UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 16, 2016 at 3:00 p.m.

1.	**14-29223-E-13** **SDH-4**	**WILLIAM/TERRY SHOUSE** **Scott Hughes**	**CONTINUED MOTION TO APPROVE LOAN MODIFICATION** 6-2-16 [50]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2016. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted with the court authorizing the Debtors to enter into a trial loan modification with Nationstar Mortgage, LLC, as the agent for U.S. Bank National Association, as Trustee (the creditor stated on Proof of Claim No. 8); and authorize Debtor to make direct payments in the amount of $2,302.51 to Nationstar Mortgage, LLC, and reduce the monthly payments to the Chapter 13 Trustee under the Confirmed Chapter 13 Plan to $2,167.49 for the months of July 2016 through December 2016.

The Motion to Approve Loan Modification filed by William Jr. And Terry Shouse ("Debtor") seeks court approval for Debtor to incur post-petition credit.

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

A. "The debtors hereby requests that the Court allow them to accept a trial loan modification offer being offered by Nationstar Mortgage, LLC and secured by a first position deed of trust on the debtor's residence at 3111 Stonebrook Court, Auburn, CA 95603 as follows:

1. First payment: $2,305.51 by 7/1/2016
2. Second Payment: $2,305.51 by 8/1/2016
3. Third Payment: $2,305.51 by 9/1/2016

B. After the debtors make all of the payments under this offer and if the debtors are offered a final permanent loan modification, the debtors will ask the court to approve the final modification agreement.

C. Wherefore, the applicants request that the Court grant the motion and allow the debtors to accept the trial loan modification offer."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 12, 2016. Dckt. 60. The Trustee states that the Creditor is included in Class 1 of the confirmed plan. The Trustee believes the trial payments should be made through the plan. The Trustee notes that Proof of Claim No. 8 indicates the name of the creditor is U.S. Bank, N.A., as Trustee for Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates, Series 2006-4. Nationstar Mortgage, LLC is listed as the name and address for notices and payments.

The Debtors explanation as to why the Creditor is listed in Class 4 rather than Class 1 is not sufficient. The Debtor claims that the nature and amount of the arrears qualify them for the arrears to be put on the "back end." However, as the loan modification and e-mail states, this will not be determined until a final loan modification is offered. The Debtors are assuming that they will be able to qualify for the final

modification and therefore should ignore the obligation of arrears. Unfortunately, this is not proper.

The Trustee is correct, and if the court interpreted the proposed loan modification as summarily, cryptically stated, the motion would be denied. Debtor might then well lose any ability to obtain a loan modification, the creditor concluding that Debtor is not requesting and prosecuting such request in good faith.

The court would save the Debtor from such possible loss by a more expansive reading of the Motion. Of course, the court will take into account the actual motion and level of legal services provided in ultimately determining any additional legal fees sought by counsel relating to the present motion.

DEBTOR'S RESPONSE

Debtor filed a Reply to the Trustee's Opposition. No evidence is provided for the various arguments made in the Reply by Debtor's Counsel. The Reply, which appears to be a cookie cutter reply used also in response to the Trustee's objection to the Debtor's motion to confirm a modified plan which is based on the alleged temporary loan modification. Dckt. 62. The Reply attempts to submit unauthenticated documents as exhibits.

The Reply appears to be based on the incorrect assertion that if the court does not do what is asked/demanded/order by Debtor in the present Motion, Debtor will be denied the opportunity to lower their house payments. That is patently incorrect. Debtor merely need to comply with the Bankruptcy Code and properly obtain authorization for the trial loan modification, then get terms for a final loan modification, get the final modification approved, and then modify the plan when the actual final loan modification terms are set. As show in this ruling, the order approving (or even continuing the hearing for) the trial loan modification can prevent there from being an overpayment to the creditor.

The Debtor filed a response to the Trustee's response on July 19, 2016. Dckt. 65. The Debtor responds as follows:

1. The loan modification states that if the balance of the delinquent (arrears) after the modification is more than 115% of the value of the home, it will be put at the back end of the loan with no interest added. The only time it would be due is if the home is sold, refinances, or at maturity.

2. The Debtor asserts that they contacted Nationstar inquiring as the arrears on the mortgage. The Debtor claims that they were informed that the arrears are going to be put at the back end of the loan once the final loan modification is prepared.

3. Debtors would rather make the trial loan modification payments directly than through the Trustee because they would not have to make a monthly payment on the mortgage arrears which will be rolled in the loan modification. That would free up the disputed room in their budget. The Debtor argues that if they have to pay the mortgage through the Trustee, the monthly mortgage part of the plan payment would only be going down from $2,631.92 to $2,305.51. The Debtors would still be paying on the arrears.

4. It would not be fair to the Debtors to deny them the opportunity to lower their house payments without having to cure the arrearages.

DEBTOR'S SUPPLEMENTAL DECLARATION

On August 3, 2016, the Debtor filed a supplemental declaration. Dckt. 75. The Debtor states that the loan modification agreement was filed separately in support of the Debtor's Motion to Confirm the Modified Plan.

The Debtor argues that the loan modification agreement states that if the balance of the delinquent (arrears) after the modification is more than 115% of the value of the home, it will be put at the back end of the loan with no interest added. The only time it would be due is if the home is sold, refinances, or at maturity.

The Debtor reports that the final loan modification is not yet prepared and the arrears will not be put at the back end of the loan until the final loan modification is drafted. However, the Debtor points to the terms of the trial loan modification and the e-mail correspondence with Nationstar Mortgage, LLC. The Debtor states that they will seek court approval at the time of final loan modification.

The Debtor also provides a "Nationwide Title Clearing Assignment Verification Report," which shows that Nationstar Mortgage, LLC is the current creditor.

The Debtor states that, due to certain medical emergencies that have arisen, they will need to file a modified plan and supplemental budget. The Debtor states that the loan modification is necessary in order for the Debtor to have a viable budget and to be able to complete the Chapter 13 plan.

JULY 26, 2016 HEARING

At the hearing, the court stated it will not issue orders purporting to effect the rights or authorization action to be taken with fictitious or placeholder entities. Possibly Nationstar Mortgage, LLC is the loan servicer and authorized agent for U.S. Bank, N.A., Trustee. If so, then it can disclose the identity of its principal and clearly identify that it is acting as the agent to bind its principal. It cannot be made to appear by the Debtor to be the principal.

Rather than denying the Motion and putting at risk Debtor's ability to obtain the loan modification, the court continued the hearing. Additionally, the court authorized the Debtor to make the $2,305.51 monthly payments thereunder to Nationwide Mortgage, LLC directly for the months of July, August, September, October, and November 2016. Further, the court authorizes the Debtor to reduce the monthly plan payments under the confirmed plan to $2,164.49 for the months of July through November 2016 and authorizes the Trustee to suspend all payments on the Class 1 Claim of Nationstar Mortgage, LLC through the Plan for those same months. FN.1.

FN.1. While fiduciaries of the Debtor might ultimately be responsible for the loss of the loan modification if the motion was just denied, judicial proceedings should not be ones that foment further litigation if it can be avoided. Here, the court infers, implies, and surmises that the motion is actually seeking authority to

enter into a loan modification with U.S. Bank, N.A., Trustee, acting through its agent Nationstar Mortgage, LLC. While doing such in this case, consumer attorneys should not expect the court to stretch so far in other cases when incomplete motions are filed and clear documents of who the actual creditor is can readily be found in the record.

DISCUSSION

As outlined above, Debtor provides minimal grounds (which must be stated with particularity, Fed. R. Bankr. P. 9013) upon which the requested relief is based. Motion, Dckt. 50. Other than three payments to be made and there being some possible final modification for some unstated terms, the court is given nothing.

Viewed most charitably, the court in "interpreting" the motion for Debtor could view this as stating:

A. Debtor current has an existing mortgage with Nationstar Mortgage, LLC for which the monthly payment is $XXX.

B. Under Debtor's confirmed Chapter 13 Plan (Dckt. XX), Debtor is making a Class 1 payment through the Plan to Nationstar Mortgage, LLC to cure the pre-petition arrearage and current post-petition mortgage payment.

C. Debtor is actively pursuing a loan modification with Nationstar Mortgage, LLC which is intended to ultimately cure the pre-petition defaults and restructure this debt.

D. Debtor has obtained a trial loan modification proposal from Nationstar Mortgage, LLC as a pre-condition to Nationstar Mortgage, LLC considering offering Debtor a final loan modification.

E. Under the proposed trial loan modification Debtor must make at least three months of trial loan modification payments of $2,305.51 each for the months of July, August, and September 2016.

F. The current Class 1 Plan distribution to Nationstar Mortgage, LLC for the current monthly payment and arrearage is $3,492.58. Plan, Dckt. 5.

G. Because the trial loan modification payments are due on the first of the month and are critical to consideration of the final loan modification, Debtor further requests that Debtor be authorized to make the monthly payments of $2,305.51 each for the months of July through November 2016 directly to Nationstar Mortgage, LLC than through the plan. This direct payment is necessary to insure that it is received by National Star Mortgage, LLC by that date and not put the Chapter 13 Trustee to the burden and risk of having to schedule a special distribution or assertion of failure to make a timely payment.

H. The Debtor shall make the timely $2,305.51 payments directly to Nationstar Mortgage, LLC. for the months of July -November 2016, and thereby requests that the court reduce the monthly payment to the Trustee to $2,164.49 for those months and authorize the Chapter 13 Trustee to suspend any distributions from the Trustee for those months to Nationstar Mortgage, LLC.

I. Upon the Debtor obtaining a final loan modification offer from Nationstar Mortgage, LLC, Debtor shall promptly file a motion for approval of that modification and motion to modify the Chapter 13 Plan to take into account such permanent modification of the obligation owed to Nationstar Mortgage, LLC.

Other Debtors and their counsel have made such requests, which have been approved by this court.

FAILURE TO SEEK AUTHORIZATION TO ENTER INTO A LOAN MODIFICATION WITH THE CREDITOR WHOSE RIGHTS ARE TO BE MODIFIED

Debtor, with the assistance of counsel and subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, affirmatively states that Debtor wants to accept a trial loan modification with Nationstar Mortgage, LLC. Debtor does use some ambiguous language saying that the trial loan modification is being "offered by" Nationstar Mortgage, LLC. However, the Motion does not address anyone else with whom Debtor intends to enter into the contract.

The court is directed to Exhibit A for the terms of the trial loan modification. Exhibit A, Dckt. 53. No trial loan modification agreement is attached. Rather, Exhibit A is merely a single page notice saying that Scott D. Hughes' unidentified client has been approved for a loan modification under the HAMP Program. Subsequently, the court and parties in interest have been told that the loan modification agreement is filed as an exhibit to the response by Debtor to the opposition of the Trustee to the Motion to confirm the Modified Plan. In reviewing this Exhibit and Response, while an exhibit has been filed, nobody authenticated the exhibit. Fed. R. Evid. 901, 902.

A review of the unauthenticated Exhibit to the Response to the Opposition to the Motion to Confirm (the court again stretching to try and keep this Debtor from losing a loan modification) discloses the following:

A. The first page is the same as the one page exhibit originally filed in support of this Motion by Debtor, which is reviewed above.

B. The Exhibit states that Debtor has been approved to "enter into a trial period plan....This is the first step toward qualifying for more affordable mortgage payments."

C. "After your [unidentified] client makes all trial period payments in a timely manner and submits all required documents, the mortgage will be permanently modified as described herein."

D. The Exhibit states that in addition to the loan modification, if a permanent modification is given, then the "client" will get a $5,000.00 "one-time pay-for-success incentive." Question 5 of Exhibit, "Are there financial incentives that I may qualify for if I am current with my new payments?" This $5,000.00 "kicker" being paid during this case has not been heretofore disclosed.

E. On page 7 of the Exhibit, reference is made several time to "The servicer" taking action, obtaining personal information about the Debtor, and disclosing that information. Who is the "servicer" is not disclosed.

Unauthenticated Exhibit B to Response to Opposition to Motion to Confirm Modified Plan; Dckt. 67.

The Debtor has also provided his declaration to try and support the court approving this as a final loan modification between the Debtor and Nationstar, LLC. Dckt. 75. He provides his conclusion that these documents establish that Nationstar, LLC is the "real party in interest." (No explanation is provided how this lay person debtor can provide testimony concerning the legal requirements of what is a "real party in interest.)

As testified to by Debtor, the meal from a "Josephine Ingraham" states that no final loan modification documents are drafted until the final trial payment is made. Exhibit D, Dckt. 74. Thus, by Debtor's own testimony and the exhibit he relies on, there is no final loan modification agreement and the terms are not yet set. While the Debtor may reasonably anticipate what the terms may be, no such terms can be presented to the court. Additionally, as disclosed in the unauthenticated Exhibit B to the Response to the Opposition to the Motion to Confirm Modified Plan, the terms may change and be even better for the Debtor. One cannot know what the actual terms are until the final terms are negotiated and reduced to writing.

Exhibit D, Dckt. 74, also include the email from Debtor to Ms. Ingraham stating that he is in desperate need of her help. He is sending her a letter from his attorney concerning specific information that is required. Nothing indicates that the Debtor's attorney, who best understands the legal issues before the court, is acting to communicate with, and obtain the identity of, the creditor.

The next exhibit relied upon by Debtor in coming to the conclusion that Nationwide, LLC is the "real party in interest" is an "Assignment Verification Report" which he states he received from "Nationstar." This "Report" states that the current "Beneficiary" is "Nationstar Mortgage, LLC (but does not define what is meant by the term "Beneficiary"). It further states under the "Security Information" heading that the "Lender" Mortgage Electronic Registration Systems, Inc., as nominee, obtained a deed of trust from Debtor on February 20, 2006,; them Mortgage Electronic Registration Systems, Inc, as nominee, issue an assignment of something (unidentified) to Aurora Loan Services, LLC. Then on September 25, 2012, Aurora Loan Services, LLC executed an assignment of something (unidentified) to Nationstar Mortgage, LLC. Exhibit E, Dckt. 74.

