

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 19, 2016 at 2:00 P.M.

1. [15-29602](#)-C-13 REGINA JAMES MOTION TO SELL
PGM-1 Peter Macaluso 6-20-16 [[38](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 20, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Sell Property is granted.

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

A. 579 Greenwood Drive, Vacaville, California

The proposed purchaser of the Property is Nicole Miller. The proposed terms are a \$340,000 total purchase price which includes a \$8,000 deposit, .

order to effectuate the sale.

4. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Chapter 13 Debtor's agents: ATM Real Estate and Keller Williams Realty.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$9,200 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,600 is due on June 25, 201g. Debtors have paid \$13,800 into the plan to date.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 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.

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 June 7, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The plan will complete in 91 months, exceeding the statutory maximum of 60 months.
2. The calculations in the plan are incorrect (i.e. showing 55 payments to Wells Fargo in Class 1, not the required 60).
3. Debtor has not filed an updated Schedule J in support of the motion.

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 April 19, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtors are proposing the monthly plan payment to remain the confirmed amount of \$620.00. However, the supporting motion states that the debtors are no longer employed and no longer in business and that their income is now reduced to Social Security. Debtors have not filed updated Schedules I and J. On those Schedules, Debtors' expenses amount to \$6,037.50--greatly exceeding their new income of \$3,446.00.

Prior Hearing

Given the few remaining months in this case, the Trustee concurred with continuing the hearing for Debtor to file Supplemental Schedules and try and address the Trustee's concerns regarding income to fund the plan.

Discussion

As of July 17, 2016, the docket does not reflect that Debtors have filed supplemental schedules addressing the Trustee's concerns. As the Trustee's concerns highlight, the Debtors may not be able to afford the proposed plan payments. The modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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, all creditors, and Office of the United States Trustee on July 1, 2016. Fourteen days' notice is required. That requirement was met.

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 real property commonly known as 3566 Sudbury Road, Cameron Park, California, which the total purchase price is \$387,000, with a loan amount of \$379,990 (3.5% interest) monthly payments of \$2,443.16. This will increase the amount in the debtor's budget for rent or mortgage by two hundred forty-three and 16/100 dollars (\$243.16). However, the debtors expenses have decreased since the filing of the case, therefore, the debtors disposable income has not changed.

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

the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

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

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

IT IS ORDERED that the Motion is granted and Timothy and Sarah Mayhew, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 31.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$3,210.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,210.00 is due on June 25, 2016. Debtor has paid \$0.00 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. [11-41916](#)-C-13 RICHARD/DEBRA ATKINSON MOTION TO SUBSTITUTE DEBRA A.
PGM-1 Peter Macaluso ATKINSON FOR RICHARD A.
ATKINSON AS
SUCCESSOR-IN-INTEREST AND/OR
MOTION TO WAIVE THE SECTION
1328 REQUIREMENT FOR RICHARD A.
ATKINSON
6-3-16 [[62](#)]

Tentative Ruling: The Motion for Omnibus Relief Upon Death of a Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 3, 2016. 28 days' notice is required.

The Motion for Omnibus Relief Upon Death of a Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Omnibus Relief Upon Death of a Debtor is granted.

Debtor and Successor-In-Interest, Debra B. Atkinson, moves the court of an order allowing substitution as the representative for or successor to the deceased joint debtor, Richard A. Atkinson, under FRCP 25(a); and waiver of the requirements for joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) for Richard A. Atkinson.

Debtor gave notice of the death of her husband and co-petitioner on June 3, 2016 by filing Exhibits including a death certificate giving the court and interested parties notice. Dkt. 64, Ex. A.

Trustee's Opposition

The Chapter 13 Trustee opposes the motion on the basis that:

1. Debtor has not filed an amended Schedule B to disclose the \$100,000.00 received from life insurance; \$10,000.00 from worker's compensation, and \$255.00 from Social Security as a death benefits. This may be required under FRBP 1007(h) until discharge in a Chapter 13 case, although it may be limited to property under 11 U.S.C. § 541(A)(5) - but failure to schedule property means the property is never abandoned, and the property is not claimed as exempt. If left unsecured, the case should be converted to one under Chapter 7.
2. If Debtor schedules the property and claims exemptions, the Trustee is likely to object to the exemption(s). Debtor's amended Schedule I (dkt. 64) indicates her income has increased from \$4,799.98 (dkt. 47) to \$4,942.36 (an increase of \$662.38). No income was previously listed for the deceased debtor, therefore it appears the surviving spouse does not need to replace lost income. Debtor's amended Schedule J indicates her expenses have increased by \$142.30 (see dkt. 64) although her household size has decreased from two people to one person. Debtor has failed to explain why home maintenance has increased from \$50.00 to \$385.00 with an additional \$90.00 for a gardener; water, sewer, and garbage increased from \$60.00 to \$170.00; food increased from \$400.00 to \$525.00; clothing, laundry, and dry cleaning increased from \$110.00 to \$215.00; and personal care from \$50.00 to \$200.00. According to the Trustee's calculations, approximately \$43,500.00 would be needed to pay all creditors a 100% dividend, leaving Debtor with more than one half of the funds received due to the death of her husband if those funds were paid into the plan. This appears to be a sufficient amount to replace the older vehicles and have remaining funds for future unforeseen medical costs. Debtor is in month 57 of a 60 month plan. Unsecured creditors have received 15% of their filed claims.

Debtor's Reply

Debtor has submitted amended Schedules B and C - exempting the funds received on account of the death of the co-debtor spouse. Debtor argues that Debtor is a senior citizen, whom paid for some 30 years for the life insurance, in an estimated amount of \$24,000. The money that was received, is intended to supplement the income for the rest of her life. The worker's compensation claims is a replacement of wages lost and medical bills.

These funds are reasonable and necessary to supplement the deceased spouse's income, which given a 20 year life span, results in a \$5,000 per year, of \$416.00 per month supplement.

Discussion

Debtor has filed amended Schedules resolving the Trustee's first concern. The Trustee's second concern will be addressed if Trustee files an objection to claim of exemption.

The Federal Rules of Bankruptcy Procedure allow normal administration of a Chapter 13 case subsequent to the death of a debtor if further administration is possible and in the best interests of parties. Fed. R. Bankr. P. 1016. As the motion has established, further administration of this case is in the best interest of the surviving co-debtor.

The Federal Rules of Civil Procedure Rule 25 made applicable in the Federal Rules of Bankruptcy Procedure allow substitution of a party in contested matters. Fed. R. Bankr. P. 7025, 1018, and 9014. Appointment of a representative for a deceased Chapter 13 debtor in furtherance of case administration is authorized by Federal Rule of Bankruptcy Procedure Rule 1004.1. Accordingly, the court may appoint Debra B. Atkinson to represent the deceased joint-debtor in this case and in contested matters related thereto. The court finds such appointment appropriate considering that Debra B. Atkinson is administrator of the deceased debtor's estate pursuant to state law.

