. The settlement has locked in the $450,000.00 recovery, which allows the estate to avoid now having to try the case without the injured victim.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Movant argues that the probability of success on the underlying case was approximately 50% given the "all or nothing" nature of the outcome. The Movant states that the settlement provides a better result than what could be predicted at trial, especially since it effectively funded the resolution of the creditors' claims in the Chapter 13 case.

Difficulties in Collection

The Movant states that while there was no difficulty of collection of the settlement itself, if the case went to trial and the Movant was successful, the Settlor may have not made timely payments.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, given the questions of law and fact which would be the subject of a trial. Additionally, the Movant asserts that the health of Debtor Thomas Lisle could have significantly decreased the amount of damages available, in light of the Debtor passing away pending trial. The Movant states that the Debtor would have had to dismiss the case due to the unavailability of general damages following Debtor Thomas Lisle's death. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court. At the hearing ----------.

The court also notes that in this bankruptcy case Debtor is providing for a 100% on general unsecured claims. In substance, to the extent that the settlement may result in not recovering some additional amounts on the claim which conceivably could exist, it is the Debtor who is making the conscious decision not to try and recover those amounts. This is a surplus case and the Debtor is settling the claims with her portion of the monies.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The terms of the settlement allows for the satisfaction of claims in the Chapter 13 case and results in a surplus estate and prevents unnecessary and uncertain litigation. The Motion is granted and Debtor is authorized to enter into the Settlement.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Denise Treat-Lake, in her individual capacity and as the personal representative for deceased co-debtor Thomas Lisle, the

Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Blackstar Paving, Lake of the Pines Association and Chec Systems (“Settlor”) is granted and the respective rights and interests of the parties are settled on the Terms set forth in the Motion (Docket Number 130).

22. 15-20352-E-13 GREGORY/CLARICE BRIDGES **MOTION TO VALUE COLLATERAL OF**
CAH-1 Nekesah Batty **BANK OF AMERICA SBM LASALLE BANK, N.A.**
5-22-15 [42]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 22, 2015. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Bank of America SBM Lasalle Bank, N.A. as Trustee of SACO 2005-WM2 ("Creditor") is denied without prejudice

The Motion to Value filed by Gregory P. Bridges and Clarice I. Bridges ("Debtors") to value the secured claim of Bank of America SBM Lasalle Bank, N.A. as Trustee of SACO 2005-WM2 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4880 Westlake Parkway Unit 2708, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $142,746.00 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).

However, a review of the Debtor's Notice of Hearing does not provide proper notice on the requirements for parties who wish to oppose the Motion. The Notice merely states:

> Without good cause, no party will be heard in opposition to the Motion to oral argument if written opposition to the Motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to granting of the motion.

Dckt. 43.

Pursuant to Local Bankr. R. 9014-1(d)(4), the Notice requires that the moving party "advice potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and address of the persons who must be served with any opposition."

Unfortunately, the Debtor failed to comply with the notice requirements. Therefore, the Motion is denied without prejudice.

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

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

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

ALTERNATIVE RULING

The Motion to Value filed by Gregory P. Bridges and Clarice I. Bridges ("Debtors") to value the secured claim of Bank of America SBM Lasalle Bank, N.A. as Trustee of SACO 2005-WM2 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4880 Westlake Parkway Unit 2708, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $142,746.00 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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $315,273.50. Creditor's second deed of trust secures a claim with a balance of approximately $80,579.41. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Gregory P. Bridges and Clarice I. Bridges ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005-WM2 secured by a second in priority deed of trust recorded against the real property commonly known as 4880 Westlake Parkway Unit 2708, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $142,746.00 and is encumbered by senior liens securing claims in the amount of $315,273.50, which exceed the value of the Property which is subject to Creditor's lien.

23. 15-22957-E-13 ROBERT BOUGHTON **OBJECTION TO CONFIRMATION OF**
DPC-1 Thomas Amberg **PLAN BY DAVID P. CUSICK**
5-28-15 [25]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that: (1) pay advices not provided; (2) plan not feasible; and (3) cannot make plan payments.

The Debtor filed an amended plan and Motion to Confirm the Amended Plan on June 16, 2015. Dckt. 29 and 33. The hearing on the Motion to Confirm the new Amended Plan is set for hearing on 3:00 p.m. on July 28, 2015.

The court considers the filing of a new amended plan and Motion to Confirm as a *de facto* withdrawal of the original plan. Debtor not indicating that the prior Chapter 13 Plan is not being prosecuted, the court sustains the Chapter 13 Trustee's Objection to Confirmation.

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.

24. 15-23258-E-13 DPC-1 MOSES/PATRICIA MERCADO Paul Bains OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-28-15 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. The plan fails to provide for all priority debts of Internal Revenue Service based on Proof of Claim No. 3-3. The claim indicates priority unsecured debt of $6,359.32 and general unsecured debt of $22,451.07. While the plan is a 100% plan to general unsecured and the creditor was scheduled as unsecured for $27,985.65, the creditor was not provided for as priority.

2. Debtor is $1,350.00 delinquent in plan payments to the Trustee.

The Debtor has paid $0.00 into the plan to date.

DEBTOR'S RESPONSE

The Debtor filed a response on June 2, 2015. Dckt. 20. The Debtor requests that the order confirming the plan specify that the plan will provide for the Internal Revenue Service as a priority claim in the amount of $6,359.32 and as a general unsecured claim in the amount of $22,451.07. The Debtor states that this is a 100% plan and such a change does not impact the net distribution to the creditors.

As to the Trustee's second objection, the Debtor states that they made the payment on May 29, 2015 of $1,350.00. The Debtor asserts that they are current.

TRUSTEE'S REPLY

The Trustee filed a reply on June 3, 2015. Dckt. 22. The Trustee states that the Debtor is now current under the plan and does not oppose confirmation if the order confirming correctly states the priority claim of the Internal Revenue Service.

DISCUSSION

As to the Trustee's second objection, the Debtor is now current under the plan. Therefore, the objection is overruled.

As to the first objection, the Debtor and Trustee both agree that the order confirming can properly address the Internal Revenue Service priority claim based on their Proof of Claim No. 3-3. A review of the plan shows that the plan is a 100% plan and that the proposed amendment does not effect the net distribution of the creditors. As such, the court finds that the order confirming can correct the Internal Revenue Service claim to provide a $6,359.32 priority claim and a $22,451.07 general unsecured claim.