As those in the bankruptcy world know, Mortgage Electronic Registration systems, Inc. (commonly known as "MERS") was created by financial institutions to facilitate the easy transfer of loans without having to record assignments of deeds of trust. For a discussion of MERS, see *Cervantes v. Countrywide Home Loans*, 656 F.3d at 1038-1040.

MERS was a mere placeholder for the various member institutions, providing (most charitably stated) a stable entity to which the owner of property could go to determine who the actual creditor was for which MERS was the agent named on the deed of trust.

As an unnumbered Exhibit Debtor provides what is stated to be a copy of the original deed of trust naming MERS as the nominee. Dckt. 74 at pages 5-17. This Deed of Trust includes the following provisions:

A. "(E) "MERS" Is Mortgage Electronic Registration Systems. Inc. MERS is a separate corporation that is **acting solely as a nominee for Lender** and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware . and has an address and telephone number of P.O, Box 2025, Flint, MI 48501-2026. tel. (1188) 679-MERS." (Page 1 of 20 of Deed of Trust) FN.2.

The Deed of Trust clearly identifies that MERS is solely the agent for the actual Lender, who is the creditor to whom the money is owed.

B. "TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS...." (Page 3 of 20 of Deed of Trust)

The Deed of Trust clearly states that whatever rights MERS has, it is solely as the agent for the actual creditor.

C. "Borrower understand, and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all those interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of Lender, including, but not limited to, releasing and canceling this Security Instrument." (Page 3 of 20 of Deed of Trust).

The only rights given to MERS to exercise is under the security agreement, acting as the agent for the actual creditor.

D. In the enforcement provisions of the Deed of Trust, reference is made to "Lender" exercising rights and powers under the Deed of Trust, including: (1) "Lender" giving notice; (2) "Lender" invoking the power of sale, and (3) "Lender" requesting that the Deed of Trust being reconvey. (Page 11 of 20 of Deed of Trust).

Again, clearly MERS is the agent for the actual third-party creditor, and only the agent. The term "Lender" is a defined term in the Deed of Trust different from MERS, which uses the defined the "Beneficiary," as the nominee of "Lender."

Another unnumbered Exhibit is titled "Corporate Assignment of Deed of Trust, bearing a recording date of July 1, 2011. Exhibits Page 18, Dckt. 74. In this document MERS, solely as nominee, purports to assign the beneficial interests, and only the beneficial interests, under the Deed of Trust to Aurora Loan Services, LLC. There is no purported assignment of the underlying debt (the note) secured by the Deed of Trust.

Another unnumbered Exhibit is titled "Assignment of Deed of Trust," bearing a recording date of October 16, 2012. Exhibits Page 19, Dckt. 74. In this document, Nationstar Mortgage, LLC, as the attorney in fact for Aurora Loan Services, LLC purports to assign "all beneficial interest and rights ...under that certain Deed of Trust [and only the Deed of Trust]..." from Aurora Loan Services, LLC to Nationstar Mortgage, LLC.

This bankruptcy case was filed on September 15, 2014, well after the purported assignment of the Deed of Trust from Aurora Loan Services, LLC to Nationstar Mortgage, LLC. Proof of Claim No. 8 was filed in which, under penalty of perjury and subject to both civil and criminal penalties, it is stated that the actual creditor is U.S. Bank, N.A., as Trustee. Further, the notices and payments are to be sent to Nationstar Mortgage, LLC – such notices and payment provision being consistent with Nationstar Mortgage, LLC being the loan servicer for the actual creditor – which in this case is U.S. Bank, N.A., as trustee.

Compounding the misstatement that Nationstar Mortgage, LLC is the "creditor," is that on July 23, 2015, U.S. Bank, N.A. filed a Notice of Post-petition Mortgage Fees, Expenses, and Charges, adding to Proof of Claim No. 8. U.S. Bank National Association is clearly identified as the "Creditor." Then on September 10, 2016, a Notice of Mortgage Payment Change was filed for Proof of Claim No. 8. Again, U.S. Bank National Association, as trustee, is stated to be the "Creditor." Multiple times, under penalty of perjury, U.S. Bank National Association, as trustee, has been clearly identified as creditor.

This is consistent with the copies of the Deed of Trust and assignments, which identify MERS as only the nominee of the "Lender" and the purported assignments of only the Deed of Trust.

The court further notes that for the Proof of Claim and the Notice of Mortgage Payment Change, they were signed by attorneys for the Creditor. Counsel for Debtor could have contacted the attorneys (who the court knows now understand the need to correctly identify the creditor in proofs of claims and pleadings) to confirm the identity of the creditor. It was not necessary, or appears appropriate, to have the Debtor send an email to a mailbox at Nationstar Mortgage, LLC to get back a form response and copies of documents which prove to the contrary of the "legal conclusion" drawn by Debtor in his declaration.

As presented, the Motion continues to request that the court issue an order determining and authorization action as between the Debtor and a person who does not have the claim at issue in this bankruptcy case.

MODIFICATION OF RELIEF REQUESTED

While failing to provide the court with a trial loan modification agreement and motion identifying the creditor, Debtor and counsel have modify the relief requested. Buried in page six of the Supplemental Declaration of Debtor (Dckt. 75) is the statement that Debtor requests that the court authorize him to make the trial loan modification payments directly, rather than through the Trustee. This is

consistent with the procedure which has been utilized by many other debtors and their counsel on numerous time in this court.

The Debtor goes further, requesting that the court, *ex parte*, modify the existing confirmed plan and reduce his plan payments to $650.00 a month "because of these increase medical expenses I am having." Declaration ¶ 7, Dckt. 75. In Paragraph 6 of the Declaration the Debtor makes reference to "Expenses for medical bills "as you can see in the attached email marked Exhibit "F" from me to my attorney dated July 29, 2016."

The first issue raised is why the Debtor has provided the court, and all parties in interest, with an attorney-client communication. While attorney-client communications are privileged, that privilege can be waived, with one method being the intentional disclosure of that communication.

In the email Debtor Terry Shouse make reference to some serious medical conditions, but provides no information about what actual out of pocket medical expenses the Debtor has and what is covered by insurance. No actual financial information is provided.

The Debtor's "candor" with respect to expenses has been put in question in connection with the recent Motion to Confirm a proposed modified plan, which motion was denied. In the Civil Minutes for the hearing on that Motion, the court noted that Debtor attempted to justify reducing the plan payments based on unexplained substantial increases in expenses, including: (1) +$250 a month for additional home maintenance (Debtor purporting to have reasonable and necessary annual expenses of $3,000); (2) +100 a month for additional electricity, gas, and heat (Debtor purporting to have reasonable and necessary annual expenses of $5,400); (3) +$200 a month for additional clothing and laundry (Debtor purporting to have reasonable and necessary annual expenses of $2,400); and (3) +500 a month for additional anticipated taxes (Debtor purporting to have reasonable and necessary taxes of $18,192.00 a year on $58,236 in wage income, plus $13,284 in retirement income, and Social Security income. The court addressed all of the unexplained expense increases in the Civil Minutes from the hearing (Dckt. 68) and the inadequacy of the Debtor's explanation.

Now, it appears that Debtor and counsel are merely trying to "backdoor" the denial of confirmation and reduction of the plan payment by providing even less of an explanation. This does not appear to be in good faith. However, that issue can be addressed when Debtor files a new modified plan, motion to confirm, and competent, credible, convincing testimony as to why the new, higher expenses are reasonable, as compared to the expenses which Debtor previously stated under penalty of perjury were reasonable and necessary.

AUGUST 16, 2016 HEARING

Notwithstanding some substantial deficiencies, the court will cobble together the pleadings, Proof of Claim, and other documents in the file, grant the Motion and:

A. Authorize William and Terry Shouse, the Debtors, to enter into the Trial Loan Modification Agreement with Nationstar Mortgage, LLC, as the agent for U.S. Bank National Association, as Trustee (the creditor stated on Proof of Claim No. 8) on the Terms and Conditions stated in the Loan Modification offer letter filed as Exhibit B,

Dckt. 66.

B. Authorize Debtors to make direct payments in the amount of $2,302.51 to Nationstar Mortgage, LLC, and reduce the monthly payments to the Chapter 13 Trustee under the Confirmed Chapter 13 Plan to $2,167.49 for the months of July 2016 through December 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 Approve the Loan Modification filed by William and Terry Shouse, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the court authorizes:

A. Authorize William and Terry Shouse, the Debtors, to enter into the Trial Loan Modification Agreement with Nationstar Mortgage, LLC, as the agent for U.S. Bank National Association, as Trustee (the creditor stated on Proof of Claim No. 8) on the Terms and Conditions stated in the Loan Modification offer letter filed as Exhibit B, Dckt. 66: and

B. Debtors to make direct payments in the amount of $2,302.51 to Nationstar Mortgage, LLC, pursuant to the terms of the trial loan modification and reduce the monthly payments to the Chapter 13 Trustee under the Confirmed Chapter 13 Plan to $2,167.49 for the months of July 2016 through December 2016.

2. **13-24684-E-13** **TOD BELLETTO** **OBJECTION TO NOTICE OF**
PGM-3 **Peter Macaluso** **POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES**
6-29-16 [72]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 29, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 Objection to Notice of Mortgage Payment Change is overruled with prejudice.

Tod Belletto ("Debtor") filed the instant "Objection to Notice of Mortgage Payment Change Filed on 2/5/16 & Request for Attorney Fees Under C.C.P. § § 1717 & 2941." Dckt. 72. The creditor identified is "Seterus, Inc. As the authorized subservicer for Federal National Mortgage Associations."

The "Objection," in relevant part argues that "because the secured creditor is classified in the chapter 13 plan as a class 2, and the debtor is paying the property taxes and insurance directly, therefore there is no reason for the escrow payments by the secured creditor." Dckt. 72.

CREDITOR'S RESPONSE

Creditor filed a response on August 2, 2016. Dckt. 77. The Creditor argues that the Debtor incorrectly references the document as a Notice of Mortgage Payment Change when it is in fact a Notice of Post-petition Mortgage Fees, Expenses, and Charges.

DISCUSSION

Review of Objection

First, the court finds it important to review the Debtor's "Objection to Notice of Mortgage Payment Change Filed on 2/5/16 & Request for Attorney Fees Under C.C.P. § § 1717 & 2941."

After spending 3-pages reviewing previous, and currently irrelevant, Notice of Mortgage Payment Change filed by the Creditor, the Debtor states, as to the 2/5/16 Notice:

> "10. In th 2/5/16, Notice of Payment change the Secured Creditor reported that the current escrow payment had been charged $1,133.92."

Dckt. 72.

Then, the Debtor argues:

> "In this instance, Secured Creditor's claim, pursuant to the motion to value and the confirmed plan is that of a class 2 claim, to be paid in full over the course of the plan.
>
> Here, Secured Creditor has been filing notice of payment changes asserting to be paying the "escrow" account, charging the claim, and incurring a duplication of payments to the county property tax collector, and eventually a claim that the class 2 claim incurred post-petition claims not accounted for in the plan payoff.
>
> As such, the Notice of Mortgage Payment Change filed by Secured Creditor should be denied to the extent that it pays for any property taxes and/or insurance."

Dckt. 72.

The remainder of the Objection asserts attorney's feels pursuant to California Code of Civil Procedure § 1717 and 2941.

Review of "Notice"

The "Notice" that is at the heart of this Objection is not a Notice of Mortgage Payment Change as the Debtor basis his entire Objection on, but rather a "Notice of Post-petition Mortgage Fees, Expenses, and Charges." Notice, February 5, 2016. The Notice indicates that the following post-petition fee, expense, or charge has been incurred after the petition was filed:

> "9. Insurance advances (non-escrow) - $1,133.92"

The Notice explicitly instructs for creditors to "not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court."

Ruling

First, the court concurs with the Creditor that the Debtor and Debtor's counsel facially gets the objection incorrect. Nowhere in the Notice is it deemed a Notice of Mortgage Payment Change, nor does any of the information contained therein indicate any change in the mortgage payment. The Debtor and Debtor's counsel both appear to have convoluted the two, as seen by the Debtor and Debtor's counsel reliance on the history of the Notices of Mortgage Payment Change.

Second, neither the Debtor nor Debtor's counsel provides any evidence or testimony showing that it is actually a duplicate or improper advance. The Debtor does not provide any declaration attesting to the fact. The only declaration filed in connection with the instant Objection is one by Debtor's counsel, Peter Macaluso, in which he also testifies to facts as they concern his request for attorney's fees.

The court on multiple occasions has addressed with Debtor's counsel that he must actually provide competent and admissible evidence and testimony in order to prevail on motions and objections. In order to prevail, the Debtor's counsel is required to submit evidence to support the claim. No such evidence has been provided here. In fact, the Debtor's counsel misidentifies the Notice even after having spent approximately 2.17 hours meeting with the client and reviewing the Notice. Within the first minute of looking at the document Debtor's counsel should have realized that this was not a Notice of Mortgage Payment Change and did not increase any escrow.

The silence is deafening in Debtor failing, or refusing, to provide any testimony under penalty of perjury that the insurance has been paid and Creditor was not forced to make an advance for insurance upon receiving notice that Debtor defaulted on the obligation to maintain insurance on the property.

Third, the Creditor's response does not fare much better. Rather than providing a declaration or properly authenticated evidence justifying the post-petition fee, the Creditor hangs its hat on the fact that the Debtor misidentified the document. Equally easy for Creditor was to have a person with personal knowledge testify that a notice of cancellation of insurance was received and it was necessary for creditor to make the advance for the forced place insurance. FN.1.

FN.1. Notwithstanding the apparent misstatement in the opposition, Seterus, Inc. is not the "secured creditor," but the servicer for the actual secured creditor Federal National Mortgage Association. The existence of Federal National Mortgage Association is clearly identified in the opposition and the court can identify the actual creditor (as that term is used in 11 U.S.C. § 101(10). The court is confident that this potentially misleading shorthand reference to Seterus, Inc. will not be repeated.