It is impossible for the deceased joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q). Waiver of these requirements as to the deceased debtor is therefore appropriate.

The motion is granted and the case may be further administered; Debra B. Atkinson may substitute as the representative for or successor to the deceased joint debtor, Richard A. Atkinson, under FRCP 25(a) and FRBP 1004.1; and the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) requirements are waived as to Richard A. Atkinson.

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 Further Administration of a Case filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case may be further administered; Debra B. Atkinson may substitute as the representative for or successor to the deceased joint debtor, Richard A. Atkinson; and the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) requirements are waived as to Richard A. Atkinson.

8. [16-22719](#)-C-13 MATTHEW JUHL-DARLINGTON
DPC-1 Douglas Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-15-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 15, 2016. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the First Meeting of Creditors held on June 9, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. The plan provides only \$60,000 to satisfy the priority unsecured claim of the IRS filed in the amount of \$223,000.

4. The plan may not be the debtor's best efforts as Form 122C-1 indicates excess disposable income.

Discussion

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

9. [16-22819](#)-C-13 LOUIS/D'AUNA RUFFIN
DPC-1 Paul Bains

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-22-16 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the First Meeting of Creditors held on June 16, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

Discussion

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on June 9, 2016 is confirmed, and counsel for the Debtors 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Due to discrepancies in Debtor's court filings, it appears that Debtor may have additional disposable income that could be paid into the plan for the benefit of creditors. Debtor moved in with her daughter and is no longer paying rent.

Debtor's Reply

The Debtor has temporarily moved in with her daughter's family because without her job the rent was too much. However, the Debtor's income of \$1,417.00 being comprised of social security (In re Welch) has allotted to keep a budget of \$1,500.00 for the next few months so that they will be able to move out of the daughter's home and back into their own in short order.

This \$1,417.00 being social security, the Debtor is requesting a waiver of this expense over the (5) five remaining months of the plan.

Prior Hearing

At the hearing held on June 28, 2016, the court continued the hearing to July 19, 2016 to allow Debtor time to supply Trustee with an accounting.

Trustee's Supplemental Opposition

After the first hearing, the Trustee filed a supplemental opposition to the motion stating that: (1) Debtor does not have accurate, current Schedules I & J on file; and (2) the Trustee's best effort objection remains unresolved.

Discussion

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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, all creditors, and Office of the United States Trustee on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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 denied.

The motion seeks permission to purchase a 2012 Mini Cooper S Hardtop Hatchback 2D with approximately 28,500 miles, a 1.6L 4 cylinder engine and a 6-speed automatic transmission, which the total purchase price is \$20,183.04 (21% interest rate), with monthly payments of \$420.48.

The motion states that Debtors currently own a 2004 Toyota Camry in poor condition with approximately 195,000. The vehicle is in dire need of repair well beyond the value of the vehicle. In order to commute to work and around town, Debtors are in need of a replacement automobile.

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).

Debtors do not address the reasonableness of incurring debt to purchase a sports car while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtors' plan payments are \$750. The car payment is more than half of their monthly plan payment. Debtors do not give evidence of how they will be able to afford the car payment.

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 21%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a sports car and attempt to borrow money at a 21% interest rate.

Most troubling, however, is the fact that Debtor completed the purchase of the vehicle on April 13, 2012, without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

The motion is denied.

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

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

The Motion to 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 denied.

13. [16-22645](#)-C-13 PATRICK/WENDY COSENTINI
DPC-1 John Downing

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-22-16 [[18](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$500.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$500.00 is due on June 25, 2016. Debtor has paid \$0.00 into the plan to date.
3. Debtor admitted, at the first meeting of creditors, that he is not longer operating his business. Thus Debtor may not be able to make

the plan payments.

4. The plan fails the liquidations analysis. Several automobiles are schedules without values, while only 1% is allotted to unsecured creditors.
5. The plan fails to list attorney fees.

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. [16-22646](#)-C-13 JOEL ERICKSON
DPC-1 John Downing

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-22-16 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$1,450.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,450.00 is due on June 25, 2016. Debtor has paid \$0.00 into the plan to date.
3. The plan fails the liquidations analysis. Debtor's non-exempt

assets total \$4,475 and the Debtor is proposing a 2% dividend to unsecured creditors, which totals \$252.

4. The plan fails to list attorney fees.
5. It appears that Debtor cannot afford the plan payments as Schedule J reflects negative disposable income in the amount of almost \$6,000.
6. The plan undervalues the priority claim of the IRS by over \$5,000.
7. The plan fails to provide for the secured claim filed by the Nevada County Tax Collector (Claim #2-5) in the amount of \$7,489.86.

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 June 7, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. It appears the debtor cannot afford the plan payments as debtor is delinquent under the terms of the third modified plan. The debtor has filed two previous modified plans to resolve delinquency.

The modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2016. Forty-two days' notice is required. That requirement was met.

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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 June 7, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the

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

17. [16-22948](#)-C-13 RAYMOND/DIANA MAGALLANES
CYB-1 Candace Brooks

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
6-29-16 [[28](#)]

Thru #20

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 29, 2016. Fourteen days' notice is required. That requirement was met.

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 Citibank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 55" Ultra HD Samsung Television, 40" HD Samsung Television, and 4th Generation iPad. The Debtor seeks to value the property at a replacement value of \$750.00 as of the petition 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 personal property secures a purchase-money loan with a balance of approximately \$1,345.00 as stated in Debtor's Amended Schedule D. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

Trustee's Opposition

The Chapter 13 Trustee is uncertain whether the Motion has correctly identified the creditor. The Plan (dkt. 5) and Amended Schedule D filed as Exhibit B (dkt. 31) identify the creditor as Best Buy and Best Buy Creditor. The creditor has not filed a proof of claim.

The motion does not indicate when the property was purchased.

Debtor's Reply

Citibank, N.A. finances Best Buy's credit card. Debtor has filed an Amended Schedule D that identifies Citibank, N.A. as the actual creditor. Debtor's declaration and supplemental declaration state the date of purchase.

Discussion

Debtor has resolved the Trustee's concerns, thus the court's decision is to grant the motion. The lien on the personal property secures a purchase-money loan with a balance of approximately \$1,345.00 as stated in Debtor's Amended Schedule D. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$750.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a purchase-money loan recorded against a 55" Ultra HD Samsung Television, 40" HD Samsung Television, and 4th Generation iPad is determined to be a secured claim in the amount of \$750.00, and the balance of the claim is a general unsecured claim. The value of the personal property is \$750.00.

18. [16-22948](#)-C-13 RAYMOND/DIANA MAGALLANES
DPC-1 Candace Brooks

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-22-16 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor proposes to value the secured claims of Santander Consumer USA and Best Buy, and has not filed motions to value collateral to date.