Therefore, following the aforementioned amendment, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the treatment of the Internal Revenue Service claim to be $5,359.32 priority claim and

$22,451.07 general unsecured claim, 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. 12-28361-E-13 JDP-4 — DOUGLAS/BARBARA STEINBERG — James Pitner — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. — 6-9-15 [60]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2015. By the court's calculation, days' 21 notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Bank of America, 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 Douglas and Barbara Steinberg ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied

by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5285 Trophy Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $297,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 10-1 filed by Bank of America, N.A. is the claim which may be the subject of the present Motion. Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $505,277.09. Creditor's second deed of trust secures a claim with a balance of approximately $42,501.79. 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 Douglas and Barbara Steinberg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5285 Trophy 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 $297,000.00 and is encumbered by senior liens securing claims in the amount of $505,277.09, which exceed the value of the Property which is subject to Creditor's lien.

26. 12-28361-E-13 JDP-5 DOUGLAS/BARBARA STEINBERG James Pitner

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 6-9-15 [64]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is grant and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Douglas W. Steinberg and Barbara A. Steinberg ("Debtors") to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5285 Trophy Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $297,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see*

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

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $505,277.09. The second deed of trust secures a claim with a balance of approximately $42,501.79. Creditor's third deed of trust secures a claim with a balance of approximately $124,992.30. Therefore, Creditor's claim secured by a junior in third 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 in the secured amount of the claim 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 Douglas W. Steinberg and Barbara A. Steinberg ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank, N.A. secured by a third in priority deed of trust recorded against the real property commonly known as 5285 Trophy 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 $297,000.00 and is encumbered by senior liens securing claims in the amount of $547,778.88, which exceed the value of the Property which is subject to Creditor's lien.

27. 14-23363-E-7 LINDA WHITE **CONTINUED MOTION TO MODIFY PLAN**
PGM-2 Peter Macaluso **4-9-15 [39]**

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The case having previously been converted to one under Chapter 7 (Dckt. 53), the Motion Modify Plan 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 Modify Plan having been presented to the court, the case having been previously converted to one under Chapter 7, 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 converted to one under a Chapter 7.

28. 14-31363-E-13 AARON/MARIA MAREADY MOTION TO CONFIRM PLAN
GDC-3 Guy Chism 5-14-15 [87]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The 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 14, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

29.	**10-25364-E-13 DEF-2**	**ROBERT/MARGARETTE WARNICK David Foyil**	**MOTION FOR WAIVER OF REQUIREMENT TO COMPLETE AND FILE 1328 CERTIFICATE AND THE CERTIFICATE OF THE CHAPTER 13 DEBTOR REGARDING 522 EXEMPTIONS 5-15-15 [49]**

Tentative Ruling: The Motion for Waiver of Requirement to Complete and file 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2015. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion for Waiver of Requirement to Complete and file 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions is denied without prejudice.

Margarette Warnick filed the instant Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor

Regarding 522 Exemptions on May 15, 2015. Dckt. 49.

The Motion states that Debtor Robert Warnick passed away on December 9, 2014 and is unable to complete and file the Debtor's 11 U.S.C. § 1328 Certificate and the Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions.

However, there has been no order granting Debtor Margarette Warnick to be substituted in as the personal representation pursuant to Fed. R. Bankr. P. 1015 and 7025. Without the court finding that further administration of the case is possible and in the best interest of the parties and without the court permitting Debtor Margarette Warnick to be the personal representative of the deceased co-debtor, Debtor Margarette Warnick is not a real party in interest who can request the relief on behalf of Debtor Robert Warnick.

Therefore, with no personal representative yet authorized by the court for Debtor Robert Warnick, the Motion is denied without prejudice.

The court notes that Mr. Warnick passed away in December 2014. However, it was not until May 2015 that the surviving Debtor and counsel attempted to bring it to the attention of the court. No determination has been made by the court whether this case should proceed under Chapter 13 for the deceased Debtor.

Though the confirmed Plan requires only a minimal monthly plan payment of $105.00, that was all of the projected income which Debtor could muster based on both the deceased Debtor's income of $3,205 and the surviving Debtor's income of $686.00 a month. Schedules I and J, Dckt. 1.

The surviving Debtor offers no explanation as to how she has been able to pay the expenses and fund the plan after losing the late Debtor's income. Based on the prior financial information provided under penalty of perjury, that should be impossible.

The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

30. 15-22166-E-13 MARK/MARY TAYLOR
APN-1 Julius Cherry

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 14, 2015. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

monthly adequate protection payments under the plan are sufficient and that the payments should not be less than $271.51 per month.

DEBTOR'S REPLY

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

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

JUNE 2, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 30, 2015. Dckt. 52.

DISCUSSION

The Debtor has not filed any supplemental papers in connection with the instant Objection.

The court denies the Motion to Value without prejudice due to the failure to provide the court with relevant evidence. To date, the Debtor has not filed a new Motion to Value. As such, the Creditor's objection is well-taken as it does not provide for the full claim of the Creditor. 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).

Since the Debtor does not provide for the full amount of the Creditor's claim and there being no order valuing the claim, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(5).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

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

31. 15-23368-E-13 DPC-1 CARLOS FIGUEROA Thomas Gillis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-3-15 [16]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal on June 26, 2015, Dckt. 23, no prejudice to the responding party appearing by the dismissal of the Objection to Confirmation, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the Objection to Confirmation without prejudice, the parties, having the right to dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the ex parte motion is granted, the Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 filed by Trustee having been presented to the court, the Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 23, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Trustee's Objection to Confirmation is dismissed without prejudice.

32. 12-34572-E-13 DANIEL/SANDRA ROGERS MOTION TO MODIFY PLAN
EWV-62 Eric Vandermey 5-16-15 [30]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Sandra Rogers ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 16, 2015. Dckt. 30.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 41. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the proposed plan payments. The Debtor specify a plan payment of $1,887.00 in § 1.01. The Debtor's plan confirmed October 9, 2012 included step plan payment increases annually. The current payment under the confirmed plan is $2,010.25. The Debtor has paid the Trustee a total of $61,668.00 through May 31, 2015. The Debtor did not clarify when the proposed plan payment of $1.887.00 was to

commence.

2. The Debtor indicates in Section 6 that additional provisions are attached but none were attached.

3. The Debtor's Motion to Confirm does not comply with applicable law. The motion does not cite applicable code such as 11 U.S.C. § 1329 which is required under Local Bankr. R. 9014-1(d) and Fed. R. Bankr. P. 9013, and does not provide a points and authorities.