Fourth, it is clear from the pleadings that neither party are entitled to attorney's fees. The Debtor's Counsel has fundamentally misidentified the Notice of Post-petition Mortgage Fees, Expenses, and Charges and fails to provide any evidentiary basis for the relief sought. If Federal National Mortgage Association, acting through its loan servicer Seterus, Inc. had presented the court with some evidence that a bona fide, necessary advance for forced place insurance was required, the court could consider whether it was the "prevailing party" on the issue. At best, Debtor and Seterus, Inc. have "fought" to a draw, neither

the winner, neither the loser.

Out of the five-pages of Opposition, signed by Debtor's counsel, and out of the 68- pages of Exhibits, the Debtor has failed to provide any factual or legal basis for the Objection, seeing that the Objection itself is premised on the incorrect interpretation of the Notice.

As such, the Objection is overruled with out prejudice

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change 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 Objection is overruled without prejudice.

3. **13-35754-E-13** **MATTHEW/ARIANA VICKERS** **CONTINUED MOTION TO RECONSIDER**
WSS-6 **W. Steven Shumway** **DISMISSAL OF CASE**
6-28-16 [101]

DEBTOR DISMISSED:
06/27/2016
JOINT DEBTOR DISMISSED:
06/27/2016

No Tentative Ruling: The Motion Vacate Dismissal of 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.

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

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

The Motion to Vacate is xxxxxxx.

Matthew and Ariana Vickers ("Debtor") filed the instant Motion to Vacate Dismissal on June 28, 2016. Dckt. 101.

The instant case was filed on December 16, 2013. Dckt. 1. A plan was confirmed on March 4, 2015, and an order confirming the plan was entered on March 12, 2015. Dckt. 76 and 77.

On May 24, 2016, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to Debtor's delinquency in plan payments. Dckt. 90.

On June 22, 2016, a hearing on the Motion to Dismiss was held and the Motion was granted. Dckt. 99. The ruling was final, as the Debtor had filed no timely opposition.

On June 28, 2016, Debtor filed this instant Motion to Vacate claiming that the delinquency was an inadvertence due to a confusion in payment back in September 2015. The Debtor at that time believed they were paying the delinquency and the September payment. However, the Debtor was only curing the delinquency. Therefore, come May, the Debtor was delinquent by two months when the Debtor believed it was only one. The Debtor mistakenly believed that the payment they sent in would cure the delinquency and that the Trustee would withdraw the Motion. The Debtor claims that the Debtor's counsel had misread the Trustee's report on payments which led to the delinquency. The Debtor are 14 months away from completing the plan.

The Debtor seeks to have the order dismissing the case vacated, per Rule 60(b).

TRUSTEE'S RESPONSE

The Trustee filed a response to the instant Motion on July 7, 2016. Dckt. 109. The Trustee states that there does not appear to be dispute over the delinquency or that one existed at the time of the hearing.

The Trustee argues that there the Debtor made a reasonable mistake, based on the Debtor appearing to have become delinquent in March 2015 and never curing the amount.

The case was delinquent $13,750.00 when the case was dismissed on June 27, 2016 and the next payment of $6,880.00 is due July 25, 2016. Provided the Debtor is curing this default, the Trustee does not oppose the Motion.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

First, the court has reviewed the Motion to Dismiss and Debtor's response. The Motion states, in pertinent part:

A. Debtors have paid $170,708.00 into the Plan.

B. The last payment was received on May 20, 2016.

C. Debtor is delinquent $6,880.00 as of the filing of the Motion on March 24, 2016.

D. Prior to the hearing on the Motion to Dismiss (set for June 22, 2016), another payment of $6,880.00 will become due.

E. The Trustee included in the motion a chart of payments showing a patter of defaults, with Debtor missing payments in:

1. February 2014,
2. June 2014,
3. August 2014,
4. October 2014,

5. December, 2014,
6. January 2015,
7. March 2015,
8. April 2015,
9. July 2015,
10. August 2015,
11. October 2015,
12. November 2015,
13. January 2016,
14. February 2016,
15. April 2016.

Motion, p. 2:4-10; Dckt. 90.

Debtor "cured" many of these defaults, sometimes making the equivalent of three payments in one month. No explanation is provided for: (1) why Debtor repeated defaulted and (2) why Debtor had sufficient "extra" money in a month to make multiple payments, including one month as high as $18,600.00. See December 2015 payments.

Debtor's untimely response to the Motion merely stated that Debtor made two payments in May 2016 (without providing any information how Debtor had $13,760.00 of moneys to make a double payment) and that Debtor believed that this would make them current. Debtor requested a thirty-day continuance to give them time to "bring the account current." Debtor's counsel did not alleged how or why Debtor would have "extra" monies in a month to make a double payment.

Conspicuously missing from the Late Response was any evidence opposing the Motion. Debtor failed, or refused, to provide any testimony under penalty of perjury.

Though the court had posted a "final ruling" dismissing the case on June 21, 2016, for the June 22, 2016 hearing, neither Debtor nor Debtor's counsel chose to appear at the court's June 22, 2016 hearing date to advise the court that there had been a terrible mistake and Debtor actually opposed the motion. As all attorneys' know, though posted as final rulings, they can always speak with the trustee at court the day of the dismissal calendar and then request the court to hear a matter posted as a final ruling. No attempt was made to appear at the hearing or communicate with the trustee at the hearing.

Motion to Vacate

The Motion asserts that Debtor was mistaken as to the amounts paid and Debtor's counsel misread the Chapter 13 Trustee's statement of the account. The allegation of misreading the statement rings hollow, in that it states that when reviewing the statement in May 2016, Debtor's counsel saw that it stated that Debtor was delinquent for $6,870.00. The Motion alleges that counsel thought that the statement of a $6,870.00 delinquency in May 2016 was a statement that Debtor's obligation of $6,870.00 due on June 25, 2016 was showing as due in May 2016.

With respect to the multiple defaults, the Motion to Vacate asserts, "Due to the nature of their business, they would become delinquent and then send in several payments which they thought was bringing

them current." No explanation is provided for how Debtor can have such an unpredictable business or why and in some months Debtor has multiples of the monthly plan payment available.

Under the Confirmed Modified Plan Debtor is required to make monthly plan payments of $6,880.00 for the last forty-eight months (commencing January 2015) of the sixty month plan. The Plan term runs from January 2014-December 2018. There remains thirty months of the plan to perform (not the fourteen months stated in the Motion to Vacate). Modified Plan, Dckt. 67.

Under the Confirmed Modified Plan Debtor makes the current monthly mortgage payment and arrearage payment on the debt secured by Debtor's residence, payments on two debts secured by Debtor's vehicles, and almost $200,000.00 of nondischargeable taxes. No payments are made to any creditors whose debts would be discharged or would not have collateral to take away from Debtor.

Debtor's counsel provides his declaration in support of the Motion to Vacate. Dckt. 104. He states that in reliance on Debtor telling him that the payment had been made, he intentionally did not file an opposition. Thus, counsel knew that a motion to dismiss was pending, that his clients had continually defaulted in the bankruptcy case, and that the case was facing dismissal due to a default. Notwithstanding such conduct and the potential dismissal of the case, counsel intentionally chose not to oppose the Motion to Dismiss.

Counsel further testifies that he did nothing further, notwithstanding the potential dismissal of the case, until June 21, 2016 - the eve of the hearing on the Motion to Dismiss. At that time (more than two weeks after he says that the Debtor told him the payments had been made), he first checked the accounting for payments made in the case on the Trustee's website. Counsel now testifies that in looking at the website in June 2016, he assumed that since it should a delinquency, it must be referring to the future payment in June 2016 which was not yet due. As Counsel admits, this assumption was incorrect.

Only on June 21, 2016, did counsel try to act to file an opposition. Counsel did not contact the court to advise that an untimely Response was filed. Counsel did not file an ex parte motion for leave to file an untimely opposition. Instead, he merely filed an untimely document based on his first reviewing the Trustee's account statement the day before the hearing, after consciously deciding that it was unnecessary to file an opposition.

Debtor Matthew Vickers filed his declaration in support of the Motion to Vacate. Dckt. 103. His testimony is that he "assumed" that he had cured the payments. While he testifies that he was speaking to his attorney in early June 2016, there is nothing in his declaration of taking any action to make sure that he had properly responded to the Motion to Dismiss.

Mr. Vickers does testify that it was not until June 21, 2016, the day before June 22, 2016 hearing date on the motion to dismiss, that his attorney first contacted him about being delinquent and not have cured the defaults.

JULY 26, 2016 HEARING

At the hearing, the court continued the Motion to 3:00 p.m. on August 16, 2016 to allow the Debtors to become current in plan payments. Dckt. 11.

RULING

No supplemental responses have been filed in connection with the instant Motion.

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

Though the Trustee may consider this as a possible reasonable mistake, the court views this as a lack of prosecution by Debtor and counsel. Clearly counsel and Debtor were aware that the case was pending dismissal. Debtor and Debtor's counsel chose, for whatever reason, to rely on Debtor's thought that the delinquency had been cured and that the Motion to Dismiss could be ignored. It was not until June 21, 2016, the eve of the hearing date on the Motion to Dismiss that Debtor and Debtor's Counsel even considered checking to see if their assumption that they could ignore the Motion to Dismiss was incorrect. Then, they discovered that it was a flawed assumption, and counsel threw at the court an untimely Response. Counsel did not notify the court that an untimely Response was being filed. Counsel for Debtor did not file an ex parte motion for leave to file an untimely opposition. Counsel for Debtor did not appear at the court's dismissal calendar to advise the Trustee of the mistake of Debtor and Debtor's Counsel in assuming that they did not need to respond to a motion. Debtor and Debtor's Counsel did not appear at the court's June 22, 2016 dismissal calendar to advise the court of their gross error and try to rectify the situation.

Instead, as with deciding that the Motion to Dismiss could be ignored, Debtor and Debtor's Counsel decided that the court's dismissal calendar could be ignored. Instead, Debtor and Debtor's counsel waited a week to file the present Motion to Dismiss, creating unnecessary work for not only the court, but the Chapter 13 Trustee.

Thus, it does not appear that the dismissal occurred because of a bona fide mistake or excusable neglect, but an intentional strategy decision to ignore the Motion to Dismiss.

With respect to the impact on Debtor caused by the dismissal, there is little. Debtor is barely halfway through the Plan. Debtor is only paying the debt which would not otherwise be discharged. Having to file a new case is of no prejudice to Debtor.

Debtor has also show an inconsistent payment ability, and has shown that in some months Debtor has the ability to make payments which are double or triple what is asserted to be Debtor's projected disposable income.

Unnecessary Cost and Expense Caused By
Debtor's Intentional Litigation Strategy

Debtor and Debtor's counsel admit that they intentionally chose to do nothing to respond to the Trustee's Motion to Dismiss. It was not until the day before the hearing that Debtor's Counsel got around to checking the status of plan payments. Possibly Debtor and Debtor's Counsel decided to do this because it could

avoid some legal expenses for Debtor. If Debtor's counsel had just shown up at court on June 22, 2016 to meet with the Trustee and bring this to the attention of the court, it could have been addressed. But due to the inaction of Debtor and Debtor's Counsel, the legal work required of the Trustee has been unnecessarily multiplied.

The court projects that this intentional decision by Debtor and Debtor's counsel has caused the Trustee to waste four hours of time in having to now address the Motion to Vacate the dismissal. Using a conservative hourly rate of $250.00, this is $1,000.00 wasted time of Trustee's counsel.

As a condition of vacating the Dismissal, Steven Shumway, counsel for Debtor shall reimburse the Chapter 13 Trustee $1,000.00 for the wasted attorneys' fees expense. The Trustee shall deposit the monies into the fund maintained for Chapter 13 Trustee costs and expenses, or as otherwise directed by the U.S. Trustee. The monies are not a personal payment to the Chapter 13 Trustee.

The $1,000.00 reimbursement of the legal expenses, as agreed to by Counsel for Debtor is deemed not to be a "sanction" for purposes of reportable sanctions to the California State Bar. While the improvident choices of Debtor and Debtor's Counsel in the handing of the Motion to Dismiss have cause the Trustee to incur otherwise unnecessary expenses, this is a compensatory payment and not a punitive sanction.

~~Therefore, in light of the foregoing, the Motion is granted and the order dismissing the case (Dckt. 99) is vacated.~~

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

~~**IT IS ORDERED** that the Motion is granted and the order dismissing the case (Dckt. 99) is vacated.~~

~~IT IS ORDERED that on or before August 15, 2016, W. Steven Shumway, counsel for Debtor, shall pay to David Cusick, the Chapter 13 Trustee, $1,000.00 as an expense reimbursement caused by the failure to properly respond or address the prior Motion to Dismiss. The Trustee shall deposit the monies into the fund maintained for Chapter 13 Trustee costs and expenses, or as otherwise directed by the U.S. Trustee. The monies are not a personal payment to the Chapter 13 Trustee.~~

~~**IT IS FURTHIER ORDERED** that if W. Steven Shumway fails to timely pay the $1,000.00 by August 15, 2016, then the Chapter 13 Trustee shall file a declaration so attesting and lodge with the court an order dismissing this Chapter 13 case pursuant to the Motion to Dismiss, DCN:DPC-4. The Trustee shall serve copies of the proposed order and declaration on the Debtors, Debtors' Counsel, and the U.S. Trustee.~~

~~**IT IS FURTHER ORDERED** that if W. Steven Shumway timely pays the $1,000.00 by August 15, 2016, then the Chapter 13 Trustee shall lodge with the court an order dismissing the Trustee's Motion to Dismiss, DCN:DPC-4.~~

4. **16-23865-E-13** **DEBRA KENNEDY** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Mikalah Liviakis** **7-19-16 [19]**

Tentative Ruling: The Objection to Exemptions 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions 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 objection to claimed exemptions is sustained, the Debtor's waiver of exemptions deemed rescinded, and the exemptions claimed pursuant to California Code of Civil Procedure § 703.140 are disallowed in their entirety.