The court has considered the Trustee's concerns and finds them legitimate. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [16-22948](#)-C-13 RAYMOND/DIANA MAGALLANES
EMM-1 Candace Brooks

OBJECTION TO CONFIRMATION OF
PLAN BY BANC OF CALIFORNIA,
N.A.
5-23-16 [[15](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Banc of California, N.A. opposes confirmation of the Plan on the basis that PennyMac Loan Services, LLC opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Specifically, the plan fails to provide for pre-petition arrears in the amount of \$2,723.75.

Debtor's Opposition

Debtors missed one mortgage payment, which was due on the date the petition was filed. Thus, the plan fails to provide for a monthly stated dividend for pre-petition arrearage in the amount of \$45.40.

Debtors tendered \$2,800 to Creditor's mortgage servicers as evidence by Debtor's Declaration.

Discussion

Debtors' opposition acknowledges that the plan fails to provide for the pre-petition arrearage owing Creditor, but disputes the amount owed.

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By altering Creditor's contractual interest rate, the Plan violates 11 U.S.C. § 1322(b)(2)'s anti-modification provision. 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 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 Banc of California, N.A. 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.

20. [11-42349](#)-C-13 SCOTT/ELIZABETH
DPC-2 NETHERCOTT
Eric Schwab

CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 7
1-8-16 [[68](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Scott and Elizabeth Nethercott ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The joint debtor Scott Nethercott passed away on November 19, 2014.
2. The Debtor improperly exempted 100% of the value of post-petition settlement funds (\$193,191.00), while proposing a 0% dividend to creditors.
3. The Trustee's objection to exemption was sustained. Dkt. 61.
4. The Debtor failed to file a motion for omnibus relief under Local Rule 1016-1(b).

DEBTORS' OPPOSITION

In Opposition to the Motion, Debtor asserts the settlement funds pertain to a personal injury lawsuit related to the death of joint debtor.

Debtor's personal injury counsel has held \$13,000.00 of the net settlement funds in reserve to be turned over to the Chapter 13 Trustee to make one final distribution to creditors to pass liquidation in the Chapter 13 Plan. The actual amount necessary to pass liquidation is \$7,800.00 plus administrative expenses.

Elizabeth Nethercott has received and utilized net Settlement funds for the support of herself, her dependents, and her household.

LEGAL STANDARD

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

April 5, 2016 Hearing

At the hearing held on April 5, 2016, Debtor, ignoring the court's sustaining the objection to claim of exemption, proposes to retain \$180,191.00 and allow \$13,000.00 to be paid into the plan, which would be liquidation value, apparently if the Debtor were allowed an exemption.

The problem is that the Debtor did not and does not have an exemption to claim in the monies. What Debtor elected to do was purportedly spend the \$180,191.00 since receiving the monies sometime after August 2014.

The court continued the hearing to afford the Debtor, Debtor's bankruptcy counsel, Debtor's personal injury attorney, and the Chapter 13 Trustee to address the rights and interests of the estate, approval of the compromise, and authorization to employ and allow compensation for Debtor's personal injury attorney, to the extent that such relief is proper.

June 14, 2016 Hearing

The court continued the hearing to July 19, 2016 per stipulation of the parties.

DISCUSSION

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The court has held that the \$193,191.00 in post-petition settlement funds was not entitled to exempt status. Dkt. 61. Nevertheless, the Debtor has refused to turnover the funds to the estate for disbursement to creditors. Debtor's failure to turnover the property to estate by increasing monthly plan payments is cause to convert the case.

The motion is granted, and the case is converted to a case under Chapter 7.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted, and the case is converted to a case under Chapter 7 of Title 11, United States Code.

21. [16-23551](#)-C-13 ARTHUR SMITH
DPC-1 Pro Se

TRUSTEE'S OPPOSITION TO VACATE
ORDER DISMISSING CASE
6-20-16 [[17](#)]

DEBTOR DISMISSED: 06/13/2016

Tentative Ruling: The Motion to Vacate Dismissal of Case 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 by the Chapter 13 Trustee on the Debtor (*pro se*), and Office of the United States Trustee on June 20, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Vacate Dismissal of Case 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 Vacate Dismissal.

Debtor moves the court for an order to vacate the dismissal entered on June 13, 2016 due to excusable neglect. The motion states that on June 8, 2016, Debtor received if documents are not filed.

Trustee's Opposition

The Trustee request the court deny the motion due to Debtor not filing documents timely. On May 31, 2016, Debtor received, via hand delivery, an Amended Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents. (Dkt. 3). The notice advised Debtor of two deadline dates of June 7, 2016 and June 14, 2016. The notice was hand-delivered to the person filing the documents.

On June 2, 2016, another amended Notice of Incomplete Filing (dkt. 9) was filed and sent to the Debtor on June 4, 2016.

As of June 20, 2016, the required documents have not been filed.

Legal Standard

Rule 60(b)

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.

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

The motion does not provide a reason for why the required documents were not timely filed and have not been filed as of July 18, 2016.

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

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

The Motion to Vacate Dismissal 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 to Vacate Dismissal of Case is denied.

22. [15-27153](#)-C-13 D JACK
[15-2241](#)
HOLLAWAY ET AL V. CUSICK ET AL

MOTION TO EXTEND TIME AND
MOTION TO COMPEL
6-15-16 [[23](#)]

Also #23

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 15, 2016. 28 days' notice is required. That requirement was met.

The Motion to Compel Responses to Discovery and Extend Discovery Period, or to Exclude Evidence 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 grant the Motion.

Pursuant to Federal Rules of Bankruptcy Procedure, Rules 7026 and 7037, the Chapter 13 Debtor / Defendant requests an order from the Court compelling Plaintiffs to respond to discovery requests and an extended discovery period of 30 days (for Defendant only), or (in the alternative) for an order by the Court excluding evidence to be presented by Plaintiffs at the upcoming Adversary Proceeding in this matter.

Defendant asserts that here are four main discovery disputes:

1. First, On April 13, 2016, Defendant served discovery requests upon Plaintiffs and their counsel a Request for Production of Documents (Set One), one each to the Plaintiffs and their counsel. To date, no documents (only objections) have been provided; no requests for extension of time have been requested and the time for doing so has expired.
2. Second, on April 14, 2016, Defendant served discovery requests upon Plaintiffs and their counsel, a set of interrogatories (Set One), one each to the Plaintiffs and their counsel. To date, no responses to interrogatories 26 - 201 (only objections) have been provided; no requests for extension of time have been requested and the time for doing

so has expired.

3. Third, on April 15, 2016, Defendant served discovery requests upon Plaintiffs and their counsel a Request for Production of Documents (Set Two), one each to the Plaintiffs and their counsel. To date, no documents (only objections) have been provided; no requests for extension of time have been requested and the time for doing so has expired.
4. Fourth, on April 28, 2016, Defendant served discovery requests upon Plaintiffs and their counsel a Request for Admissions, one each to the Plaintiffs and their counsel. To date, no admission or denial to requests 5, 9, 15, 17, 18, 21, 30, 32, 33, 46, 47, 53, 54, 55, 57, 59, 60, 61, 62, 64, 65, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 101, and 106 (only objections) have been provided; no requests for extension of time have been requested and the time for doing so has expired.