DISCUSSION

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

The Trustee's objections are well-taken. The Trustee's first two objections are based on the proposed plan being incomplete. The Debtor's proposed plan appears to have not been filed completely, especially in light of the proposed plan indicating that additional provisions are attached when none are in fact there. It is possible that in these additional provisions that there is an indication when the lower plan payments were scheduled to begin. However, this information is absent in the plan. Without having all the information and provisions of the proposed plan, the plan cannot be confirmed.

As to the third objection, a review of the Motion shows that it does not appear to comply with Fed. R. Bankr. P. 9013 which requires that the motion state with particularity the grounds in which relief is sought – here, confirmation of a plan. The Motion gives a history and the reason for the proposed plan yet does not specify the legal grounds for confirmation. The failure to comply with Fed. R. Bankr. P. 9013 is grounds to deny confirmation.

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.

33. 13-30273-E-13 ELIAS ORTIZ — MOTION TO MODIFY PLAN
SJS-5 Scott Johnson — 5-19-15 [99]

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 19, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court 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.

Elias Ortiz ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 19, 2015. Dckt. 99.

TRUSTEE'S LIMITED OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on June 16, 2015. Dckt. 109. The Debtor's proposed plan proposes to reclassify Autoville Motors from a Class 2 secured claim to Class 3 surrender, but does not authorize interest payments made by the Trustee. The additional provisions authorizes payments in the amount of $0.00, where the Trustee has disbursed $311.31 in interest payments. The Trustee has no objection if payments were unauthorized in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. The Trustee has disbursed $311.31 to Autoville Motors in interest payments. However, a review of the proposed plan shows that the Additional Provisions only authorizes the disbursement in the amount of $0.00. This appears to be a mere scrivener's error which can be corrected in the order confirming and changing the additional provisions to allow for the $311.31 disbursed to Autoville Motors.

With the Trustee's objection being corrected in the order confirming and no other objections pending, 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 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the Additional Provisions to authorize a disbursement of $311.31 to Autoville Motors, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. 15-23475-E-7 **LIZZETTE LORA** **OBJECTION TO CONFIRMATION OF**
APN-1 **Peter Cianchetta** **PLAN BY WELLS FARGO BANK, N.A.**
5-20-15 [15]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The case having previously been converted to one under Chapter 7 (Dckt. 26), the Objection to Confirmation is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been converted to one under a Chapter 7.

35. 15-23475-E-7 **LIZZETTE LORA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Cianchetta** **PLAN BY DAVID P. CUSICK**
6-3-15 [19]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The case having previously been converted to one under Chapter 7 (Dckt. 26), the Objection to Confirmation is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been converted to one under a Chapter 7.

36. 15-23176-E-13 DPC-1 LOUIS/HEATHER MESSIER Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-3-15 [28]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

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

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

37. 15-23176-E-13 JHW-1 LOUIS/HEATHER MESSIER Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY CAB WEST, LLC 5-27-15 [24]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

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

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

38. 15-24476-E-13 KENNETH/STACEY ACKMAN
TLA-1 Thomas Amberg

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
6-2-15 [8]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 2, 2015. By the court's calculation, 28 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 US Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kenneth and Stacey Ackman ("Debtor") to value the secured claim of US Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5700 20th Street, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $410,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

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

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

No Proof of Claim or Opposition 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. Furthermore, Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $434,871.00. Creditor's second deed of trust secures a claim with a balance of approximately $97,175.00. 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 Kenneth and Stacey Ackman ("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 US Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5700 20th Street, Rio Linda, 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 $410,000.00 and is encumbered by senior liens securing claims in the amount of $434,871.00, which exceed the value of the Property which is subject

to Creditor's lien.

39. 15-24476-E-13 KENNETH/STACEY ACKMAN — MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC.
TLA-2 Thomas Amberg — 6-2-15 [12]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 2, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is denied without prejudice.

The Motion to Value filed by Kenneth B. Ackman and Stacey L. Ackman ("Debtors") to value the secured claim of "Real Time Resolutions, Inc." is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5700 20th Street, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $410,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

IMPROPER CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Real Time Resolutions, Inc." However, a review of Proof of Claim No. 2 shows that Real Time Resolution, Inc. is acting as the "AGENT FOR THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TO JP MORGAN CHASE BANK N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWEQ REVOLVING HOME EQUITY LOAN TRUST, SERIES 2006-G." The attached Home Equity Credit Line Agreement and Disclosure Statement lists Countrywide Home Loans, Inc. as the creditor.

As the court has repeatedly said, the court will not issue "maybe effective" orders in which debtors rely on, only to learn later that the true holder of a loan, the "creditor whose claim must be valued," was not a party to the motion. Here, the Proof of Claim No. 2 explicitly states that Real Time Resolutions, Inc. is not the creditor but instead the agent and servicer. The Debtor is improperly attempting to value the secured claim of a servicer.

Therefore, because the Debtor improperly lists Real Time Resolutions, Inc. as the creditor, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kenneth B. Ackman and Stacey L. Ackman ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

40. 14-28079-E-13 MRL-1 | **ERNESTO/MILAGROS SANTOS** **Jeremy Heebner** | **OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 1 5-19-15 [50]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 40 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 1 of LNVN Funding, LLC is sustained and the claim is disallowed in its entirety. The request for attorneys' fees is denied.

Ernesto and Milagros Santos, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,725.00. Objector asserts that, pursuant to California Code of Civil Procedure § 337(1), the statute of

limitations has run and therefore, the claim should be disallowed. The Movant also requests attorneys' fees in the amount of $555.00 under Local Bankr. R. 1001-1(g) and 11 U.S.C. § 105(a).

CREDITOR'S RESPONSE

The Creditor filed a response to the instant Objection on June 16, 2015. Dckt. 58. The Creditor states that they have withdrew the Claim on June 11, 2015.

As to the attorneys' fees request, the Creditor states that Debtor is not entitled to any attorney fees because Creditor did not violate any rules or court orders by filing the Claim. The Creditor argues that the statute of limitations argument is an affirmative defense which does not extinguish the action but instead gives the Debtor a personal privilege that they may exercise. The Creditor argues that the Debtor does not cite any rules or orders that the Creditor violated to justify the attorneys fees.