The Chapter 13 Trustee begins in his Objection stating that Debtor Debra Kennedy claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b) on the Schedule C filed in her Chapter 13 bankrupt case, 16-23865. These are the special "bankruptcy exemptions" enacted by California, having elected to opt-out of the federal bankruptcy exemption scheme. If there is not a joint petition filed by the two married debtors, then the § 703.140(b) exemptions cannot be claimed unless that both the debtors

waive the right to claim exemptions under any other provisions of law. Cal. C.C.P. § 703.140(a)(2). FN.1.

FN.1. Cal. C.C.P. § 703.140(a)(1) and (2) provide [emphasis added]:

> "(a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but **the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows**:
>
> (1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
>
> (2) **If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other** than the provisions of subdivision (b) are applicable, **except** that, **if both the husband and the wife effectively waive in writing the right to claim**, during the period the case commenced by filing the petition is pending, **the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in** any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b)."

On Schedule C, Debtor Debra Kennedy claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b) 703.140(b). On the Petition, Debtor also discloses the filing of the bankruptcy case by her spouse, David Kennedy, 16-23768. David Kennedy filed his Chapter 13 case on June 10, 2016, claiming exemptions pursuant to California Code of Civil Procedure §§ 404.010 et seq., not under California Code of Civil Procedure § 703.140(b). A joint waiver of the non-C.C.P. § 703.140 was filed by Debtor Debra Kennedy in her bankruptcy case (16-23865, Dckt. 8) and David Kennedy, her spouse and debtor in his own bankruptcy case (16-23768, Dckt. 12). The joint waiver is dated June 15, 2016. At this juncture, the wavier of exemptions was consistent with the exemptions claimed by Debra Kennedy in her bankruptcy case. However, David Kennedy waived all of the exemptions claim on the Schedule C. See non-C.C.P § 703.140(b) exemptions originally claimed on the Schedule C he filed in his case on June 10, 2016, 16-23865; Dckt. 1 at 17-18.

The Trustee's Objection in the Debra Kennedy bankruptcy case asserts that the Trustee is uncertain if the joint waiver executed on June 15, 2016 and filed in both the Debra Kennedy and the David Kennedy bankruptcy case would be "effective" as a waiver by David Kennedy of any exemptions other than under California Code of Civil Procedure § 703.140(b). There is no apparent issue as to the waiver by Debra Kennedy, as she only claimed exemptions under California Code of Civil Procedure § 703.140(b).

On August 1, 2016, Debtor Debra Kennedy filed a Response to the Trustee's Objection to Claim

of Exemption in her case. 16-23865, Dckt. 23. The Response states that Debtor Debra Kennedy does not oppose the Chapter 13 Trustee's contention that the waiver may not be effective, and has elected to change the exemptions she is claiming to those arising under California Code of Civil Procedure §§ 704.010 et seq.

On August 1, 2016, Debtor Debra Kennedy also filed an Amended Schedule C which asserts various exemptions under California Code of Civil Procedure §§ 704.010 et seq. 16-23865, Dckt. 22.

The court accepts the Response to the Trustee's Objection and the filing of the Amended Schedule C as Debtor Debra Kennedy's recision of her waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b). Absent the rescission, the waiver by Debtor Kennedy was effective.

In the David Kennedy bankruptcy case the Chapter 13 Trustee filed a parallel objection, questioning whether the June 15, 2016, waiver of the June 10, 2016 claimed exemptions was effective. 16-23768, Dckt. 14. On August 1, 2016, Debtor David Kennedy filed a Response to the Trustee's Objection to Exemptions, stating that he wished to have the Trustee's Objection granted and this waiver declared ineffective. 16-23768, Dckt. 22. In effect, this response is a recision of the joint waiver filed by Debtor David Kennedy in his bankruptcy case and the Debra Kennedy bankruptcy case.

DISCUSSION

It appears that while Debtor Debra Kennedy and Debtor David Kennedy are represented by the same counsel, they crossed wires and claimed incompatible exemptions. As originally filed and waived, Debtor Debra Kennedy had effectively claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b). Debtor David Kennedy waived any exemptions he had claimed on Schedule C, having signed and filed the joint waiver of non-California Code of Civil Procedure § 703.140(b) exemptions.

The Chapter 13 Trustee's two Objections to Claims of Exemptions brought this to a head and allowed both Debtors to act to claim exemptions in each of their cases. Whether the exemptions have been properly claimed under Amended Schedule C by Debtor Debra Kennedy and under the rescinded waiver of the California Code of Civil Procedure §§ 704.010 et seq. exemptions is not determined in this Objection. In light of the confusion created by the two Debtors' original exemption schemes and waiver of exemptions, the time for filing objections to the claims of exemptions run from the entry of the order ruling on the Trustee's current Objection.

The Chapter 13 Trustee's objection is sustained and Debtor Debra Kennedy's waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b) is deemed rescinded and the exemptions claimed on Original Schedule C (16-23865, Dckt. 1) are disallowed in their entirety.

The Chapter 13 Trustee's objection to the waiver of non-California Code of Civil Procedure § 703.140(b) exemptions by Debtor David Kennedy is sustained and the waiver (16-23768, Dckt. 12) is deemed rescinded.

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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and Debtor Debra Kennedy's waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b) is deemed rescinded and the exemptions claimed on Original Schedule C (16-23865, Dckt. 1) are disallowed in their entirety.

IT IS FURTHER ORDERED that the time period to object to the Amended Schedule C exemptions filed in this case, Dckt. 22, is computed from the date of this order due to the filing of exemptions, waiver of exemptions, and the court determining by this order the rescission of the waiver by Debtor Debra Kennedy.

5. **16-23768-E-13** **DAVID KENNEDY** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Mikalah Liviakis** **7-19-16 [18]**

Tentative Ruling: The Objection to Exemptions 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions 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 objection is sustained and the waiver of non- California Code of Civil Procedure § 703.140(b) exemptions filed by Debtor (Dckt. 12) is deemed rescinded.

The Chapter 13 Trustee begins in his Objection stating that Debtor Debra Kennedy claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b) on the Schedule C filed in her Chapter 13 bankrupt case, 16-23865. These are the special "bankruptcy exemptions" enacted by California, having elected to opt-out of the federal bankruptcy exemption scheme. If there is not a joint petition filed by the two married debtors, then the § 703.140(b) exemptions cannot be claimed unless that both the debtors waive the right to claim exemptions under any other provisions of law. Cal. C.C.P. § 703.140(a)(2). FN.1.

FN.1. Cal. C.C.P. § 703.140(a)(1) and (2) provide [emphasis added]:

"(a) In a case under Title 11 of the United States Code, all of the exemptions

provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but **the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows**:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) **If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other** than the provisions of subdivision (b) are applicable, **except** that, **if both the husband and the wife effectively waive in writing the right to claim**, during the period the case commenced by filing the petition is pending, **the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in** any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b)."

On Schedule C, Debtor Debra Kennedy claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b) 703.140(b). On the Petition, Debtor also discloses the filing of the bankruptcy case by her spouse, David Kennedy, 16-23768. David Kennedy filed his Chapter 13 case on June 10, 2016, claiming exemptions pursuant to California Code of Civil Procedure §§ 404.010 et seq., not under California Code of Civil Procedure § 703.140(b). A joint waiver of the non-C.C.P. § 703.140 was filed by Debtor Debra Kennedy in her bankruptcy case (16-23865, Dckt. 8) and David Kennedy, her spouse and debtor in his own bankruptcy case (16-23768, Dckt. 12). The joint waiver is dated June 15, 2016. At this juncture, the wavier of exemptions was consistent with the exemptions claimed by Debra Kennedy in her bankruptcy case. However, David Kennedy waived all of the exemptions claim on the Schedule C. See non-C.C.P § 703.140(b) exemptions originally claimed on the Schedule C he filed in his case on June 10, 2016, 16-23865; Dckt. 1 at 17-18.

The Trustee's Objection in the Debra Kennedy bankruptcy case asserts that the Trustee is uncertain if the joint waiver executed on June 15, 2016 and filed in both the Debra Kennedy and the David Kennedy bankruptcy case would be "effective" as a waiver by David Kennedy of any exemptions other than under California Code of Civil Procedure § 703.140(b). There is no apparent issue as to the waiver by Debra Kennedy, as she only claimed exemptions under California Code of Civil Procedure § 703.140(b).

On August 1, 2016, Debtor Debra Kennedy filed a Response to the Trustee's Objection to Claim of Exemption in her case. 16-23865, Dckt. 23. The Response states that Debtor Debra Kennedy does not oppose the Chapter 13 Trustee's contention that the waiver may not be effective, and has elected to change the exemptions she is claiming to those arising under California Code of Civil Procedure §§ 704.010 et seq.

On August 1, 2016, Debtor Debra Kennedy also filed an Amended Schedule C which asserts various exemptions under California Code of Civil Procedure §§ 704.010 et seq. 16-23865, Dckt. 22.

The court accepts the Response to the Trustee's Objection and the filing of the Amended Schedule C as Debtor Debra Kennedy's recision of her waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b). Absent the rescission, the waiver by Debtor Kennedy was effective.

In the David Kennedy bankruptcy case the Chapter 13 Trustee filed a parallel objection, questioning whether the June 15, 2016, waiver of the June 10, 2016 claimed exemptions was effective. 16-23768, Dckt. 14. On August 1, 2016, Debtor David Kennedy filed a Response to the Trustee's Objection to Exemptions, stating that he wished to have the Trustee's Objection granted and this waiver declared ineffective. 16-23768, Dckt. 22. In effect, this response is a recision of the joint waiver filed by Debtor David Kennedy in his bankruptcy case and the Debra Kennedy bankruptcy case.

DISCUSSION

It appears that while Debtor Debra Kennedy and Debtor David Kennedy are represented by the same counsel, they crossed wires and claimed incompatible exemptions. As originally filed and waived, Debtor Debra Kennedy had effectively claimed exemptions pursuant to California Code of Civil Procedure § 703.140(b). Debtor David Kennedy waived any exemptions he had claimed on Schedule C, having signed and filed the joint waiver of non-California Code of Civil Procedure § 703.140(b) exemptions.

The Chapter 13 Trustee's two Objections to Claims of Exemptions brought this to a head and allowed both Debtors to act to claim exemptions in each of their cases. Whether the exemptions have been properly claimed under Amended Schedule C by Debtor Debra Kennedy and under the rescinded waiver of the California Code of Civil Procedure §§ 704.010 et seq. exemptions is not determined in this Objection. In light of the confusion created by the two Debtors' original exemption schemes and waiver of exemptions, the time for filing objections to the claims of exemptions run from the entry of the order ruling on the Trustee's current Objection.

The Chapter 13 Trustee's objection is sustained and Debtor Debra Kennedy's waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b) is deemed rescinded and the exemptions claimed on Original Schedule C (16-23865, Dckt. 1) are disallowed in their entirety.

The Chapter 13 Trustee's objection to the waiver of non-California Code of Civil Procedure § 703.140(b) exemptions by Debtor David Kennedy is sustained and the waiver (16-23768, Dckt. 12) is deemed rescinded.

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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that Objection is sustained and Debtor David Kennedy's waiver of exemptions other than pursuant to California Code of Civil Procedure § 703.140(b), Dckt. 12, is deemed rescinded.

IT IS FURTHER ORDERED that the time period to object to the Schedule C exemptions filed in this case is computed from the date of this order due to the waiver of those exemptions and the court's determination that said waiver has now been rescinded.

6. **16-23865-E-13** **DEBRA KENNEDY** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mikalah Liviakis** **PLAN BY DAVID P. CUSICK**
7-19-16 [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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The Debtor's plan may not be the Debtor's best effort. Debtor's Statement of Current Monthly Income indicates that the Debtor is under median income. The Debtor's plan proposes payments **of $347.00 for 36 months. Debtor's Schedule I lists gross wages of $5,490.00 per month, and lists net income from IHSS of $500.00 per month. The total of these** two amounts is $5,990 monthly.

1. The Statement of Current Monthly Income fails to list the IHSS income and therefore the Debtor's income is understated.

B. The Debtor's plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. If the Trustee is successful in the Objection to Exemptions, the Debtor will have claimed as exemption $114,553.00 in property where the exemptions may be disallowed. The plan proposes only $5,366.27 in payments to unsecured.

DISCUSSION

The Trustee's objections are well-taken.

While the Debtor has filed an amended Schedule C, claiming exemptions under California Code of Civil Procedure § 704, the Trustee's objection over best efforts is valid. As the Trustee states, the Debtor appears to have under calculated the Debtor's income, making her actually required to propose a 60 month plan. This, coupled with the fact that, with the change in exemptions, that there is an additional $1,500.00 in non-exempt equity, the Debtor needs to correctly list all income to determine the length of the plan and to determine if additional monies are due to unsecured creditors. The plan does not appear to be the Debtor's best effort. 11 U.S.C. § 1325(b).

Due to the waiver/non-waiver change of strategy, amended Schedule C waiver, and waiver of non-waiver of conflicting exemptions in the separate bankruptcy case of Debtor Debra Kennedy's spouse, going back to the drawing board on constructing a plan, documenting income and expenses, the Trustee and parties in interest being given a reasonable time to review the exemptions actually being claimed and exemptions which now are not being waived in the David Kennedy bankruptcy case is warranted. Continuance of this hearing is not warranted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed, without prejudice.

7. 16-23768-E-13 DAVID KENNEDY
DPC-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-19-16 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Confirmation on July 19, 2016. Dckt. 14.

The Trustee opposes confirmation of the Plan on the basis that the plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor had claimed exemptions totaling $86,663.50 under C.C.P. §§ 704.730, 704.010, 704.020, 703.070, and 704.060 on Debtor's Schedule C, filed June 10, 2016. Dckt. 1. The Debtor has since filed a waiver, which waives the right to claim exemptions other than those under C.C.P. § 703.140(b).

The Trustee argues that where the Debtor originally claimed as exempt $86,663.50 in property and the plan appears to allow for only 19% on $90,421.00 of unsecured claims, it pays only $17,181.89 to

general unsecured.