Plaintiffs' Opposition

Plaintiffs James and Linda Holloway oppose the motion on the basis that:

1. The motion is untimely under the requirements of the Pretrial Scheduling Order (dkt. 14), which specified June 30, 2016 as the date of the close of discovery.
2. The majority of the requests for relief and challenges were brought without complying with Rule 37's meet and confer requirement. Although Debtor alleges that he met and conferred with Plaintiffs' counsel on discovery issues, it is not true.
3. Debtor violated Local Bankruptcy Rule 9014-2(a), which requires that any motion under FRCP, Rule 37 or any other applicable rule involving the adequacy of a discovery response be accompanied by a separate statement including factual and legal reasons for compelling discovery responses. The motion does not include the requisite separate statement, and the body of the motion does not fulfill the intent and goal of requiring a separate statement.

Debtor's Reply

Debtor asserts that: (1) the motion is timely; (2) he met and conferred with Plaintiffs; (3) he is now filing a "separate statement" in compliance with the local rules.

Discussion

In their opposition, Plaintiffs take issue with the Motion to Compel on technical grounds, but they do not assert that they have furnished Debtor with discovery responses. The court's decision is to grant the Motion and compel Plaintiffs to respond to discovery requests and an to extend the discovery period by 30 days (for Defendant only).

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 Compel Responses to Discovery and Extend Discovery Period, or to Exclude Evidence filed by the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Responses to Discovery and Extend Discovery Period, or to Exclude Evidence is granted.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2016. Forty-two days' notice is required. That requirement was met.

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 Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the grounds that Trustee is uncertain if Creditors' objections (dkt. 119) have been properly addressed:

1. The plan may fail the liquidation analysis.
2. Based on the significant objections made by Creditors, including the pending adversary proceeding (#15-02241), Trustee is not certain whether the plan is Debtor's best efforts and whether Debtor proposed the plan in good faith.

The Trustee believes an evidentiary hearing may be helpful.

Creditors' Opposition

Creditors James and Linda Holloway object to confirmation on the basis that:

1. The plan seeks to modify Creditors' claim in the amount of \$149,800.56 that is secured by a constructive trust/ escrow account. The plan seeks to surrender the collateral, but the account only contains \$68,922.00,

thereby leaving a deficiency of \$80,878.56. This claim is the subject of an adversary dispute seeking nondischargeability of the debt.

2. Debtor filed this case days before the state court was to confirm Creditors' final arbitration award. Debtor filed for chapter 7 relief in 2011, and this is his second chapter 13 case in the past year and a half.
3. Debtor has not been forthright about his gross income.
4. Debtor seeks to inappropriately exempt his interest in the family home (maintained in his wife's name), which has already been previously denied by the court (dkts. 93 and 101).
5. Debtor failed to accurately disclose bank accounts in which he has a community property interest.
6. Debtor failed to accurately disclose vehicles in which he has a community property interest.
7. Discrepancies exist in Debtor's average monthly expenses. (Dkt. 130).

Discussion

Based on the significant and numerous concerns of Creditors and the Trustee, the court is not prepared to confirm the Plan. An evidentiary hearing may be appropriate to resolve concerns regarding Debtor's finances and community property interests. The Plan does not comply with 11 U.S.C. §§ 1322 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.

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 June 13, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Section 6 Additional Provisions state that the additional provisions are not appended to this plan. However the debtor has attached additional provisions as page 7.
2. Section 1.01 refers to "See Additional Provisions Section." Section 6.01 states "Debtor to pay \$555/month starting on or before June 25, 2016 and continuing until completion of the plan term." June 2016 is the 17th month of the plan. The debtors have not specified a plan payment for the first 16 months of the plan. The debtors have paid a total of \$14,879.58 through May 2016.
3. Section 6.02 states that "Trustee authorized to pay CCO Mortgage \$10,321.60 . . ." Trustee is uncertain if debtor is authorizing

payments made to creditor through May 2016 or if debtor is attempting to limit payments to the creditor to this amount.

4. Debtor failed to cite in the motion the correct legal basis of 11 U.S.C. § 1329 under which a modification of a confirmed plan must be sought. The debtor did cite 11 U.S.C. § 1325.

The Trustee has identified numerous deficiencies in the proposed plan, including that certain sections present inconsistent information and/or incomplete information. Furthermore, Debtor has not cited to the correct legal standard or provision for the relief sought. The modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2016. Forty-two days' notice is required. That requirement was met.

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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 20, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to continue the hearing on the Motion to Confirm to September 13, 2016 at 2:00 p.m.

Chapter 13 Trustee, David Cusick, opposes the instant motion on the basis that:

1. Debtor is \$1,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,530 is due February 25, 2015. The case was filed on November 3, 2015, and Debtor has paid \$1,530 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

At the hearing, the Trustee confirmed that Debtor had cured the delinquency.

2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Long Beach Mortgage. The motion was set for hearing on January 26, 2016, and was continued to March 22, 2016.

DEBTORS' RESPONSE

Debtors respond, stating that they have cured the delinquency, and the Motion to Value was continued to March 22, 2016 at 2:00 p.m.

CREDITOR'S OPPOSITION

Brio Ventures, LLC opposes confirmation of the Plan on the basis that Movant holds a junior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b) (2)'s anti-modification provision.

FEBRUARY 9, 2016 HEARING

At the hearing on February 9, 2016, the court continued the matter so that it could be decided on the same hearing date as the Motion to Value Collateral of Brio Ventures, LLC upon which the plan relies. Subsequently, Brio Ventures, LLC filed an opposition to the Motion to Confirm Plan.

The Parties concurred with continuing the hearing on this Motion to after the May 3, 2016 Evidentiary Hearing Scheduling Conference on the motion to value to afford the Parties to consider the evidence and document a settlement, if any, on the motion to value and corresponding amendments to the Plan which would then allow this Plan to be confirmed.

DISCUSSION

On May 3, 2016, the court set an evidentiary hearing to be heard before the Honorable David E. Russell on July 8, 2016 at 10:00 a.m. to resolve the underlying basis for this objection, a Motion to Value Collateral, Dckt. Control No. PGM-2. The parties subsequently stipulated to continue the evidentiary hearing to September 6, 2016. The court will continue the instant motion to confirm plan to September 13, 2016 at 2:00 p.m.

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 is continued to September 13, 2016 at 2:00 p.m.