DEBTOR'S REPLY

The Debtor filed a reply on June 19, 2015. Dckt. 59. The Debtor argues that the Creditor has violated multiple local rules, including the lack of docket control number, the proof of service being attached to the response, and the proof of service stating that no parties were actually served but rather just filed electronically. FN.1. Further, the Debtor argues that the Creditor wasted time by filing the Claim in hopes of no one catching the statute of limitations. The Debtor argues that under 11 U.S.C. § 105(a) the court can award attorney fees to deter this kind of conduct.

FN.1. Ironically, the Debtor has failed to provide sufficient notice of the instant Objection. Pursuant to Fed. R. Bankr. P. 3007(a) and Local Bankr. R. 3007-1(b)(1), a total of 44 days of notice is required (30 day notice with an additional 14-day opposition filing). The Debtor improperly noticed under Local Bankr. R. 9014-1(f)(1), which only requires 28 days notice. However, since the Debtor did note in the Notice that written opposition is required, the court construes this as an attempt to notice under Local Bankr. R. 3007-1, and as such, the Debtor failed to give sufficient Notice. While this is grounds to overrule the Objection and the request for attorneys fees, the Creditor's response acts as a waiver of the defective service.

DISCUSSION

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

Creditor's Claim is Barred by Statute of Limitations

Pursuant to California Code of Civil Procedure § 337(1), an "action upon any contract, obligation or liability founded upon an instrument in writing" must be brought within four years. A review of the recently withdrawn Proof of Claim No. 1 shows that the Creditor "charged off" the account on January 26, 2005. The latest, under California Code of Civil Procedure § 337(1), an action could be brought is January 26, 2009. This is latest because it is common place for creditors to not charge off accounts till some time after the default.

The Creditor, is at a minimum, 6 years outside the allowed statute of limitations. This is further supported by the Creditor withdrawing the Proof of Claim. However, the mere withdrawal of the Proof of Claim does not prevent the court from addressing the underlying objection and the conduct of the Creditor in connection with a demand for attorneys' fees. No basis has been shown for Creditor having the right or ability to deprive Debtor and this court from determining the issues presented. It may well be that Creditor has prudently stated a non-opposition to the Objecting, obviating the need for further substantial attorneys' fees in litigation the issue. But managing legal fee obligations is not the same as depriving the opposing party from having the court determine the issue.

Failure to State Grounds in Which to Justify Attorneys Fees

The Debtor has failed to provide a basis to justify the grant of attorneys fees. The Debtor cites to Local Bankr. R. 1001-1(g) and 11 U.S.C. § 105(a) as grounds for attorneys fees. First, 11 U.S.C. § 105(a) does not grant the court authority to "award attorneys fees to deter this kind of conduct by creditors." Dckt. 59. The powers authorized by 11 U.S.C. § 105(a) is not a carte blanche for the court to exercise any and all powers it feels like exercising. *See Law v. Siegel*, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014). The Debtor appears to construe 11 U.S.C. § 105(a) as a "catch-all" code section which would justify any relief the Debtor seeks. This is improper.

As to the grounds that Local Bankr. R. 1001-1(g) entitles the Debtor to attorneys fees is also improper. First, the court notes that if the court were to base it on such an award on these grounds, the failure of the Debtor to provide the required notice under Local Bankr. R. 3007-1 would also entitle Creditor to attorney's fees. The Debtor appears to construe this Local Rule as a "catch-all" provision like § 105(a). This is not correct.

The Debtor does not cite to a single contractual clause, a state statute, or any legal authority outside the above sections. While 11 U.S.C. § 105(a) is a grant of power, as stressed by the Supreme Court, and has long been held by the Ninth Circuit Court of Appeal, it is limited in scope and for purposes of enforcing other provisions of the Bankruptcy Code and Rules. While Debtor utilizes inflamed adjectives to invoke the court's ethos, Debtor neglects to address any basis for legal fees in objecting to this claim. Merely stating that Creditor should be sanctioned because Debtor prevailed is not a right to attorneys' fees. The sanction powers of the court are not a general litigation "prevailing party" fee shifting statute or rule. FN.2.

FN.2. As discussed above, in California the statute of limitations is a defense to allowing the creditor to litigate the stale claim, not a termination

or extinguishment of the underlying obligation. The California statute can be contrasted to the Wisconsin statute of limitations provisions which provides "When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy." Wisc. § 893.05.

While one might well question the conduct of a creditor in filing a proof of claim on a debt which went into default at least ten years ago (the record is not clear how much earlier than the 2005 "write-off" the default occurred), but other laws and regulations govern such conduct.

Therefore, based on the evidence before the court, the Objection to the Proof of Claim No. 1 is sustained and the claim is disallowed in its entirety. Furthermore, the request for attorneys' fees is denied, no sufficient basis provide for the court sanctioning the creditor, and no contractual or statutory basis for an award of attorneys' fees provided by Debtor.

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 LNVN Funding, LLC., Creditor filed in this case by Ernesto and Milagros Santos, 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 Objection to Proof of Claim Number 1 of LNVN Funding, LLC is sustained and the claim is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that the request for attorneys' fees is denied.

41. 15-21082-E-13 PLC-2 STEVEN/MARIA PETERSON Peter Cianchetta

MOTION TO VALUE COLLATERAL OF RPM LENDERS 5-28-15 [33]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 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 J.W.P. Lenders Corporation, dba RPM Lenders ("Creditor") is granted.

The Motion filed by Steven and Maria Peterson ("Debtor") to value the secured claim of J.W.P. Lenders Corporation dba RPM Lenders ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 1996 Chevy Suburban 1500, vin ending in 0023 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $1,316.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a non-purchase-money loan incurred in November 29, 2014, to secure a debt owed to Creditor with a balance of approximately $3,600.06. Proof of Claim No. 4. 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 $1,316.00. *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 Steven and Maria Peterson ("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 J.W.P. Lenders Corporation dba RPM Lenders("Creditor") secured by an asset described as 1996 Chevy Suburban 1500, vin ending in 0023 ("Vehicle") is determined to be a secured claim in the amount of $1,316.00, 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 $1,316.00 and is encumbered by liens securing claims which exceed the value of the asset.

42. 15-22182-E-13 RUTH CLARK — **MOTION TO CONFIRM PLAN**
PGM-1 Peter Macaluso — **5-11-15 [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)(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 11, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Amended Plan to 3:00 p.m. on September 1, 2015.