Here, Debtor David Kennedy and his spouse, Debtor Debra Kennedy in her separate bankruptcy case filed incompatible claims of exemptions. Then, in this case, David Kennedy waived his non-California Code of Civil Procedure § 703.140(b) objections – effectively claiming no exemptions in this case. When the Trustee raised the issue as to the waiver, the conflicting exemptions, and the apparently substantial non-exempt equity, Debtor David Kennedy sought to rescind and un-waive his waiver of his exemptions. Then Debtor Debra Kennedy sought to rescind and un-waive her waiver of non-C.C.P § 703.140(b) exemptions, file an amended Schedule, and jump-shift exemption schemes. The court has determined that the period to object to the current, rescinded waiver, un-waived, resurrected exemptions claimed by Debtor runs from the entry of the order on the Trustee's objection in this case (August 16, 2016 hearing).

Due to the waiver/non-waiver change of strategy, amended Schedule C waiver, and waiver of non-waiver of conflicting exemptions in the separate bankruptcy case of Debtor Debra Kennedy's spouse, going back to the drawing board on constructing a plan, documenting income and expenses, the Trustee and parties in interest being given a reasonable time to review the exemptions actually being claimed and exemptions which now are not being waived in the David Kennedy bankruptcy case is warranted. Continuance of this hearing is not warranted.

The Chapter 13 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 Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and Debtor's Chapter 13 Plan filed on June 10, 2016 is not confirmed, without prejudice.

8. **16-23603-E-13** **STACY TUCKER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Matthew Gilbert** **PLAN BY DAVID P. CUSICK**
7-19-16 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 19, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to provide the Trustee with a tax transcript or a copy of the 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 documentation exists.

2. The Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.

3. The Debtor has failed to file all pre-petition tax returns required for the four years preceding the filing of the petition. The Internal Revenue Service filed a proof of claim on June 22, 2016, Court Claim #3, indicating that the Debtor has failed to file income

tax returns for 2010, 2011, 2012, 2013, 2014, ans 2015. Debtors are required to have all their tax returns due during the 5-year period preceding the filing of the Petition. *See* 11 U.S.C. §§ 1308 & 1325(a)(9).

4. The plan will not complete within 60 months.

5. The plan fails the Chapter 7 liquidation analysis. The Debtor's non-exempt assets total $222,100.00 and the Debtor proposes to pay only a 2% dividend to unsecured creditors, which amounts to about $249.00.

The Trustee's objections are well-taken.

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee correctly points notes that the Debtor is required to have filed of Debtor's tax returns due during the 4-year period preceding the filing of the petition. 11 U.S.C. §§ 1308 & 1325(a)(9). The Debtor has failed to file income taxes for 2010, 2011, 2012, 2013, 2014, and 2015. Debtor's failure to file is an independent ground to deny confirmation.

The debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 80 due to the claim filed by the Internal Revenue Service on June 22, 2016 in the amount of $40,443.12. The Proof of Claim indicated priority unsecured debt of $26,343.42 and general unsecured debt of $14,099.70. The Debtor's Schedules Plan lists the Internal Revenue Service as a Class 5 debt for $11,000.00.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation analysis under 11 U.S.C. § 1325(a)(4). The Trustee states that the Debtor's Schedules A/B, C, and D show non-exempt equity exists in Debtor's real property commonly known as 2017 California Drive, Vacaville, California. Schedule A/B lists the value of the property at $325,000.00; Schedule D shows debt against the property in the amount of $27,900.00; and Schedule C claims an exemption under C.C.P. § 704.713. This leaves non-exempt assets totaling $222,100.00. The Debtor has not explained how the unsecured creditors are entitled to only a 2% dividend amounting to about $249.00 when there may be non-exempt assets in excess of that amount.

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

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

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

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

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

9. 11-39806-E-13 HWW-4 | **RACHEL/JORGE ESPINOZA** | **Hank Walth** | **MOTION TO MODIFY PLAN 6-30-16 [69]**

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2016. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 30, 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.

10. 16-23407-E-13 IRMA QUIAMBAO
DPC-1 Kristy Hernandez
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-6-16 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's Plan relies on a Motion to Value Collateral of Check into Cash but has failed to file one to date.

2. Section 2.11 of Debtor's Plan lists a Class 4 direct payment to Carrington Mortgage Services. Schedule D indicates that this debt is secured by Debtor's real property commonly known as 4886 Heritage Court, Fairfield, California. The Plan states "Class 4 claims mature after the completion of the plan, are not in default, and are not modified by this plan."

Debtor testified at the First Meeting of Creditors that she is in a trial mortgage loan modification and the first trial payment was in June 2016. The Trustee has not received any evidence of a loan modification agreement, and the Debtor has not filed a Motion for Approval of a Loan Modification to date. The plan does not contain any additional provisions setting forth the terms of a loan modification, such as the treatment of the creditor if the modification is ultimately denied.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, the Creditor with a secured claim, stated it is also in opposition to confirmation based on the Objections filed by the Trustee to Debtor's Chapter 13 Plan. The Creditor opposes confirmation of the Plan on the basis that:

1. The Plan fails to require the maintenance of the ongoing correct amount of post-petition monthly payments. *See* 11 U.S.C. § 1322(b)(5).

2. The plan is not adequately funded. The proof of claim deadline is September 28, 2016. The Creditor has not yet filed its claim which will show arrears in excess of $11,000.00. The Debtor's plan payments will not be sufficient to satisfy Secured Creditor's claim in full. *See* 11 U.S.C. § 1325(a)(6).

DISCUSSION

Trustee's Objection

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that Debtor's Plan relies on a Motion to Value Collateral of Check into Cash, but Debtor has not filed such a motion. Without valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

If it was the Debtor's intention to confirm a plan which includes a loan modification negotiation provision with adequate protection payments to the creditor, that has not been presented to the court. For almost four years attorneys in this court have utilized such an Ensminger Additional Plan Provision (so named after the consumer attorney who worked with creditor attorneys and other consumer attorneys to develop such a provision which is consistent with the Bankruptcy Code). Without these provisions and without any information as to the loan modification, the court cannot determine the viability and feasibility of 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.

Creditor's Objection

The basis for the Creditor's objection is that the Plan fails to require the maintenance of the ongoing correct amount of post-petition monthly payments as required by § 1322(b)(5).

The Creditor also argues that the plan is not adequately funded because the Secured Creditor has not yet filed its proof of claim which will show arrears in excess of $11,000.00. Debtor's current plan proposes a monthly plan payment of $650.00 per month for 51 months and $884.00 per month for 9 months. Debtor's currently monthly net income is $653.18 according to Debtor's Schedule J. This suggests that the plan is not feasible. *See* 11. U.S.C. § 1325(a)(6).

However, the Creditor has not yet filed a Proof of Claim asserting the pre-petition arrearage of over $11,000.00. Creditor does not include any evidence supporting its calculation of the arrears, and the actual remaining amount owed on the claim. Without this information and without properly admitted evidence or a Proof of Claim being filed, the court relies on the Schedules filed under the penalty of perjury. The Creditor offers no evidence, and therefore, the Creditor's objections are overruled.

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

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

11. 13-22012-E-13 KENNETH/KRISTINE THOMPSON MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 7-11-16 [123]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

Kenneth and Kristine Thompson filed the instant Motion to Confirm the Modified Plan on July 11, 2016. Dckt. 123.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on August 2, 2016. Dckt. 128. The Trustee opposes confirmation on the following grounds.

1. Debtor proposes to treat creditor Employment Development Department as a Class 4 secured claim to be paid directly by a third party. The Debtor may not be able to make certain that payments will be made or comply with the Plan.

   The creditor has filed two claims with the court for $621.81 and $2,781.01 entitled to priority. Each claim reports the amount of the secured claim as $0.00. The current plan

however, asserts that these claims are secured and will be paid by the Debtors' son. The Debtors' Motion and Declaration both state the claims have been paid by the Debtor's son, but no proof of payment has been provided.

2. The Plan may not have been proposed in good faith.

   a. The Debtors have not submitted either a supplemental Schedule I or Schedule J.

   b. The Debtors have not addressed the state of the Debtors' business.

   c. The Debtor is reporting no income from the business.

   d. The Debtor's Motion and Declaration refer to "our former business that our son now operates". The Trustee cannot locate any information on PACER regarding the sale or transition of the business to the Debtors' son.

   e. A change of address was filed with the court, indicating the Debtors' address has changed from 3021 Orchard Park Way, Loomis, California to 407-D Avedina Castilla, Laguna Woods, California. Debtors Schedule J only includes property expense for the Loomis Property; no rent or mortgage expense is reported for Laguna Woods.

   f. Debtor's Schedule I at the time of filing indicated the Debtors' employer was Thompson Sales, which was listed as a dba on the Petition, but no income was reported.

DEBTOR'S REPLY

The Debtor filed a reply on August 9, 2016. Dckt. 131. The Debtor states that the Debtor will provide proof of payment to the EDD on or before the hearing and that the "Debtors filed Amended Schedules I & J on August 9, 2016."

The court notes that the Debtor, having filed under penalty of perjury "amended" schedules, Debtor has altered the financial information provided under penalty of perjury as of the commencement of this case more than three years ago, but fails to provide any current financial information as of August 2016.

DISCUSSION

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

To date, no supplemental schedules have been filed in connection with the instant case. While Debtor has filed "amended" Schedules I and J, Debtor is providing information which is now more than three years old.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Trustee is unable to determine whether the Debtor can make the payments under the plan or comply with the plan. The Debtor has proposed to treat creditor Employment Development Department as a Class 4 secured claim and state that the Creditor's claims have been paid by Debtor's son. However, the Creditor has filed two Proofs of Claim with the court. Proofs of Claim No. 11 and 12. The Proof of Claim No 11 asserts a claim for $686.16 with $621.81 being claimed as priority and Proof of Claim No. 12 asserts a claim of $2,781.01, all priority.

While the Debtor states that they will provide proof of payment, to date no such proof has been offered. The Debtor is attempting to treat the EDD priority claim outside of the plan which raises serious questions over whether the Debtor's plan is feasible or viable given the outside payment of the priority claim. This indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee also objects on the basis that the plan may not have been proposed in good faith. The Debtor has failed to submit a Supplemental Schedule I or J; failed to address the state of the Debtor's Business; is reporting no income from the business; the Debtor's Motion and Declaration state that the business is Debtor's former business and that their son now operates it, but there is no information to be found in the Docket regarding such a sale or transition; the Debtor filed a change of address, but failed to supplement Debtor's Schedule J to include a rent or mortgage expense for the Laguna Woods property; and Debtor's Schedule I indicated that the Debtor's employer was Thompson Sales, which is lists as a dba on the Petition, yet no income was reported from this employer.

The Debtor's conduct in this case raises substantial good faith issues. For the confirmation of any plan, a debtor must show not only that the case was filed in good faith, but that the plan was proposed in good faith. 11 U.S.C. §1325(a)(3), (7). Pursuant to 11 U.S.C. § 1325(a)(3), a plan must be proposed in good faith. Courts apply the totality of the circumstances test in making a good faith determination and consider several factors in determining whether a plan was proposed in good faith, including:

1. Whether the proposed plan accurately states Debtor's secured and unsecured Debts;

2. Whether the proposed plan accurately states Debtor's expenses

3. Whether the proposed plan accurately states the percentage repayment of unsecured claims;

4. Whether the proposed plan has deficiencies and whether the inaccuracies amount in an attempt to mislead the bankruptcy court; and

5. Whether the proposes payments indicate a fundamental fairness in dealing with one's creditors

In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991) (citing *In re Smith*, 848 F.2d 813, 818 (7th Cir. 1984). Although good faith in a Chapter 13 proceeding is determined on a case by case basis, a debtor must at minimum show that he or she has an honest intention. *In re Powers* at 992. One factor the courts consider is whether the Debtor acted equitably in proposing the Chapter 13 plan and whether a Debtor has misrepresented facts in the plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed a plan

in an inequitable manner. *Id.* at 992.

Under the totality of the circumstances, the Debtor has not proposed this modified Chapter 13 Plan in good faith. The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

12. **16-23615-E-13** **TATYANA MOLITVENIK** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
7-19-16 [36]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

13. **14-21316-E-13** **SHAWN JACKSON** **CONTINUED MOTION TO DISMISS CASE**
DPC-1 **Peter Cianchetta** **4-15-16 [45]**

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

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

Below is the court's tentative ruling.

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

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 April 15, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 Dismiss is denied without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 15, 2016. Dckt. 45. The Trustee seeks default due to the Debtor being in material default under the plan.

The Trustee seeks dismissal on the ground that the Debtor is in material default under the plan. Namely, the Trustee asserts that the Debtor failed to provide for the priority claims of Sacramento County Dept. Child Support Services (Proof of Claim No. 11) in the amount of $1,644.74 and the Internal Revenue Service (Proof of Claim No. 2) in the amount of $298.00. Pursuant to § 2.13 of the plan, this failure to provide is a material default under the plan.

MAY 18, 2016 HEARING

At the May 18, 2016 hearing, the court continued the hearing to allow the Debtor the opportunity to file and serve a modified plan. Civil Minutes, Dckt. 49. The Debtor having filed a modified plan, motion to confirm, and supporting evidence, the hearing on the Motion to Dismiss was further continued to 3:00 p.m. on July 26, 2016. Civil Minutes, Dckt. 58.

JULY 22, 2016 STIPULATION

On July 22, 2016, the Debtor and Trustee filed a stipulation to continue the hearing to 3:00 p.m. on August 16, 2016 due to Debtor's counsel's unfortunate family emergencies.

JULY 26, 2016 HEARING

In light of the stipulation, the court continues the instant Motion to 3:00 p.m. on August 16, 2016.

DISCUSSION

First, the Sacramento Department of Child Support Services filed a Notice of Withdrawal of Claim No. 11-1 on July 13, 2016. Dckt. 64. Therefore, the Debtor is not in material default in failing to provide for the Sacramento Department of Child Support Services.

As to the Internal Revenue Service claim, the proposed modified plan did include the payment of the Internal Revenue Service priority claim. However, the court denied the Debtor's plan on July 26, 2016, due to the Debtor failing to provide explanation as to why there is no longer a step up in the plan nor why the Debtor has not filed supplemental Schedules I and J.