27. [16-22462](#)-C-13 DAWN BASURTO
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-27-16 [[36](#)]

DEBTOR DISMISSED: 06/27/2016

Final Ruling: No appearance at the July 19, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Dawn Annette Basuto ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 27, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fee installment.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on June 27, 2016 (Dckt. 39), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause 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 Order to Show Cause is discharged as moot, and no sanctions are ordered.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2016. Forty-two days' notice is required. That requirement was met.

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, and the plan is not confirmed.

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the basis that it is not clear if Debtor can afford plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6).

Trustee's Objection to Confirmation, DPC-1, was heard and sustained by the court on May 3, 2016, Dckt. 70. The objection in part was premised on the fact that Debtor had not provided payment advices received 60 days prior to filing under 11 U.S.C. § 521(a)(1)(B)(iv). To date, the only pay stubs received by Trustee are those from PSA Healthcare listed as one of Debtor's part time jobs in Schedule I. No other pay stubs have been provided to Trustee.

Moreover, Debtor admitted at the 341 meeting that she recently acquired a part time job at Senior Helpers and still works for PSA Healthcare. Debtor amended her schedule I on May 2, 2016, Dckt. 62. It is not clear why "Part time job income-2 jobs" line 8h remains unchanged at \$1,000.00, and line 12 (combined monthly income) remains unchanged at \$4,522.00. According to Trustee's calculations from the provided paystub from PSA Healthcare, the average gross income is \$2,202.16 and the average net income is \$1,161.70.

Next, Debtor's declaration in support, Dckt. 60, states that she and her

mother have been "living in motels since we were evicted, but expect to find an apartment within the next few weeks." Debtor's mother has a pending and active chapter 13 case, which lists rental expenses for a property in Benicia, California. Debtor's address in the voluntary statement is a property in Vallejo, California. No change of address has been filed nor any evidence of motel expenses. Trustee is unclear if Debtor has found an apartment or continues to reside in motels.

Debtor in her declaration does not explain her mother's ability to contribute \$750 per month.

JUNE 14, 2016 HEARING

At the hearing on June 14, 2016, Counsel advised the court and parties in interest that the Debtor has been hospitalized and is incommunicative at this time.

The Trustee concurred in the request for a continuance.

DISCUSSION

Although the court continued the motion in order to accommodate Debtor who was hospitalized, the docket reflects that no status report or supplemental motion has been filed reflecting the above-mentioned deficiencies were resolved. The court agrees that Debtor's documents, including the plan, amended schedules, statements made at the 341 meeting, and voluntary petition reflect inconsistent and inaccurate accountings of income and expenses. It is not clear whether Debtor can afford the plan payments asserted. No documentation has been provided to the satisfaction of the Trustee as to pay stubs for two part time jobs, it is not clear what Debtor's monthly income actually is. Moreover, whether Debtor continues to live out of motels is of concern. This is a considerable expense, and one that will affect whether or not Debtor can afford plan payments. Finally, it is of concern that Debtor lists in her income a monthly contribution from her mother of \$750, who herself is undergoing a chapter 13 case.

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

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

The Motion 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.

29. [16-22863](#)-C-13 WANDA MOORE
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
6-9-16 [[17](#)]

Also #30

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 9, 2016. Twenty-eight days' notice is required. That requirement was met.

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-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 Value secured claim of Americredit Financial Services, Inc., "Creditor," is continued to August 30, 2016 at 2:00 p.m..

The Motion filed by Wanda Lynette Moore ("Debtor") to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Mustang ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in December 23, 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,123.78. Therefore, Debtor asserts that the Creditor's claim secured by a lien on the asset's title is under-collateralized.

CHAPTER 13 TRUSTEE'S RESPONSE

On June 14, 2016, Chapter 13 Trustee filed a statement of non-opposition.

CREDITOR'S OPPOSITION

Creditor opposes the instant motion, submitting the declaration of Bankruptcy Specialist for Creditor, Jodi Lloyd, asserting that the vehicle should be valued at no less than \$7,950.00. Creditor states that "the price a retail merchant would charge" for a 2008 Ford Mustang is \$7,950.00, and that pursuant to F.R.E. 803(17), the NADA guide upon which Creditor's valuation relies as a "market report" or "commercial publication" is admissible as evidence for the replacement value of the car.

Creditor further takes issue with Debtor's valuation of \$4,000 based on Debtor's personal knowledge, as Debtor lists six items that need repair work but Debtor does not provide evidence to corroborate her estimate that the repair work would cost between \$6,715.93 to \$7,065.93. Creditor takes great issue with Debtor's valuation and claimed repair work. If the court is taking into account repair work, Creditor asserts the value of the vehicle should be \$7,650.

DEBTOR'S RESPONSE

Debtor responds to Creditor's opposition, stating the submitted declaration of their "Bankruptcy Specialist" and counsel are inadmissible as evidence to support Creditor's asserted value. Debtor the Debtor's personal knowledge as to the vehicle and the mechanical and cosmetic issues that affect the vehicle's valuation sufficiently detailed that the car's valuation of \$4,000 is warranted.

Debtor asserts Creditor has not actual evidence upon which the court may rely, but that Debtor has no opposition to Creditor contacting counsel for an inspection of the vehicle.

DISCUSSION

Presumably Debtors' Declaration (Dckt. 19) provides the best testimony as to the owners' value of this vehicle. To that end, the Debtors provide the following testimony to be used by the court to value this vehicle: six items in need of repair on the vehicle: (1.) alternator; (2.) strut & spring assembly; (3.) harmonic balancer; (4.) battery; (5.) Body work; and (6.) tire and alignment. Altogether, the repair work's estimated cost is \$6,715.93 and \$7,065.93. Debtor does not specify what is wrong with the above-listed parts, what sort of repairs must be made on them, or any further information.

Creditor, asserting that the NADA guide valuation on the vehicle is \$7,950, takes great issue with Debtor's stated repairs, and submits that altogether, that considerations of the repair work should lower the value of the vehicle by \$300, asserting that the court determine that the value is \$7,650. The court doubts that the above-listed repairs would cost only \$300 to bring the vehicle into

Both parties have provided the court with information concerning the vehicle, and both parties have withheld other information -

condition of the vehicle, and credible evidence as to the costs related to the condition of this Vehicle.

While the court agrees that Debtor has submitted a surprisingly sparse amount of detail in the Debtor's declaration, the court also notes that Creditor appears to completely disregard that Debtor has personal knowledge of the actual mechanical and cosmetic repairs required, and submits a valuation that does not take these repairs into account. However, Debtor has not provided sufficient evidence of the extent of the damage in order to aid the court in making a valuation determination on the evidence at hand.

As such, the court will continue the instant motion for 45 days in order to permit Creditor time to inspect the vehicle and obtain a verified appraisal of the property.

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 Wanda L. Moore ("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 continued to August 30, 2016 at 2:00 p.m.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to continue the Objection to August 30, 2016 at 2:00 p.m.