Ruth Clark ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 29, 2015. Dckt. 48.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 71. The Trustee objects on the following grounds:

1. The Debtor is $1,100.00 delinquent in plan payments to date and has paid $0.00 into the plan.

2. In Debtor's Adversary Proceeding (Case No. 15-02084), the court granted an Application for a Preliminary Injunction against creditor Joshua Road Investments, Inc. The court ordered that the Debtor shall pay the Clerk of the Bankruptcy Court $541.52 by the 5th of each month starting June 2015 to be held by the Clerk. The terms of the court order in the adversary case conflict with the terms of Debtor's plan as to the mortgage payments.

DEBTOR'S REPLY

The Debtor filed a reply on June 22, 2015. Dckt. 77. The Debtor states that the delinquency difference is found in court's injunction order. The Debtor has paid $541.52 to the Clerk and the balance of the $1,100.00 to the Trustee, thus causing the appearance of arrears, which can be corrected in the order confirming.

EL DORADO SAVINGS BANK STATEMENT

El Dorado Savings Bank ("Creditor") filed a statement on June 25, 2015. Dckt. 80. The Statement states that the Debtor, Creditor, and Joshua Road Investments have agreed to resolve the Adversary Proceeding No. 15-02084 on terms that will restore title to the subject real property to the Debtor and will permit the Creditor and Joshua Road Investments to file proofs of claim that will include the fees and costs incurred by those parties. The settlement agreement has been executed by the Creditor and Joshua Road Investments. The Debtor has yet to sign the settlement agreement. The Creditor states that while the parties await final execution of the agreement, the foreclosure sale cannot be reversed and the final fees and costs cannot be known. The Creditor proposes that the hearing be continued.

DISCUSSION

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

In light of the Creditor's statement, it appears that the settlement agreement may materially change terms of the proposed plan. Since no such

agreement has been fully executed nor has the court approved such settlement, the court agrees that continuing the hearing is the better course of action.

Therefore, the hearing is continued to 3:00 p.m. on September 1, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on September 1, 2015.

43. 15-23482-E-13 CHRISTOPHER CONWAY
DPC-1 Jeremy Heebner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-3-15 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to susatin the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors on May 28, 2015.

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

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

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

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

44. 14-23685-E-13 LBG-6 PAUL LUDOVINA Lucas Garcia

CONTINUED MOTION TO CONFIRM PLAN
1-30-15 [86]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Paul Ludovina ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 30, 2015. Dckt. 85.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 91. The Trustee objects on the following grounds:

1. The Trustee is unable to determine the feasibility of the plan. Debtor lists Advance Restaurant Financial in Class 4 of the plan, but fails to indicate the amount of the monthly contract installment. The creditor was previously listed in Class 2 of the Debtor's plan.

2. The Trustee is concerned that payment of Advance Restaurant in Class 4 may cause the Debtor to be unfairly discriminating against other general unsecured creditors. On May 8, 2014, Advance Restaurant Finance, LLC filed Proof of Claim No. 3, which appears to indicate that the claim is wholly unsecured. While the Debtor claims to be paying the claim outside the plan, the Debtor offers no evidence of the payments and what percentage of the claim will be paid to the creditor. The Trustee has reviewed the claim file by creditor which appears to indicate that they do possess a secured claim but have not attached proof of a perfected lien, such as a recorded UCC-1 statement, to support the claim of a recorded lien.

3. The plan does not propose to pay all priority claims, 11 U.S.C. § 1322(a)(2). Debtor's plan fails to provide for payment of the priority claim of State Board of Equalization (Proof of Claim No. 7) filed by Debtor's counsel on June 20, 2014 in the amount of $50,000.00. In his motion to confirm, Debtor now claims that Board of Equalization "desires" treatment outside the plan as a business obligation. In Debtor's declaration, however, the Debtor indicates that the Board of Equalization demands to be paid by the business. Debtor offers no evidence to support the claim that Board of Equalization has made any request for payment outside of the plan. Debtor offers no evidence that the claim is being paid by the business.

4. Debtor's plan indicates that attorney fees total $18,000.00, $3,000.00 of these fees were paid prior to filing. The plan also indicates that Debtor's counsel will file and serve a motion for approval of the fees to be paid through the plan. Debtor's attorney has not explained why or how these payments will be made directly by the Debtor, and it is not clear to the Trustee whether Schedule J is accurate considering these fees.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 30, 2015. Dckt. 98.

TRUSTEE'S REPLY

The Trustee filed a reply on June 12, 2015. Dckt. 99. The Trustee states that the Debtor has provided the Trustee with sufficient documentation to satisfy the Trustee's Opposition to the confirmation of the proposed amended plan, including 6 months of bank account statements for business bank account, evidence of payment arrangement with Advanced Restaurant, Inc. and Ludy's Inc., proof of post-petition payments to State Board of Equalization and tax returns for 2012 and 2013 for both Debtor's personal returns and Ludy's Inc. and proof of filing extension to file 2014 personal and corporate return.

The Debtor has said that Debtor's counsel will file a separate motion for attorney fees and will be paid through the plan. Additionally, the Trustee states that the claim of State Board of Equalization, Proof of Claim No. 7, appears to have been signed by Sara Myles, a case manager at Law Office of Stephen Johnson, and there is not sufficient funding to pay this priority claim as provided for in the Class 5 treatment required in the plan. Debtor has indicated that the claim is being paid by the business, Ludy's Inc. The Trustee requests that the claim be allowed as a Class 4 claim, to be paid by the Debtor's corporation even though the claim is priority and not secured so that the creditor has relief from stay.

DISCUSSION

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

The Trustee no longer objects to the proposed plan, the Debtor having provided all the information requested by the Trustee.

However, the issue of the treatment of State Board of Equalization. The Debtor is proposing to treat the State Board of Equalization as a Class 4 claimant while listing them as a Class 5 claimant. The Debtor's plan does not provide any additional provisions to state how the State Board of Equalization will be paid, does not provide any evidence that the business, Ludy's Inc., has the ability to pay for the claim outside the plan. On the face of the plan, it lists the claim of State Board of Equalization as a Class 5 claimant. As such, the plan proposes to pay this claim through the plan. The Debtor has not provided any proposed amendments nor noticed any of the parties of this proposed treatment. Instead, it appears as if the Debtor, instead of proposing a plan that notices all necessary parties of their treatment, the Debtor is seeking to have a piecemeal plan come together for the sake of getting to confirmation. This is improper.

Therefore, because the treatment of the State Board of Equalization is not clearly provided for in the plan, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

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

45. 14-23387-E-13 GREGG/NANITA SCHILLER — MOTION TO MODIFY PLAN
MC-1 Muoi Chea — 5-14-15 [37]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2015. By the court's calculation, 47 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.