While the court denied the Debtor's proposed plan, dismissal of the case at this juncture appears to be too radical. The Debtor should be given an additional opportunity to propose a modified plan that incorporates all necessary priority claims as well as rectifies the court's and Trustee's concerns over best efforts.

The court is confident that Debtor and Debtor's counsel will properly provide for the payment of creditors' claims and funding of the plan with projected disposable income, promptly presenting to the court a new plan and motion to confirm. In light of all the facts and circumstances relating to this case, the court does not see the need, at this time, to have this Motion to Dismiss hanging, like the Sword of Damocles, over Debtor's and counsel's heads.

As such, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 denied without prejudice.

14. **14-21316-E-13** **SHAWN JACKSON** **CONTINUED MOTION TO MODIFY PLAN**

PLC-3 **Peter Cianchetta** **5-27-16 [50]**

Tentative Ruling: The Motion to Confirm 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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2016. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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 Confirm the Modified Plan is denied without prejudice.

Shawn H. Jackson filed the instant Motion to Modify Plan on May 23, 2016. Dckt. 50.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to Debtor's Motion to Modify Plan on July 11, 2016. Dckt.61. The Trustee opposes confirmation on the following grounds:

I. Section 2.13 of Debtor's modified plan proposes to add California State Disbursement Unit as Class 5 creditor and indicates the claim amount is $0.00.

Section 6 states, "Class 5 Creditor California State Disbursement Unit ongoing claim is being paid via wage assignment. Arrears that exested [sic] at time of filing have been paid in full through wage assignment paid directly to creditor."

Debtor's declaration states California State Disbursement Unit filed a claim for arrears, but Debtor's wages were garnished and the arrears have been satisfied. Debtor also files a DCSS printout as an exhibit which reflects past due support of $0.00.

Sacramento County Dept. Child Support Services filed a priority claim for $1,644.74 on July 8, 2014 for a domestic support obligation. The creditor has not withdrawn or amended the claim, and the Debtor has not filed an objection to the claim. The Trustee calculates that including this creditors priority claim, Debtor's proposed modified plan will not complete within the 60 months proposed.

II. Section 6 of the Debtor's modified plan proposes a plan payment of $3,489.00 total paid in through May 23, 2015 (month 15 where Debtor's petition was filed February 12, 2014, then $117.00 commencing June 25th for the balance of the plan. Under the confirmed plan Debtor's plan payments are $116.91 for 28 months, then $216.91 for 32 months.

The Trustee believes Debtor's proposed plan payment contains an error in that $3,489.00 total paid in should actually be through May 23, 2016, not 2015 as stated. This could be corrected in the order confirming.

Additionally, Debtor's plan payments under the confirmed plan increase by $100.00 in month 29 (July 2016) due to payoff of a retirement loan. Debtor's proposed modified plan no longer includes this increase, provides no explanation, and is not Debtor's best efforts.

III. The Debtor has not filed amended [supplemental] Schedules I and J reflecting his current income and expenses

Debtor's last amended Schedules I and J were filed April 1, 2015 as an exhibit in conjunction with a Motion to Incur Debt and reflects a monthly net income of $150.43. Prior to that, Debtor filed an amended Schedule J on July 14, 2014, which also reflects a monthly net income of $150.43.

Where Debtor is proposing a plan payment in an amount that is less than his monthly net income, and where Debtor is no longer proposing a step up payment due to a retirement loan payoff, and the fact that Debtor's last Schedules were filed more than a year ago, Debtor should file updated Schedules I and J representing his current income and expenses.

JULY 26, 2016 HEARING

On July 22, 2016, the Debtor and Trustee filed a stipulation to continue the hearing to 3:00 p.m. on August 16, 2016 due to Debtor's counsel's unfortunate family emergencies. In light of the stipulation, the court continued the instant Motion to 3:00 p.m. on August 16, 2016.

DISCUSSION

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

No supplemental papers have been filed in connection with the instant Motion.

The Trustee's objections are well-taken.

First, the Sacramento Department of Child Support Services filed a Notice of Withdrawal of Claim No. 11-1 on July 13, 2016. Dckt. 64. As such, this withdrawal rectifies the Trustee's first objection and is therefore overruled.

However, the Trustee's remaining objections are concerning. While the court concurs with the Trustee that the order confirming can correct the scrivener's error of May 23, 2016 versus May 23, 2015, the concern over whether the Debtor's plan is best efforts is valid. Namely, the Debtor has removed a part of the prior plan which called for a plan payment step up of $100.00 when the Debtor has paid off a retirement loan. However, in the instant proposed plan, the Debtor has stricken that language without providing the court or other parties in interest the justification.

Additionally, in his declaration in support of the present Motion (Dckt. 52), Debtor states under penalty of perjury:

> "5. I can afford to meet the terms of my plan. The new plan does not change the payment, it adds the IRS as a Priority Creditor. The plan had and still has sufficient funds to pay the IRS and all other creditors."

Plan, p. 2:1-3; Dckt. 52. Unfortunately, notwithstanding Debtor's testimony under penalty of perjury, the proposed plan does change the payments to be made by the Debtor. The existing confirmed plan and the proposed modified plan are compared in the following chart.

Confirmed Plan, Dckt. 5, Order Confirming Dckt. 16	Proposed Modified Plan, Dckt.
$116.91 Months 1-28 of Plan	$129.22 Months 1-27 of Proposed Modified Plan
$216.91 Months 29-30 of Plan (Increased amount stated in Order Confirming Plan)	$117.00 Months 28-60 of Proposed Modified Plan

Total Payments Under Existing Confirmed Plan	Total Payments Under Proposed Modified Plan
Months 1-28 = $3,273.48 Months 29-60 = $6,941.12 Total Payments = $10,214.60	Months 1-27 = $3,489.00 Months 29-60 = $3,744.00 Total Payments = $7,233.00

Contrary to Debtor's statement, under penalty of perjury, there is a thirty percent reduction in the payments by the Debtor to be made into the plan. This money is unaccounted for and just disappears.

This deletion of thirty percent of the money the Debtor previously committed to fund the plan is unaccounted projected disposable income that should be committed to the plan. Therefore, the objection is sustained.

Lastly, the Trustee's final objection ties together with the Trustee's second objection. The court nor any other party in interest can determine the viability and feasibility of the plan, especially when the Debtor has removed a step up, when the Debtor has not filed supplemental schedules indicating financial changes. It is clear based on the Debtor's Declaration that there has been substantial changes in the Debtor's financial reality that a supplemental Schedule I and J is appropriate. The court cannot justify confirming a plan that does not contain a step up plan payment based on the same financial information which justified the step up.

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

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

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

15. 13-22917-E-13 PLG-1 | **VICTORIA THOMPSON** **Rabin Pournazarian** | **MOTION TO DISALLOW ATTORNEY FEES AND/OR MOTION FOR APPROVAL OF PAYMENT OF NO LOOK FEES REMAINING DUE TO NEW COUNSEL 7-19-16 [42]**

Tentative Ruling: The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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, prior counsel, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Rabin Pournazarian, Debtor's Counsel, filed the instant Motion requesting an order disallowing

fees granted to Jacoby & Meyers, LLP/Macey & Aleman dba Legal Helpers, P.C., attorney fees for failure to complete the representation and for approval of remaining no look fees to be granted to Debtor's counsel.

Debtor's Counsel states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

In the Motion, it is asserted that the last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Debtor's Counsel argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Debtor's Counsel as Debtor's Counsel will not be tasked with completing cases without compensation.

In support, Debtor's Counsel cites to Federal Rule of Bankruptcy Procedure 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Debtor's Counsel then argues that Federal Rule of Bankruptcy Procedure 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Federal Rule of Bankruptcy Procedure 25 applies to adversary proceedings. What Debtor's counsel appears to be relying on is Federal Rule of Bankruptcy Procedure 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Debtor's Counsel recognizes that the Federal Rule of Bankruptcy Procedure 25 is not directly on point. He argues that he wishes to insure that the substitution of counsel includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms out and replacing them with new Debtor's Counsel.

Debtor's Counsel argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Debtor's counsel alleges that under Local Bankruptcy Rule 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankruptcy Rule 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided

> under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Debtor's Counsel alleges that the language of the Local Bankruptcy Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a response to the Motion on August 1, 2016. Dckt. 46. The Trustee states that Debtor's counsel is seeking to change the order entered on June 3, 2013 (Dckt. 30) which was the order approving attorney fees which provided "attorney's fees in the full amount of $4,000.00 are approved, $1,500.00 of which was paid prior to the filing of the petition."

The Trustee states it appears that Jacoby &Meyers appears to have consented to fees being paid to Debtor's Counsel. Dckt. 38.

The Motion does not include a declaration. However, based on the Instructions to Trustee and Assignment of Interest (Dckt. 38) and the order confirming plan (Dckt. 30), the Trustee is not opposed to the court granting the fee motion.

DISCUSSION

Failure to Provide Evidence in Support of Motion

The Trustee correctly identifies a fundamental defect in the present Motion - Current Counsel for Debtor fails to provide any evidence in support of the Motion. As Counsel is aware, motions and complaints are not "evidence" of the facts alleged therein. While a court could just blindly accept alleged facts as true upon the entry of a default of the other party, such judicial practices lead to bad lawyering - putting a premium on "creating" allegations on "information and belief," causing the judicial process to be corrupted.

In light of the significant potential harm to Debtor by delaying determination of this issue and the substitution having been completed, the court will rule on this Motion. However, Debtor's Current Counsel should not view this as a license to ignore the Local Bankruptcy Rules, the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence.

Ruling

Local Bankruptcy Rule 2016-1(c)(5) is a sound legal basis for the court to grant the relief sought. As stated *supra*, Local Bankruptcy Rule 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Debtor's Counsel being

substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankruptcy Rule 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in March 4, 2013. The Plan was confirmed June 3, 2013. The term of the Plan is 60 months.

On December 20, 2013, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on December 24, 2013. Dckt. 34 and 40.

In the Motion, Current Counsel never alleges that attorneys' fees allowed, what has been paid to date, and what remains to be paid and redirected to Current Counsel. In the prayer, the request is made to have $1,302.00 of fees paid to Current Counsel. In his Response, the Chapter 13 Trustee does allege that $4,500.00 in fees were approved and $1,500.00 in fees were paid pre-petition. There is no allegation as to what the Trustee has paid and what remains to be paid. The Trustee offers no evidence as to these facts.

However, the Trustee expressly states in his Response that he does not oppose the Motion. The court accepts this non-opposition as the Chapter 13 Trustee's certification that there remains $1,302.00 of the approve fees which remain to be disbursed to the attorney for Debtor in this case.

The court disallows the payment of the remaining $1,302.00 in attorneys' fees to prior counsel in this case and allows the $1,302.00 in the remaining No-Look Fees allowed in this case to be paid to Rabin Pournazarian, Debtor's current counsel.

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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $1,302.00 of the Fixed Fee previously allowed for all prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.

IT IS FURTHER ORDERED that $1,302.00 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Rabin Pournazarian through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $1,302.00 of monies for the balance due on the Fixed Fee approved in this case to Rabin Pournazarian.

16. 16-23617-E-13 DPC-1 | **JOHN MONROE** / **Kristy Hernandez** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-13-16 [24]**

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 13, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on August 23, 2016.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtors' plan relies on the Motion to Value Collateral of Citi Financial ("the Creditor") on a second deed of trust on Debtor's residence.

On July 26, 2016, the Debtor filed a Motion to Value Collateral of the Creditor. Dckt. 30. The Motion is set for hearing on August 23, 2016 at 3:00 p.m.

Due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection is continued to 3:00 p.m. on August 23, 2016.

17. 16-23425-E-13 ALFRED OLIVAREZ
Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
7-14-16 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2016. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Bank of America, N.A., a Creditor asserting a secured claim, opposes confirmation of the Plan on the basis that:

A. The Debtor's Plan states that payments on the Creditor's note are current, however the Creditor claims that an arrearage existed at the time of filing of the petition in the amount of $1,028.87. Debtor's Plan makes no provision for the cure of the arrears

B. The Debtor lists the balance owing on the note as $99,000.00. The Secured Creditor claims argues that the balance owing in the note is actually $100,440.67.

On July 20, 2016, the Creditor filed a "Notice of Mortgage Payment Change." Dckt. 23.

However, to date, the Creditor has failed to file a proof of claim. Additionally, the Creditor has failed to provide admissible evidence to support its claim that the plan does not provide for the full arrears of the Creditor.

The Creditor merely declaring that the Debtor's numbers are incorrect is insufficient.

Here, the Creditor objects on the basis that the plan does not properly state the arrearage amount. However, as stated in Section 2.04 states:

> 2.04 The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claims unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

So, while the plan as proposed does not state the proper amount of arrears due, the proof of claim will control. However, as stated supra, the Creditor has failed to file a proof of claim.

Therefore, with no evidence presented, no countervailing evidence, and no further objection, the Creditor's objection is overruled. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). 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 Secured Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 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.

18. 16-22732-E-13 DANNY RUE
DWR-1 Pro Se

MOTION TO VALUE COLLATERAL OF ANANA BLISS REVOCABLE LIVING TRUST
6-24-16 [27]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 24, 2016. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of "Anana Bliss Revocable Trust" is denied without prejudice.

The Motion to Value filed by Danny W. Rue ("Debtor") to value the secured claim of Anana Bliss Revocable Living Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4831 Cibola Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $166,933.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

secured claim.

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

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

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

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Anana Bliss Revocable Trust." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion.

As a matter of basic trust law, a "trust" is not a separate legal entity, such as a corporation or partnership. The Trust is name and serve in the name of the trustee of the trust, very much like a bankruptcy estate. For service by mail on an "unincorporated association," service must be made on an officer, managing agent, or other agent for service of process. Fed. R. Bankr. P. 7004(b)(3), 9014.