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Americredit Financial Services.
2. Debtor's plan fails the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$51,428.15 and Debtor is proposing a 0% dividend to unsecured creditors. The non-exempt real property totals \$19,352. The non-exempt personal property totals \$32,482.39. Debtor is claiming her interest in real property at 519 Blanks Lane, Emporia, VA, as exempt under "ES1 #1757-Unknown Exemption" and the Debtor claimed the same exemption for cash on hand where Debtor has not cited an intelligible statute.

The trustee objection to this claim of exemption.

3. The Debtor's plan proposes to pay \$4,500 in attorney's fees. Debtor's rights and responsibilities filed May 2, 2016 indicate \$4,000 in fees have been charged in this case and that \$1,500 was paid prior to filing. Debtor's disclosure of compensation also shows attorney's fees total \$4,000 and \$1,500 was paid prior. The balance of attorney fees in the plan appears to be \$2,500.
4. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Official Form 122C-1 filed on May 2, 2016 is blank. Debtor reports earning income from pension and rental income along with a domestic support obligation all of which was not reported on the form, but based on Form 122C-1, it appears that Debtor has not received any such income in the last six months prior to filing.

DEBTOR'S RESPONSE

Debtor responds to Trustee's objection, providing:

1. Debtor has filed a motion to value on calendar on the same day as the hearing on this objection.
2. Debtor filed amended schedule c on June 15, 2016.
3. The fees stated in Debtor's Rights and Responsibilities are correct. Debtor was charged \$4,000 in fees and \$1,500 was paid prior to filing. Attorney's fees are clarified in the order confirming plan.
4. Debtor filed an amended form 122C-1 on June 15, 2016.

DISCUSSION

The court notes that Debtor has filed an amended schedule C and amended form 122C-1, and addresses the attorney's fees raised by Chapter 13 Trustee. However, the motion to value upon which the proposed plan relies was continued to August 30, 2016 in order to resolve a valuation dispute. The court will continue the instant motion to the same date of hearing on that motion so that this objection may be resolved in conjunction.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to August 30, 2016.

31. [16-22864](#)-C-13 IRIS ROBERSON
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-8-16 [[16](#)]

Also #32

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen days' notice is required. That requirement was met.

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.

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

1. The plan does not appear to provide for all of Debtor's projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). Debtor deducts on Schedule J \$464 for auto payments on a Nissan Sentra. At the 341 meeting, Debtor indicated that the vehicle will be paid off in approximately 2.5 years. Debtor fails to propose an increase of \$464 when the payments are complete.
2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Capital One Auto Finance. To date, Debtor has not filed such motion.

3. The plan may provide unfair discrimination as to general unsecured creditors who are to receive 0%. Debtor proposes to pay City of Vacaville \$299.05 in Class 5 of the plan. Trustee is uncertain whether the claim is entitled to priority status or is a general unsecured claim.

The Trustee has raised valid concerns. In addition to not sufficiently accounting for all disposable income and being unfairly discriminatory towards general unsecured creditors, the court docket reflects that Debtor has not filed any Motion to Value the Collateral of Capital One Auto Finance. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 9, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Cam IX Trust, is the current holder a Promissory Note secured by a First Deed of Trust on Debtor's real property, 418 Salisbury Circle, Vacaville, California. Debtor has stated that the pre-petition arrears are \$115,719.87, however Creditor's records show that Debtor owes \$121,816.32 in pre-petition arrears. Creditor opposes confirmation of the Plan on the basis that:

1. The plan is infeasible in violation of 11 U.S.C. § 1325(a)(6).
 - a. Debtor states she has submitted a loan modification application and no payments will be made on arrears, and that arrears will be dealt with in the loan modification in the event that the modification application is denied, Debtor will within 14 days provide for the arrears by amending the plan. However Debtor does not have a pending loan modification with the Creditor. Lender has not accepted its treatment proposed under the plan and Debtor cannot modify

its claim over Creditor's objections as detailed here.

- b. According to Debtor's schedules, Debtor has \$4,200 in disposable income available towards a chapter 13 plan payment. Debtor has proposed payments of \$4,200 per month towards the plan. If the plan were to be amended to include Creditor's full claim and arrears, Debtor will not be able to make ongoing payments, making the plan infeasible. The failure to pay Creditor's claim in full and the attempt to modify Creditor's claim is in violation of 11 U.S.C. § 1322(b)(2) and § 1325(a)(5).

2. Debtors are impermissibly trying to modify Creditor's claim, 11 U.S.C. § 1332(b)(2). Creditor's note is secured solely by Debtor's principal residence and Debtors are generally prohibited from modifying Creditor's note. Debtor does not propose making payments on the total arrears owed to Creditor. Creditor does not accept the proposed treatment.

The court agrees that Creditor has raised valid concerns, especially concerning a loan modification that Debtor asserts is in process and is necessary to the feasibility of the plan. Creditor has submitted the declaration of Karin Murphy, the Assistant Vice President of BSI Financial Services, which states that no loan modification is actually pending. Dckt. 22. Debtor has additionally misstated the arrears owed, and with no loan modification pending, it is questionable whether Debtor will have the ability to afford the plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 15, 2016. Fourteen days' notice is required. That requirement was met.

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.

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

1. Debtor does not appear to be able to make payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule J lists living expenses totaling \$1,891.00 per month for a household of three persons. The schedule includes mortgage expenses of \$576.00, property taxes of \$141.00, utilities of \$268.00, food and housekeeping expense of \$500.00, clothing and laundry of \$100.00, personal care of \$30.00, \$160.00 for transportation, \$116.00 for auto insurance, and \$0 for medical and dental, entertainment, and charity. Debtors' total non-mortgage expenses average to \$391.33 per person, which is below the IRS allowable living expense national standards. The IRS standards are \$416.33 per person per month for all expenses, as well as \$472 monthly for transportation expenses, and \$60 per person for out of pocket medical expenses, totaling \$1,901 per month.

2. The income may not be accurate. Debtors' schedule I indicates that Debtor and spouse are unemployed. Line 8d lists unemployment income for Debtors' spouse of \$1,493.00 per month. Line 8h lists tax over withholding of \$540 per month. Line 13 does not list any anticipated increase or decrease of income within the next year. A review of the 2014 and 2015 federal tax returns shows that Debtor and spouse are both cannery workers. Monthly income in 2015 was \$4,565.16. Total 2014 income is \$48,552.00, which averages to \$4,046 per month. Debtors actual average monthly income may be higher than listed where the employment appears to be seasonal and Debtor may anticipate returning to work, which is not reflected in schedule I.

The court agrees that not only has Debtor appeared to have underestimated the actual living expenses of his 3 person household, the income issue raised by Trustee reflects that Debtor may have an income source in 2016 that she has not disclosed to the court. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen 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.