Gregg and Nanita Schiller ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 14, 2015. Dckt. 37.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 43. The Trustee objects based on the post petition Class 1 Arrears being overstated. The Trustee has disbursed 12 monthly contract installment payments totaling $19,667.83. The Creditor is due one payment of $1,636.00. The Debtor is proposing to add post petition arrears of $3,272.00 per Section 6.02 of the plan. No monthly arrearage dividend is stated. This overpayment is to the determent of unsecured creditors.

DEBTOR'S RESPONSE

The Debtor filed a response on June 23, 2015. Dckt. 46. The Debtor proposes that in the order confirming that the post-petition mortgage arrearages is $1,636.00 instead of $3,272.00. Although the Debtor missed 2 plan payments, the Trustee gives preference to mortgage payments so that only one post-petition payment is owed to Class 1 Creditor, first deed of trust lienholder of Debtor's residence.

DISCUSSION

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

It appears that the Trustee's objection can be corrected through the order confirming. The Debtor appear to have miscalculated the amount of arrearage based on the Trustee's disbursements. As such, the Debtor is only one payment in post-petition arrears. The order confirming can correct Section 6.02 of the proposed plan to reflect only $1,636.00 in post-petition arrears.

Without any further objections and the order confirming being able to correct Section 6.02 to state that the post-petition arrears to be paid through the plan $1,636.00, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 14, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting Section 6.02 to state that the post-petition arrears to be paid through the plan $1,636.00, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

46. 15-20687-E-13 SALEH BADDAWI **MOTION TO SELL**
WSS-1 W.Steven Shumway **6-11-15 [23]**

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 11, 2015. By the court's calculation, 19 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits the Debtor in Possession ("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. 9665 Oak Leaf Way, Granite Bay, California.

Unfortunately, the Debtor only provided 19 days notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), a Motion to Sell requires, at a minimum, 21 days notice, even on a Local Bankr. R. 9014-1(f)(2) basis.

Since insufficient notice was provided, the Motion is denied without

prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Saleh Baddawi, 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 is denied without prejudice.

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

ALTERNATIVE RULING

The Bankruptcy Code permits the Debtor in Possession ("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. 9665 Oak Leaf Way, Granite Bay, California.

The proposed purchaser of the Property is Eric Nuttell and the terms of the sale are a purchase price of $552,000.00, a close of escrow period set for 30 days, and conditions "as is." The Movant proposes that from the proceeds, the first lender will be paid in full; the real estate brokers will receive $27,600.00. The remaining funds will be deposited with and administered by the Chapter 13 Trustee.

David Cusick, the Chapter 13 Trustee, filed a response on June 17, 2015. Dckt. 28. The Trustee states that he does not oppose the Motion but asks that the order clarify the remaining funds are to be administered by the Trustee as an additional plan payment.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The sale provides for the payment to the first lender in full, as well as providing for substantial additional funds for the Chapter 13 Trustee to distribute to creditors under the plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Saleh Baddawi, 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 Saleh Baddawi, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and 1303. to Eric Nuttell or nominee ("Buyer"), the Property commonly known as 9665 Oak Leaf Way, Granite Bay, California("Property"), on the following terms:

1. The Property shall be sold to Buyer for $552,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 26, and as further provided in this Order.

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

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

4. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount equal to five percent (5%) of the actual purchase price upon consummation of the sale. The five percent (5%) commission shall be paid to the Debtor's broker, Lyon Real Estate.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

6. The remaining funds after the payment of the liens and broker's fee shall be administered by the Trustee as additional plan payment.

47. 13-29694-E-13 SINA TOGIAI **MOTION TO MODIFY PLAN**
SJS-5 Scott Johnson **5-19-15 [63]**

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 19, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court 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.

Sina Togiai ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 19, 2015. Dckt. 63.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on June 16, 2015. Dckt. 69. The Trustee states that the Debtor incorrectly states in Section 6 that a total of $22,438.00 has been paid to the Trustee through May 5, 2015. However, the Trustee states that the correct amount paid is a total of $23,703.00 through May 5, 2015. The Trustee requests that this be corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. It appears that the Debtor's plan misstates the total amount paid into the plan to date. However, this is a mere scriviner's error that can be corrected in the order confirming.

Therefore, with no other objections and the Debtor correcting the total amount paid into the plan in Section 6 to reflect $23,703.00, 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 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting Section 6 to reflect a total of $23,703.00 being paid into the plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

48. 15-23397-E-13 JASON/SANDRA PERKINS — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 Eric Schwab — **6-3-15 [28]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13, 2015, opposes confirmation of the Plan on the basis that:

1. The plan relies on the Motion to Value Collateral of First US Community Credit Union and Motion to Avoid Lien of Vacaville Christian Schools.

2. The proposed plan is not Debtor's best effort. The Debtor is over the median income and proposes plan payments of $780.00 for 60 months with a 4% dividend to unsecured creditors. While the Debtor's Form B22C reflects a negative $179.00, the

Trustee's own review comes to $446.00 for 60 months, totaling $26,760.00.

Line 29 deducts $625.00 for education expenses for dependent children, however the Debtor lists an expense of $300.00 on Schedule J for childcare and education costs. The Debtor has failed to provide documentation of these actual expenses.

The Debtor provided the Trustee with his 2014 income tax returns which reflected a refund of $10,349.00 from the Internal Revenue Service and $2,764.00 from the Franchise Tax Board. The Debtor's plan fails to propose to pay the tax refunds into the plan.

3. The plan fails the Chapter 7 liquidation analysis. The Debtor's non-exempt equity totals $11,989.99 from the 2001 Chapparal Boat listed on Schedule B with a value of $11,990.00 and exempted as $1.00 on Schedule C. The Debtor is proposing to pay the unsecured creditors a 4% dividend, which totals $7,121.00.

4. The plan does not provide all of the Debtor's projected disposable income for the applicable commitment period. The Trustee is not certain that the expense on Form 22C or Schedule J for 401K loan in the amount of $1,000.00 is reasonably necessary for the maintenance and support of the Debtor or a dependent. The Debtor has not disclosed the amount of the loan and when it will be repaid. The plan payments do not increase after the loan is repaid, and Debtor has not furnished evidence to show why the repayment of this loan is reasonably necessary. The Debtor most disclose this as the plan payment may need to increase after the loan is repaid.