Here, Debtor names as the other "party" the "Anana Bliss Revocable Living Trust." Such trust can only act through, and be a party in, the name of the trustee of the trust. Fed. R. Civ. P. 17(a)(1)(E) and Fed. R. Bankr. P. 7017 and 9014. Neither is the trustee of the trust named as the party to the action, but it is not purported that the Motion has been served on the trustee or other authorized agent, but sent to the trust itself at a street address in Winnetka, California. Certificate of Service, Dict. 30. No Proof of Claim has been filed in this bankruptcy case. A survey of the Debtor's prior nine Chapter 13 cases which have been filed and dismissed since 2010, no proof of claim was filed in any of those prior cases.

DISCUSSION

While Debtor may have merit in his contention as to value of the Property and valuation of the secured claim, the court must have the real party in interest before it as a party to this Motion. U.S. Const. Art. III, Sec. 2. That is the trustee of the Anana Bliss Revocable Trust.

Rather than continuing this hearing and having the Debtor cobble together pleadings and service, the court denies the Motion without prejudice. Debtor can do his investigation, which may include obtaining copies of the recorded documents which may show the name of the trustee of the trust or avail himself of the ability to conduct written and oral discovery pursuant to Federal Rule of Bankruptcy Procedure 2004, and then file a new motion. FN.1.

FN.1. A review of the file indicates that Debtor may have bigger fish to fry in trying to prosecute this Chapter 13 case. In sustaining the Objection to confirmation of the Debtor's proposed Chapter 13 Plan, the court was presented with evidence that the pre-petition arrearages on the senior secured claim total $96,706.94. Civil Minutes, Dckt. 33. The proposed plan provided for paying a pre-petition arrearage of $68,628.01. The plan did not adequately fund repayment of a higher arrearage. Debtor did not challenge the creditor's objection to confirmation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Danny W. Rue ("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.

19. 12-40834-E-13 DAVID/SHELLIE FISCHER CONTINUED MOTION TO MODIFY PLAN
CA-6 Michael Croddy 6-21-16 [103]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Motion to Confirm the Modified Plan is denied without prejudice.

David W. and Shellie J. Fischer ("Debtor") filed the instant Motion to Confirm Debtor's Third Modified Plan on June 20, 2016. Dckt. 103.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on July 8, 2016. Dckt. 113. The Trustee opposes confirmation on the following grounds.

1. There are unexplained changes listed on the Debtor's amended Schedules I & J filed June 21, 2016. Dckt. 102.

2. Debtor's two Schedule I's, filed approximately 3 ½ years apart, contain information that mirrors the other.

3. There is an attachment for additional employment information that lists Debtor as "blank" with an occupation of Realtor with Re/Max Reality Today for 7 years.

JULY 26, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 16, 2016. Dckt. 129.

TRUSTEE'S RESPONSE

The Trustee filed a response on August 9, 2016. Dckt. 141. The Trustee objects to the Debtor's motion as follows:

1. The Debtors continue to pay the prior plan payment amount. The additional provisions of the modified plan lists the proposed plan payments as "$80,136 total paid in on or before month 42, followed by $1,393 per month for 18 months." According to the Trustee's records, month 42 is May 2016. The Trustee has posted plan payments in the amount of $1,908.00 for months June and July 2016.

2. The Debtor has not clearly addressed rental income. The Debtor's have filed a 34 page exhibit that only has a letter from the primary Debtor, explaining the changes to both income and expenses with no authentication or explanation of the other documents attached. The letter is not a declaration and does not authenticate, explain, or analyze the other pages of exhibits.

In the Trustee's opposition, the Trustee noted that the Debtor was still claiming income based on a 75% occupancy rate after more than three years in the Chapter 13 without providing any specific details. Now after the Trustee's opposition, the Debtor has removed the 75% language from the latest Schedule I (Dckt. 124) but the issue still remains.

DISCUSSION

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

The Trustee's objection is well-taken.

The basis for the Trustee's objection is that there are unexplained changes on the Debtor's amended Schedules I & J. Additionally, the two Schedule I's filed about 3 ½ years apart contain information that mirrors the other (both contain a statement that reads, "Property management income listed above assumes 75% occupancy on $1,839.50 = $1,379.62)." Lastly, there is an attachment for additional employment information that lists Debtor as "blank" with an occupation of Realtor with Re/Max Reality Today for 7 years. The Trustee is uncertain what if any income from this occupation the Debtor is receiving, and if no income is being received from this occupation, when the last time Debtor received any income from said occupation.

On July 25, 2016, the Debtor filed another Supplemental Schedule I. Dckt. 124. The only

apparent difference in the most recent Schedule I as compared to the one filed on June 21, 2016 is the removal of the phrase "Property management income listed about assumes 75% occupancy on $1,839.50 = $1,379.63."

The Trustee is correct that merely deleting the additional information does not provide sufficient information as to the accuracy and truthfulness of the budget.

In total, the concern of the Trustee as well as the court is that court nor any other parties in interest can determine the viability and feasibility of the plan when the Debtor has failed to provide updated and accurate information as to the Debtor's finances. The court finds it hard to believe that in the past 3.5 years, the Debtor's expenses and income has not changed. Without this information, the court is unable to confirm the plan.

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

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

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

20. 12-40834-E-13 DAVID/SHELLIE FISCHER CONTINUED MOTION TO MODIFY PLAN
DPC-1 Michael Croddy 6-15-16 [94]

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

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

Below is the court's tentative ruling.

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

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

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

The Trustee's Motion to Confirm the Modified Plan is granted

David Cusick, the Chapter 13 Trustee, filed a Motion to Confirm the Modified Plan on June 15, 2016. Dckt. 94. The Trustee states that he seeks to modify the plan to eliminate an ongoing mortgage payment to a second deed of trust to JP Morgan Chase where the claim has been satisfied and to reduce the plan payment by the amount that an ongoing Class 4 mortgage payment to Wells Fargo has increased.

The Trustee states that the Debtor's attorney has failed to file a timely modified plan.

The Debtor filed a proposed modified plan and Motion to Confirm on June 21, 2016. Dckt. 103 and 105. The hearing on the Motion is set for 3:00 p.m. on July 26, 2016.

JULY 19, 2016 HEARING

In light of the interconnectedness of the instant Motion and the Motion to Confirm, the court continued the instant hearing to 3:00 p.m. on July 26, 2016.

JULY 26, 2016 HEARING

The court continued the instant Motion along with the Motion to Confirm to 3:00 p.m. on August 16, 2016.

DISCUSSION

On August 16, 2016, the court denied the Debtor's Motion to Confirm Amended Plan. In denying confirmation, the increase in Debtor's projected disposable income has not been addressed by the Debtor.

Debtor has not opposed the current Plan.

No supplemental papers have been filed in connection with the instant matter.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Trustee's Chapter 13 Plan filed on June 15, 2016 is confirmed. Counsel for the Trustee shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Debtor for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. 16-23034-E-13 DPC-1 | **GREG SHOOK, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-19-16 [20]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustained the Objection.

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

A. The plan will not complete within 60 months.

B. Section 2.09 of the Debtor's Plan lists Nancy Cardenas, Tax Collector, as a secured debt for $7,050.00 at 0% interest. Creditor has filed a proof of claim indicating secured and priority debt of $12,878.25. Based on the Trustee's calculation, the plan will take 107 months to pay the claim in full at 0% interest and because the creditor is secured, it appears to be entitled to interest.

C. The Debtor has not made it clear whether they intend to pay ongoing property taxes. They show an expense of $84.00 described as "alleged property taxes." Debtor describes their ownership interest in the real property as **"absolute & private**." Debtor also refers to property in his schedules worth $11,104 under item 33, Claims Against Third Parties. The Debtor describes it as "wrongfully extorted property taxes."

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 2, 2016. Dckt. 28. The Debtor states that when the he discovered the Tax Collector claim, he amended the appropriate schedules and plan to provide for an amount that should be allowed. The Debtor, however, asserts that he will be filing an adversary proceeding objecting to the Tax Collector claim, apparently based on a footnote in a law review article.

In the Opposition it appears that Debtor believes that what he states on the Schedules controls over a Proof of Claim. That is not accurate, as required Paragraph 2.04 of the Plan provides,

> "2.04. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

Chapter 13 Plan, Dckt. 12. That does not mean a Debtor cannot object to the claim and the court confirm a plan that builds in that litigation, and a sufficient payment on, or as adequate protection if the objection is overruled, the claim.

Debtor also makes the incorrect assertion that since the County asserts a secured claim, and a valid secured claim will have a lien that continues on the property, then he does not have to provide for it in the Plan. Absent the creditor's consent, the Debtor may not ignore a secured claim, not provide for payment or treatment (such as prosecuting an objection to claim as part of the plan and the plan containing payments or creation of an adequate protection fund pending completion of that ligation). This court has addressed a possible method for such litigation to be made part of a plan in its decision in *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

In responding to the Objection, Debtor has now filed an amended plan. In filing an amended plan, Debtor must file and serve the amended plan, motion to confirm, supporting evidence, and notice of hearing on the motion to confirm the amended plan. While Debtor may have thought he was doing the "right thing" in filing an amended plan, he triggered a new notice and motion requirement. See Local Bankruptcy Rule 3015-1.

It may be that the creditor would agree to the proposed treatment, but there is nothing in the record showing such consent.

DISCUSSION

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the Plan will complete in 107 months due to the Debtor's understatement of Nancy Cardenas, Tax Collector's claim. The Debtor lists this as a secured debt for $7,050.00 at 0% interest, but the creditor has filed a proof of claim for the debt in the amount of $12,878.25.

Additionally, the Debtor lists an expense of $84.00 describing "alleged property taxes" and refers to property in his schedules valued at $11,104.00 which the Debtor refers to as wrongfully extorted property taxes. Taking this into account, the Debtor's plan exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan filed on May 24, 2016 is not confirmed.

22. 16-23034-E-13 GREG SHOOK
PP-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY COUNTY OF LASSEN
7-21-16 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustained the Objection.

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

1. The plan will not complete within 60 months. Debtor's Plan lists Nancy Cardenas, Tax Collector (the County) as a secured debt for $7,050.00 at 0% interest. Creditor has filed a proof of claim indicating secured and priority debt of $12,878.25. The debt to the county currently increases monthly by approximately $105.76. The minimum payment to satisfy the debt to the County in 60 months is approximately $322.00 per month. The current plan proposes to pay only $118.00 per month.

2. The Plan must pay statutory interest on the secured tax arrearage. The plan

currently provides for 0% interest on the arrears owing to the County. The plan must provide for full payment of the delinquent secured taxes at the statutory rate of 1.5% per month.

3. The Debtor does not have sufficient income to fund a confirmable plan. The Debtor receives $926.00 per month in social security payments as well as $75.00 in food stamps. The Debtor has monthly expenses totaling $872.00. This leaves the Debtor with $129.00 per month to fund the Plan.

4. The Debtor is not acting in good faith and in compliance with the law. The Debtor claims ownership of the Property but does not have title to the property. The Debtor has understated the amount of real property taxes owing. Additionally, the Debtor claims that the County has no right to recover real property taxes and has asserted a claim against the County to recover all prior payments made to the County for real property taxes. Finally, the Debtor includes in his Schedule J ongoing tax payments to the County as an expense, but has not been making any payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 2, 2016. Dckt. 31. The Debtor argues that the County does not have an actual claim and that he is planning to file an adversary proceeding to object to the claim, interest and penalties. The Debtor makes legal arguments without providing any legal support. The Debtor's opposition makes generalized objections to the County's Objection, including statements in the declaration establishing certain evidentiary basis.

The Debtor argues that the plan should be confirmed because the Debtor will be able to make the $229.00 payment, and that once he is successful on the claim against the County, he will be able to fund the plan.

DISCUSSION

The Counties's objections are well-taken.

The basis for the County's objection is that the Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. The Debtor has understated Nancy Cardenas, Tax Collector's claim. The Debtor lists this as a secured debt for $7,050.00 at 0% interest, but the creditor has filed a proof of claim for the debt in the amount of $12,878.25. The Debtor's plan proposes payments of $118.00 per month. In order to complete the plan in the permitted 60 months, Debtor would have to pay approximately $322.00 per month.

Additionally, the Debtor lists an expense of $84.00 describing "alleged property taxes" and refers to property in his schedules valued at $11,104.00 which the Debtor refers to as wrongfully extorted property taxes. Taking this into account, the Debtor's plan exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

What appears to the court is that the Debtor and the County have been locked in battle over the property tax issue since at least 2009. Based on the Debtor's opposition, the court can discern that the Debtor is passionate in exercising his rights and in his attempt to disallow the County's claim. However, the plan as presented, is not feasible or viable. The court understands the financial situation of the Debtor. However, based on the information provided to the court, the court cannot confirm the plan since it facially appears to exceed 60 months.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan filed on May 24, 2016 is not confirmed.

23. **16-23438-E-13** **VINCENT/JANICE AYULE** **OBJECTION TO DISCHARGE BY DAVID CUSICK**
DPC-1 **Ronald Holland**
7-15-16 [14]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 15, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on July 15, 2016. Dckt. 14.

The Objector argues that Vincent James and Janice Lee Ayule ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on February 3, 2015. Case No. 15-20803. The Debtor received a discharge on June 16, 2015. Case No. 15-20803, Dckt. 30.

The instant case was filed under Chapter 13 on May 26, 2016.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on June 16, 2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 15-20803, Dckt. 30. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-

23438), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS FURTHER ORDERED** that, upon successful completion of the instant case, Case No. 16-23438, the case shall be closed without the entry of a discharge.

24. **16-20740-E-13** **EMMA MCZEEK-TANKO** **MOTION TO APPROVE LOAN MODIFICATION**
TLA-2 **Thomas Amberg** **8-2-16 [55]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13Trustee, parties requesting special notice, and Office of the United States Trustee on August 2, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Emma McZeek-Tanko ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC, loan servicer and authorized agent for creditor, HSBC Bank, USA, N.A., as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AG1, Asset Backed Pass-Through Certificates ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $769.00 a month to $764.63 a month. The modification offers a 3.25% fixed interest rate and a balloon payment disclosure incorporated into the modification which indicates a balloon payment of $56,148.80 will be due and payable on August 1, 2016.