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

1. Debtor is \$2,741 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,741 is due June 25, 2016. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. The 341 meeting was held on June 2, 2016 and was continued to June 30, 2016 to allow Debtor to provide Trustee with all required business documents. Debtor failed to provide the Trustee with numerous business documents, tax returns for 2 years of business, and paystubs from the business.
3. It appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Official Form 122C-1 is blank. Debtor has not reported

any business income or wages for the 6 months prior to filing.

The Chapter 13 Trustee has raised valid concerns as to whether Debtor can afford this plan or whether it is feasible. First, Debtor has not made a single payment to date, Trustee does not have sufficient information to make necessary determinations as Debtor has not provided the requested documents, and has not completed the means test. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen days' notice is required. That requirement was met.

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.

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

1. Debtor did not appear at the first meeting of creditors on June 2, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor is \$1,662 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,662 is due June 25, 2016. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
3. Debtor is attempting to modify a debt secured solely by Debtor's primary residence, which is not permissible under 11 U.S.C. § 1322(b).
4. Debtor cannot make payments under the plan or comply with the plan,

11 U.S.C. § 1325(a)(6). Debtor discloses a secured second deed of trust on schedule D but does not provide for this second deed of trust in the plan.

5. It appears that Debtor cannot make plan payments under 11 U.S.C. § 1325(a)(6).

Trustee has raised numerous deficiencies with Debtor's plan and failure to provide in the plan. Debtor has not made a single payment, and there are legitimate concerns as to whether can even afford proposed plan payments. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: Hearing Set by Court Order, Dckt. 13 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Chapter 13 Trustee, and Office of the United States Trustee on May 31, 2016.

The Motion to Impose Automatic Stay has been set for hearing by order of the court, entered June 1, 2016, Dckt. 13.

The Motion to Impose the Automatic Stay is denied

HISTORY

Susan Laughery ("Debtor") seeks to have the provisions of the automatic stay imposed in the instant case pursuant to 11 U.S.C. § 362(c)(4)(B). This is Debtor's fourth bankruptcy filing within the past year. First, on September 28, 2015, the Debtor filed a chapter 13 bankruptcy which was dismissed on December 19, 2016 because Debtor did not provide the chapter 13 trustee the required paperwork, Dckt. 61, Case No. 15-27551.

Second, on February 3, 2016, the Debtor filed her second chapter 13 bankruptcy which was dismissed on March 7, 2016 because Debtor did not file or serve a chapter 13 plan or motion to confirm plan prior to a court-set date, Dckt. 19, Case No. 16-20600.

Third, on April 5, 2016, the Debtor filed her third chapter 13 bankruptcy which was dismissed on May 4, 2016 for failure to timely file opening documents, Dckt. 18, Case No. 16-22149.

On May 16, 2016, Debtor filed the instant chapter 13 bankruptcy. This is Debtor's fourth bankruptcy petition pending in the past year.

Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), the provisions of the automatic stay never went into effect upon the filing of the instant case. If within 30 days after the filing of the later case, a party in interest requests it, the court may order the stay to take effect in the case as to any or all creditors, only if the party in interest demonstrates that the filing of the later case was in good faith as to the creditors to be stayed after notice and a hearing. 11 U.S.C. § 362(c)(4)(D)(i)(I).

On May 31, 2016 (which was less than 30 days after the filing of the petition), the court received a letter from Debtor, appearing pro se, urging the court to impose the automatic stay in this case. On June 1, 2016, the court set the matter for hearing in open court on June 14, 2016 to determine whether the automatic stay should be imposed. On June 7, 2016, the court received a second letter asking the court to reschedule the date of hearing for after July 6, 2016, as the Debtor had a pre-planned vacation scheduled and as such she would be unable to attend the hearing as scheduled on June 14, 2016.

DISCUSSION

The court notes that Debtor's hand-written letter contains little to no explanation by Debtor as to why the court should impose the stay and what has changed that warrants imposing the stay. Furthermore, the court notes that Chapter 13 Trustee has filed a Motion to Dismiss Case, describing numerous deficiencies that show that Debtor does not appear to be prosecuting her chapter 13 case. The grounds stated include: tax returns not provided, Debtor did not appear at the 341 meeting, pay advices not provided, Debtor is delinquent \$2,-00 in plan payments with no payments made to date, no noticed plan or motion to confirm pending plan, and the prior cases not disclosed on the bankruptcy petition.

The Debtor has not shown that this case deserved imposition of the stay, and Debtor has failed to cooperate 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 Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied and the stay is not imposed.

37. [12-36277](#)-C-13 RAYMOND/JOYCE PISTORIUS MOTION FOR SUBSTITUTION OF
CAH-3 C. Anthony Hughes DECEASED PARY PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURES 1004.1 AND/OR MOTION
FOR WAIVER OF SECTION 1328
REQUIREMENT
6-2-16 [[44](#)]

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2016. 28 days' notice is required. This requirement was met.

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

The Motion to Substitute is granted.

Joint Debtor, Joyce Pistorius, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Raymond Walter Pistorius. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on September 7, 2012. On November 28, 2012, the Debtor's Chapter 13 Plan was confirmed. On April 20, 2015, Debtor Raymond Walter Pistorius passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor. Despite Debtor's passing, Joint Debtor continued the plan payment to of the confirmed chapter 13 plan until October 21, 2014 when a Notice of Completion of Plan Payments and Obligation to File Documents was filed. On December 15, 2015, the case was closed without discharge as the § 1328 certificates were not filed.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on June 2, 2016. Dckt. 47. Joint Debtor is the surviving

spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

Chapter 13 Trustee filed an opposition to this motion, Dckt. 53, which was subsequently remedied by Debtor, Dckt. 56. Trustee withdrew the opposition, Dckt. 60.

DISCUSSION

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

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

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

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

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of

Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

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

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

Here, Joyce Lavelle Pistorius has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 47. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Joyce Lavelle Pistorius, as the surviving spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Raymond Walter Pistorius. The court grants the Motion to Substitute Party.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Joyce Lavelle Pistorius is substituted as the successor-in-interest to Raymond Walter Pistorius and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. That requirement was met.

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.

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

1. The plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total \$11,929 and Debtor is proposing a 1% dividend to unsecured creditors amounting to \$25.00 and Debtor is proposing to pay priority creditors \$3,000.
2. It appears the plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$425 for 60 months with a 1% dividend to unsecured creditors. Debtor is surrendering their residence in class 3 however Debtor still resides at the residence based on testimony from the 341 meeting. Debtor lists a rent expense of \$1,200 on schedule J which is projected and the Debtors are not currently paying rent.

The court agree with Chapter 13 Trustee, and the plan appears to fail liquidation analysis and does not appear to be Debtor's best efforts. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

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 June 20, 2016. 28 days' notice is required. That requirement was met.

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

The Motion to Sell Property is denied without prejudice.

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

A. 859 Channing, Benecia, California.

Subsequently, the chapter 13 trustee filed a motion pointing out numerous deficiencies in the instant motion. Dckt. 62.