The Trustee's objections are well-taken. As to the Trustee's first objection, the court has granted both the Motion to Value Collateral of First US Community Credit Union (Dckt. 37) and Motion to Avoid Lien of Vacaville Christian Schools (Dckt. 34). Therefore, the Trustee's first objection is overruled.

However, the Trustee's remaining objections are well-taken. The Trustee's second objection highlights the discrepancies in the Debtor's Schedules and the Debtor's Form B22C. Namely, the Debtor does not explain why they list an expense of $624.00 on Form B22C for education expense yet only lists $300.00 on Schedule J, less than half of what the Debtor states on Form B22C. The Debtor offers no explanation for this difference. Without further explanation, it appears that the Debtor's representation in the schedules and forms is not an accurate reflection of the Debtor's finances. Furthermore, the Debtor does not provide for the Debtor's refunds into the plan. This is evidence that this plan is not Debtor's best efforts and reason to deny confirmation. 11 U.S.C. § 1325(b).

As to the Trustee's second objection, the Debtor filed an amended Schedule C on June 10, 2015. Dckt. 33. On the amended Schedule, the Debtor fully exempts the 2001 Chapparal Boat in the full amount of $11,990.00 under California Code of Civil Procedure § 703.140(b)(5). Therefore, because the Debtor has exempted the equity left and passes the liquidation analysis, the

objection is overruled.

Lastly, the Trustee's fourth objection raises concerns over whether the Debtor is providing all of the Debtor's disposable income. The Debtor lists a 401K loan repayment. However, the Debtor has failed to provide any evidence or explanation that the repayment of hte loan is necessary. Furthermore, the Debtor has failed to list the full amount owed on the loan and when the repayment would be complete in order to increase plan payments appropriately. This failure raises concerns over whether, as discussed supra, this is Debtor's best efforts. The Debtor not fully disclosing all necessary information as to the loan raises serious concerns over whether the plan is feasible, viable, or whether the Debtor is fully disclosing the full financial reality of the Debtor. Without this information, the plan cannot be confirmed. 11 U.S.C. § 1325(b).

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

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

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

49. 13-30998-E-13 RALPH SETTEMBRINO CONTINUED MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 3-17-15 [49]

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 March 17, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court 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.

Ralph Settembrino ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2015. Dckt. 62.

TRUSTEE'S AMENDED OBJECTIONS

The Trustee filed an amended Objection on June 16, 2015. Dckt. 87. The Trustee states that the first two objections have been resolved based on the court granting the Motion to Avoid Lien (Dckt. 81) and the Debtor's supplemental income and expense sheet (Dckt. 85).

However, the Trustee still objects on the grounds that the Debtor's plan is not feasible. The class 1 creditor filed a Notice of Mortgage Payment Change on April 27, 2015 increasing the Class 1 Monthly Contract Installment Amount to $1,946.94 effective June 1, 2015. The proposed plan payment of $2,150.00 is not sufficient to pay the Class 1 Arrearage Dividend and Monthly Contract Installment Amount which total $2,261.08 plus Trustee's fees.

TRUSTEE'S ORIGINAL OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. Debtor has failed to file a Motion to Avoid Lien of Credit Bureau Associates. Credit Bureau Associates is provided in the plan in the amount of $641.00 at 0% interest and $0.00 monthly dividend in Class 2C. However, the creditor has filed a secured claim court claim #3-1 in the secured amount of $640.59. The creditor's claim is not provided for in the plan confirmed October 16, 2013.

2. The Debtor has not filed supplemental Schedules I or J in support of the plan. Trustee notes the proposed Plan includes Class 4, a monthly contract installment of $1,850.00 for rental property. The Debtor's Schedule I filed on August 21, 2013 reports rental income of $1,370.00 with a monthly mortgage payment on Schedule J of $1,370.00. Almost two years has elapsed since the last budget filed by the Debtor. If Debtor's mortgage payment on their rental property has increased $480.00 and no other expenses have decreased or their income has not increased, Debtor will not be able to afford the Plan payments.

APRIL 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Debtor's Motion to Avoid Lien. Dckt. 73.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on May 12, 2015. Dckt. 76. The Debtor states that he has provided a supplemental Schedule I and J. He states that his income and expenses have remained essentially the same as they were when he initially filed with the exception of the rental property. The Debtor state that he had problems with tenants not paying rent which made it impossible for the Debtor to keep the mortgage payment current. He is attempted to short sell the property. If no offers are received, the Debtor states that the property will go into foreclosure.

MAY 19, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 30, 2015. Dckt. 79.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on June 5, 2015. Dckt. 84. The Debtor attached an additional supplemental Schedule I and J as well as a breakdown of business income and expenses. The Debtor states that after further review, there are further changes in income and expenses that the Debtor did

not reflect in the last supplemental declaration.

The Debtor states that while his gross income is slightly lower than what was originally listed and his business expenses slightly higher, the Debtor alleges that he has been able to reduce his living expenses. Debtor states that he has been able to reduce his medical insurance from $855.00 per month to $85.00. He has also been able to reduce his car insurance from $253.00 to $123.00. The Debtor states he got rid of his personal cell phone and solely uses his business one.

The Debtor states that he is continuing to seek a loan modification. However, the Debtor notes the modification is complicated because the loan is in his mother's name, even though he is on the title. This is only further exasperated by the fact that the Debtor's mother passed away.

DISCUSSION

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

The Trustee's objections are well-taken. 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). Based on the Notice of Mortgage Change filed by Chase, the Class 1 Arrearage Dividend and Monthly Contract Installment Amount totals $2,261.08. The current plan payment is $2,150.00. This is insufficient, especially since this does not include the Trustee's fees. Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

This is not Debtor's first attempt to be rehabilitated financially through bankruptcy. His first Chapter 13 case was filed on March 9, 2012. Bankr. E.D. Cal. 12-24718 ("First Case"). The First Case was dismissed more than a year later on August 5, 2013. The current bankruptcy case was filed sixteen days later on August 21, 2013.

Debtor's confirmed Chapter 13 Plan in the First Case committed him to make monthly plan payments of $2,050.00. 12-24718 Dckt. 5. In a Notice of Default filed on June 27, 2013, filed in the First Case states that the Debtor was $4,100.00 (two months payments) in default. *Id.*, Dckt. 31. Because of these defaults, the court dismissed the First Case. *Id.*; Order, Dckt. 34.