The Debtor responded, Dckt. 70, asking the court to deny the motion without prejudice, noting that Debtor's counsel provided incorrect information that was an oversight.

The docket reflects that on July 6, 2016, the Debtor filed another Motion to Sell the above-described property, Dckt. 65. The court will deny the instant motion without prejudice.

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

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 22, 2016. Fourteen days' notice is required. This requirement was met.

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.

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

1. Debtor has listed the debt of Travis Credit Union on Schedule D as a 2003 Ford Focus, however the creditor filed a claim on May 11, 2016 and listed the asset as a 2014 Ford Focus. Unless the schedules are incorrect, Debtor may have additional property which may mean the Debtor has additional property or expenses and cannot make the plan payment or has property so that unsecured claims should receive more.
2. Debtor is under the median income however Debtor failed to list any gross income on Form 122C-1, although according to Schedule I both Debtors have been employed for more than the last 2 years. Based on this omission, it may be that the Debtor's income has not been reliable historically and Debtor cannot make plan payments or Debtor

may be over median income so that the plan should go for 60 months and their annuity will pay them a lump sum of \$75,000 on 06/22/20.

3. According to schedule I, Debtor receives monthly income of \$867.78 from "athene" which appears to be a Trust Annuity-arising from personal injury and valued at \$200,000 per schedule B. The Trustee has requested a copy of the annuity, however has not received it to date.

DEBTOR'S RESPONSE

Debtor responds to Trustee's objections urging the court to overrule Trustee's objection, providing:

1. Debtor filed amended schedules on July 11, 2016.
2. Debtor filed an amended form 122C-1 on June 23, 2016.
3. Debtor sent Trustee the requested Annuity statement on July 11, 2016.

DISCUSSION

Debtor appears to have sufficiently resolved Trustee's basis for objections. First, as too the Ford Focus vehicle, there appears to be confusion as to whether this vehicle is a 2003 model or a 2014 model. Debtor's original schedules state that it is a 2003 Ford Focus, valued at \$15,500, on which Travis Credit Union is owed \$16,377.56. The amended schedule filed July 12, 2016, Dckt. 27, currently reflects that the vehicle is a 2014 model Ford Focus. Second, on June 23, 2016, Debtor filed amended form 122C-1, Dckt. 20, addressing Trustee's concern. Finally, Debtor asserts that on July 11, 2016, the annuity statement was forwarded to chapter 13 Trustee.

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 3, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the proposed plan on the basis that:

1. Debtor is \$1,973 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,973 is due July 25, 2016. Debtor has paid \$1,973 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Section 6 of Debtor's amended plan indicates the plan payments shall be \$1,973 per month for 12 months. or until Debtor's residence is sold then payments shall be \$435 per month after the sale. Debtor's amended schedule J lists net income of \$1,973. Debtor's declaration states that when the house sells, Debtor should be able to find a house to rent for \$1,800 per month. Adding a rental expense of \$1,800 into the budget will leave net income of \$173 per month, and Debtor will not be able to afford

\$435.

On July 11, 2016, Debtor Miracle Wanzo submitted a supplemental declaration addressing Trustee's concerns.

On July 13, 2016, Chapter 13 Trustee filed a statement of non-opposition to the confirmation of the plan, no longer opposing confirmation of the plan, Dckt. 66.

The 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, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42. [16-23788](#)-C-13 EMANUEL/SILVIA UNGUREANU
PLC-1 Peter Cianchetta

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.

Thru #44

6-13-16 [8]

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 13, 2016. Twenty-eight days' notice is required. This requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3641 Bainbridge Drive, North Highland, California. The Debtor seeks to value the property at a fair market value of \$125,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$133,167. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$143,291. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The 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.

Chapter 13 Trustee has filed a motion of non-opposition, Dckt. 38, and points out that Creditor has not filed a claim in this case.

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

holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3641 Bainbridge Drive, North Highland, 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 \$125,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

43. [16-23788](#)-C-13 EMANUEL/SILVIA UNGUREANU MOTION TO AVOID LIEN OF
PLC-2 Peter Cianchetta HOUSEHOLD FINANCE CORP OF CA
6-13-16 [[13](#)]

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 13, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Household Finance Corp. of California for the sum of \$15,853.22. The abstract of judgment was recorded with Sacramento County on January 29, 2009. That lien attached to the Debtor's residential real property commonly known as 3461 Bainbridge Drive, North Highland, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$125,000 as of the date of the petition. The unavoidable consensual liens total \$276,458.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Household Finance Corp. of California, Sacramento County Superior Court Case No. 34200800011223, Document No. 20090129, recorded on January 29, 2009, with the Sacramento County Recorder, against the real property commonly known 3461 Bainbridge Drive, North Highland, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

44. [16-23788](#)-C-13 EMANUEL/SILVIA UNGUREANU MOTION TO AVOID LIEN OF GFCS,
PLC-3 Peter Cianchetta INC.
6-13-16 [[18](#)]

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 13, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of GFCS, Inc. for the sum of \$31,719.54. The abstract of judgment was recorded with Sacramento County on April 30, 2009. That lien attached to the Debtor's residential real property commonly known as 3461 Bainbridge Drive, North Highland, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$125,000 as of the date of the petition. The unavoidable consensual liens total \$276,458.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of GCFS, Inc., Sacramento County Superior Court Case No. 34200800028386CLCLGDS, Document No. 20090430, recorded on April 30, 2009, with the Sacramento County Recorder, against the real property commonly known 3461 Bainbridge Drive, North Highland, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the July 19, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2016. 28 days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to incur a student loan for her son to attend Sacramento State University, which the total amount is \$13,876, with monthly payments of \$175. The loan interest rate is determined at the time of repayment but carries maximum interest rate of 10.5%. The loan will be applied to tuition and school related expenses for the years of 2016-2017.

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

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion is granted and Kristie Jo Allensworth ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 24.

Final Ruling: No appearance at the July 19, 2016 hearing 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). 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 April 25, 2016. Thirty-five days' notice is required. That requirement was met.

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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$306 under the terms of the proposed modified plan. Accordingly to the proposed modified plan, payments of \$49,918 have become due. The Debtor has paid a total of \$49,612 to the Trustee with the last payment posted on May 27, 2016 in the amount of \$2,756.

DEBTOR'S RESPONSE

Debtor responds, stating that he is delinquent \$306 because he did not increase his plan payments until April 25, 2016, when he should have done so March 25, 2016. Debtor states he will pay \$306 by the time of hearing.

JUNE 28, 2016 HEARING

At hearing on June 28, 2016, the court continued the instant motion in order to permit time for Debtor to become current.

TRUSTEE'S RESPONSE

On July 5, 2016, the trustee filed a statement of non-opposition, stating that Debtor is now current under the terms of the plan.

DISCUSSION

The Debtor having resolve Trustee's only basis for opposition, the plan will be confirmed and the motion granted.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 25, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.