Immediately after the dismissal of the First Case, Debtor commenced the current case and proposed a plan committing to monthly payments of $2,150.00 a month. Plan, Dckt. 5. Debtor provided for the current monthly payments and the arrearage cure payment (but only after payment of Debtor's counsel) for the Class 1 claim of "Chase." The court confirmed Debtor's plan on October 16, 2013. Order, Dckt. 36.

On February 26, 2015, the Chapter 13 Trustee filed a motion to dismiss this case based on the inability of Debtor to fund a plan which could be completed within the sixty-month maximum permitted for a chapter 13 plan. This was because the arrearage on the Class 1 Claim was $4,065.75 in the proof of claim filed by the creditor than listed by Debtor in the Plan. Motion to Dismiss, Dckt. 45. Debtor's current motion is his attempt to deal with this situation.

The Proposed Plan continues to provide for Class 1 treatment for the "Chase" claim, but in the Additional Provisions says that Debtor is seeking a loan modification. But if the loan modification is not granted within the next six months, then the plan payment shall be increased to $2,325.00 to provide for the mortgage payment and arrearage.

In effect, Debtor seeks to have the court confirm a plan which modifies the creditor's secured claim (for which the only collateral is Debtor's residence) for six months. Then, the Debtor will again modify the plan treatment or the plan itself depending on whether there is a loan modification.

While subtle, there is a difference between the court allowing for an additional plan provision for adequate protection payments and termination of the stay as a debtor seeks a loan modification, and a debtor modifying the creditor's rights by lowering the required Class 1 payment for a six month period while the debtor seeks a loan modification. The later impermissibly modifies the creditor's claim and the former provides adequate protection for a creditor's interest in collateral.

Rather than trying to splice together an "Ensminger Additional Provision" on the fly at this hearing, Debtor may well be better served by taking the additional time to prepare, file, and serve a new modified plan, motion to confirm, and notice hearing on that motion, while simultaneously actively pursuing a loan modification.

Pending the new plan being filed, Debtor can continue making the payment proposed in this plan, and the creditor can receive the monthly plan payment for the current installment as an adequate protection payment.

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.

50. 15-22798-E-13 PARKER/DONNA PUGH
APN-1 Nekesah Batty

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO AUTO FINANCE
6-1-15 [38]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 1, 2015. By the court's calculation, 29 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

Wells Fargo Auto Finance ("Creditor"), opposes confirmation of the Plan on the basis that the plan does not provide for the Creditor's secured claim.

The Creditor states that Debtor had financed a vehicle with the Creditor in the amount of $12,440.00, which matured on January 1, 2015. The Creditor states that the Debtor remains in possession of the Vehicle.

The Creditor notes that the Debtor received a Chapter 7 discharge of the obligation on February 22, 2013. Case No. 12-32447.

The creditor first alleges that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the creditor's matured obligation, which is secured by the Debtor's residence.

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral.

The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

The Debtor's proposed Chapter 13 Plan (Dckt. 15, the only plan filed in this case to date) has been denied confirmation based upon the objection of the Chapter 13 Trustee and an objection of another creditor. Orders, Dckt. 50, 51. This objection is another basis for denying confirmation.

Therefore, the Creditor's objections are well-taken. 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.

51. 15-22998-E-13 TSION GETACHEW
DRE-1 D. Randall Enminger

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA
5-20-15 [16]

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on May 20, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required. The court waives the failure to serve the Chapter 13 Trustee in light of the connection of this motion to the motion to confirm the plan with which the Trustee is actively involved.

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

The Motion to Value secured claim of Bank of America **("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.**

The Motion to Value filed by Tsion Shankute Getachew ("Debtor") to value the secured claim of Bank of America ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 742 Davonshire Lane, Lincoln , California ("Property"). Debtor seeks to value the Property at a fair market value of $310,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $380,632.00. Creditor's second deed of trust secures a claim with a balance of approximately $98,442.77. 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 in the secured amount of the claim 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 Tsion Shankute Getachew ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America secured by a second in priority deed of trust recorded against the real property commonly known as 742 Devonshire Lane, Lincoln, 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 $310,000.00 and is encumbered by senior liens securing claims in the amount of $380,632.00, which exceeds the value of the Property which is subject to Creditor's lien.

52. 15-22998-E-13 TSION GETACHEW
DPC-1 D. Randall Ensminger

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

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

1. Debtor has failed to list all income on Schedule I. As a

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

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

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

JUNE 16, 2015 HEARING

At the hearing, the court continued the hearing to be heard in conjunction with the Motion to Value the Secured Claim of Bank of America, N.A. at 3:00 p.m. on June 30, 2015. Dckt. 26.

TRUSTEE'S STATUS SUPPLEMENT

The Trustee filed a status supplement on June 22, 2015. Dckt. 27. The Trustee states that his objections remain unresolved.

DISCUSSION

The Trustee's objections are well-taken.

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

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

The Plan proposes to pay a 0% dividend to unsecured claims, which total $0.00. However, at the Meeting of Creditors, the Debtor admitted that she received around $4,500 in tax refunds which was not disclosed on her Schedule I.

Furthermore, the Debtor received tax refunds for previous years which the Debtor did not disclose in her schedules nor provide for in the plan. Thus, the court may not approve the plan as it appears that there is additional income that should be committed to the plan.

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

Lastly, the Trustee's final objection concerns the fact the proposed plan relies on a Motion to Value the Collateral of Bank of America, N.A. A review of the docket shows that the Debtor has filed a Motion to Value set for hearing on June 30, 2015. Dckt. 16. The Motion to Value has been granted, resolving this portion of the objection.

The Debtor has not filed any supplemental papers in connection with the Objection.

While the motion to value has been concluded, Debtor clearly has some substantial financial work to do before proposing and seeking to confirm a plan that provides for all of her projected disposable income to fund the plan. With gross income of $7,473 a month, Debtor represents under penalty of perjury that she has only $229 of monthly net income. This is what Debtor proposes to use as her projected disposable income.

But it appears that Debtor's monthly net income is artificially depressed by excessive income tax withholding, for which Debtor has received substantial tax refunds the past few years. As now disclosed on Amended Schedule B, the 2014 tax refund is $8,661 – which averages an additional $721 a month of projected disposable income. Dckt. 25 at 7.

On Amended Schedule J Debtor now lists her 60 year old mother as a "dependent." *Id.* at 2. There is no Amended Schedule I showing the mother's income, benefits, or support which is being contributed to this household for which she is claimed by Debtor as a "dependent." The court also notes that there is a $416.66 payroll deduction a month for "Dependent Care," which deduction needs to be explained.

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

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

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

having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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