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

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee filed an opposition on August 3, 2016. Dckt. 60. The Trustee states that he has no objection to the general terms of the modification

However, the Trustee is uncertain the loan modification is being offered by the party who is the owner or holder of the existing note, and if it is not, the Trustee is not certain what authority the party offering the loan modification has to offer the loan modification.

The loan Modification Agreement indicates that Ocwen Loan Servicing, LLC is the lender, but does not provide proof of Ocwen's authority to enter the modification. The Balloon Payment Disclosure incorporated into the loan modification identifies Ocwen Loan Servicing, LLC as the servicer.

Proof of Claim No. 9-1 was filed by Trea Ruffin, Contract Management Coordinator for Ocwen, who is identified as the creditor's attorney or authorized agent. The claim identifies HSBC Bank, USA, N.A., as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AG1, Asset Backed Pass-Through Certificates as the creditor. Attached to the Proof of Claim is a Corporation Assignment Deed of Trust transferring all beneficial interest under the Deed of Trust dated June 7, 2015 together with the note or notes, money due and to become due thereon with interest, and all rights accrued under said Deed of Trust from Argent Mortgage Company, LLC to HSBC Bank, USA, N.A., as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AG1, Asset Backed Pass-Through Certificates.

DISCUSSION

First, the court notes that the Home Affordable Modification Agreement identifies Ocwen Loan Servicing, LLC as "Lender/Servicer or Agent for Lender/Servicer." Dckt. 58.

While the court would have also liked to see the explicit documentation that gives Ocwen Loan Servicing, LLC the authority to enter into loan modifications, the Debtor and Creditor did correctly identify themselves as the "authorized agent." The court's prior concern with these motions was namely the parties incorrectly identifying loan servicers as the real creditor. This had the potential of causing substantial harm to debtors who entered into these modifications because, essentially, the real creditor, years later, could say that the loan servicer was never authorized to modify the loan, rendering the order authorizing the loan modification ineffective since it incorrectly identified that true creditor.

However, in the instant case, Ocwen Loan Servicing and the Debtor are both correctly identifying it as the loan servicer and "agent for." This explicitly provides the parties involved and which parties are entering into the modification. While the Trustee raises a more nuanced point, the court has no reason to believe that Ocwen Loan Servicing would be misrepresenting, or that HSBC Bank, USA, N.A., as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AG1, Asset Backed Pass-Through Certificates , would have such a misrepresentation made, that it is the agent for the creditor. Such is the business of Ocwen Loan Servicing, LLC as it has been represented by Ocwen Loan Servicing, LLC and various

institutional lender clients in other cases. There is no need to make approval of the loan modification any more difficult by adding a “proof of agency” component under the facts of these types of motions. (This is similar to the loan servicer seeking relief from the automatic stay for the servicer and its identified principal.)

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Emma McZeek-Tank having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Emma McZeek-Tanko ("Debtor") to amend the terms of the loan with Ocwen Loan Servicing, LLC, loan servicer and authorized agent for creditor, HSBC Bank, USA, N.A., as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AG1, Asset Backed Pass-Through Certificates, which is secured by the real property commonly known as 145 Gunnison Ave., Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 58.

25. 16-20740-E-13 EMMA MCZEEK-TANKO MOTION TO MODIFY PLAN
TLA-1 Thomas Amberg 6-21-16 [43]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2016. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

The 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.

Emma McZeek-Tanko ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 21, 2016. Dckt. 43.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the Instant Motion on August 1, 2016. Dckt. 52. The Trustee states that the Debtor's modified plan proposes to reclassify Ocwen Loan Servicing regarding the ongoing mortgage and pre-petition arrears from a Class 1 secured creditor to a Class

4 secured claim paid directly by the Debtor on a trial loan modification. Debtors Motion and Declaration indicate that Debtor intended to file a Motion to approve the loan modification within the week following the filing of Debtor's Motion to Modify, which was filed June 21, 2016. Additionally, Section 6.02 of the proposed modified plan states, "Debtor shall file a "Motion to Approve Loan Modification" before the present plan is confirmed."

DISCUSSION

On August 2, 2016, the Debtor filed a Motion to Approve Loan Modification. Dckt. 55. The final loan modification was approved on August 16, 2016. Therefore, the Trustee's objection is overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 21, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. **16-21446-E-13** **ANGELA SEIBERT** **MOTION TO CONFIRM PLAN**
DAO-4 **Dale Orthner** **6-30-16 [58]**

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 30, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. 16-24146-E-13 SJS-1 STANLEY/KATHLEEN HART Matthew DeCaminada MOTION TO VALUE COLLATERAL OF PATELCO CREDIT UNION 7-7-16 [20]

Tentative Ruling: The Motion to Value the Secured Claim of Patelco Credit Union 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Patelco Credit Union ("Creditor") is continued to 3:00 p.m. on XXXXXXXXXXXX, 2016.

The Motion to Value filed by Stanley Wilford Hart, Jr. And Kathleen Margaret Hart ("Debtor") to value the secured claim of Patelco Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7248 Sylvan Grove Way, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $206,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

OPPOSITION

Patelco Credit Union filed an Opposition to Debtors' Motion to Value Collateral of Patelco

Credit Union on August 2, 2016. Dckt. 34. The Creditor contests the Debtors' valuation of the Property.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $222,831.67.

The Creditor requests additional time to perform an 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 Stanley Wilford Hart, Jr. And Kathleen Margaret Hart ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on XXXXXX, 2016.
>
> **IT IS FURTHER ORDERED** that supplemental Opposition pleadings shall be filed and served on or before XXXXXX, 2016; and Replies, if any, to the Supplemental Opposition pleadings shall be filed and served on or before XXXXXXXXXX, 2016.

28. **16-24146-E-13 SJS-2** **STANLEY/KATHLEEN HART** **Matthew DeCaminada** **MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION 7-7-16 [16]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Sierra Central Credit Union ("Creditor") is granted and the creditor's secured claim is determined to have a value of $11,909.69.

The Motion filed by Stanley Wilford Hart, Jr. And Kathleen Margaret Hart ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Ford F150 SuperCrew Cab FX4 Pickup 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,891.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S RESPONSE

Sierra Central Credit Union filed an Opposition to Motion to Value Collateral of Sierra Central Credit Union on July 29, 2016. Dckt. 30. The Creditor opposes the Instant Motion on the basis that the Debtor has incorrectly valued the collateral securing the Creditor's claim at $6,891.00. The Creditor claims that the value of the collateral is $15,946.00 based on a Kelly Blue Book Lending/Suggested Retail Breakdown.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in August, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,909.69.

The court has been presented with credible evidence, in the form of the Kelley Blue Book valuation (authenticated as a market report, Fed. R. Evid. 803(17)), that this vehicle has a retail value of $15,946.00. However, such value is for a 2007 vehicle in showroom ready condition. No other information is provided by the Creditor as to the condition of the vehicle.

Unfortunately, the person who is likely to be the most knowledgeable as to the condition of the vehicle, the Debtor, offers no explanation as to the condition of the vehicle in his declaration. Dckt. 18. While the Debtor's personal opinion is admissible, compared to the market report, it is not the more convincing or credible.

Even if the court allows $2,000.00 for detailing and a tune-up, the Kelly Blue Book retail value for the Vehicle still exceeds the $11,909.69 secured claim.

Therefore, the court grants the motion and determines that the value of the secured claim of Sierra Central Credit Union, for which the collateral is a 2007 Ford F150 SuperCrew Cab FX4 Pickup 4D, is $11,909.69. The court determines the value of the vehicle to be $13,946.00, after allowing for normal detailing and maintenance to put the vehicle into retail sale shape.

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 Stanley Wilford Hart, Jr. And Kathleen Margaret Hart ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the secured claim of Sierra Central Credit Union, for which the collateral is a 2007 Ford F150 SuperCrew Cab FX4 Pickup 4D, is $11,909.69; with the court determining the value of the collateral to be $13,946.00.

29. 16-23350-E-13 DPC-1 | **JODY/JOY SILVA** **Michael Croddy** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-6-16 [30]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The courts decision is to sustain the Objection

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

A. The Plan relies on Motions to Value.

1. The Debtors propose to value the secured claim of NCEP, LLP, but Debtors have failed to file such a motion to date.

2. The Debtors propose to value the secured claim of Santander, but the Debtors have failed to file such a motion to date.

B. The Debtors are $4,796.00 delinquent in plan payments to the Trustee to date.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that Debtor's Plan relies on Motion to Value Collateral of NCEP, LLP and Santander, but Debtor has not filed such motions. Without valuing the claims, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the Trustee objects based on the Debtors' delinquency. Debtor is $4,796.00 delinquent in plan payments and has paid $0.00 into the Plan. The Debtors' delinquency indicates the Plan is not feasible, and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

30. 16-23350-E-13 JODY/JOY SILVA
EAT-1 Michael Croddy

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 7-7-16 [34]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of the Plan is overruled.

Wells Fargo Bank, N.A., the Secured Creditor Trustee, opposes confirmation of the Plan on the basis that:

A. There is no automatic stay in effect.

B. The total arrearage amount in the Plan is understated. The Debtors' Plan list the Secured Creditor as a Class 1 Creditor and provides to cure pre-petition arrearages of $25,000.00. The Secured Creditor Contends that the arrearages due are in the amount

of $37,227.15 and intends to file a Proof of Claim.

First, the Creditor does not provide any authority or citation as to why the termination of the automatic stay is cause to deny confirmation. In light of the legal effect of confirmation being the modification to the contract between the parties, the effect of confirmation is not dependent on the automatic stay. FN.1.

FN.1. While the court could structure some possible arguments about why the absence of the automatic stay and the prior dismissed cases may form some basis for objecting to confirmation, it is not the court's place to make such arguments. When creditors' attorneys merely through out contentions, unsupported by cogent, well reasoned, and legally supported arguments, a judge is left to wonder whether other arguments that appear to facially have merit might well be non-meritorious and build on a foundation of sand.

The Creditor merely declaring that the Debtor's numbers are incorrect is insufficient to derail confirmation of this Plan.

Here, the Creditor ignores the express language of the Chapter 13 Plan and objects on the basis that the plan does not properly state the arrearage amount. However, as stated in Section 2.04 states:

> 2.04 The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claims unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

So, while the plan as proposed does not state the proper amount of arrears due, the proof of claim will control. However, as stated supra, the Creditor has failed to file a proof of claim. Creditor has failed to provide any evidence for its contention that there is a larger arrearage and the plan does not have sufficient funds to pay that claim. Thus, this contention is not built on a foundation of evidentiary substance, but merely conjecture, speculation, and attorney argument. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing the creditor proceeding with a foreclosure after filing a proof of claim and the plan failing to properly provide for that claim. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee. Rushing to confirm a plan that fails to properly provide for the arrearage of a secured claim is not a no-lose proposition for a debtor, nor for that debtor's counsel.

Though a creditor, it appears that Wells Fargo Bank, N.A. has chosen not to file a proof of claim and elected not to receive any payments from the Chapter 13 Trustee. See Chapter 13 Trustee's Response, Dckt. 37.

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 Wells Fargo Bank, 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 overruled.

31. **16-23056-E-13** **ANDREW KNIERIEM** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Pro Se** **PLAN BY DAVID P. CUSICK**
7-6-16 [30]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The Debtor os $70.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan to date.

B. The Debtor failed to appear at the First Meeting of Creditors held on June 30, 2016. The meeting was continued to August 25, 2016.

C. The Plan fails to provide payments to any creditors. No creditors are listed in Class 1, Class 2, Class 3, Class 4, Class 5, and no dividend has been provided to general unsecured creditors.

D. The Debtor lists no Creditors on Schedules D or E and lists four creditors on Schedule F, including Nationstar Mortgage. Nationstar Mortgage may be secured by Debtor's real property and would be more appropriately listed on Schedule D and provided for in either Class 1 or Class 4.

E. Additionally, Bank of New York Mellon/Real Time Resolutions filed Court Claim #2 in the amount of $358.042.26, secured by a second deed of trust. The lender reports the Debtor was delinquent $176.339.48 at the time of filing, indicating that this claim should be listed in the plan as Class 1. The Claim reports an ongoing payment of $1,833.38

F. The Debtor's Plan may fail the Chapter 7 Liquidation analysis.

1. The Debtor's Schedule A lists real property with a value of $496,600.00. The Debtor's Schedule F reports debt to Nationstar Mortgage in the same amount. The property may be worth more than reported. On Schedule C, the Debtor exempts his real property under C.C.P. § 704.730 for $496,600.00. This exceeds the amount allowed under the exemption.

2. The Debtor claims as exempt two vehicles under C.C.P. § 704.010 for $4,500. This exceeds the amount allowed under the exemption.

G. The Plan may not be in the Debtor's best efforts. The Debtor is proposing to pay $70.00 per month for 36 months. Debtor's Schedule J reports his net disposable income to be $131.00 per month.

H. Debtor may not be able to make the payments under the Plan or comply with the Plan. Debtor deducts $800.00 per month for an ongoing mortgage payment on Debtor's Schedule J. According to the claim filed by Bank of New York Mellon/Real Time Resolutions, the contractual ongoing monthly payment is $1,833.38.

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

J. The Debtor has failed to provide the trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. Specifically, the 2015 Tax Return or a written statement that no such documentation exists.

The Trustee's objections are well-taken.

The Trustee opposes confirmation offering evidence that the Debtor is $70.00 delinquent in plan payments. This is evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Debtor failed to appear at the First Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee opposes confirmation of the Plan on the basis that the Debtor's Plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While the Debtor proposes a 0% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upwards of $170,000.00 in non-exempt equity.

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee also argues that the plan is not the Debtor's best effort. According to the Trustee, the Debtor is under the median income and proposes plan payments of $70.00 per month for 36 months, with a 0% dividend to unsecured creditors. Debtor's monthly projected disposable income listed on Schedule J reflects disposable income of $131.00 per month. Therefore, Debtor is not paying all of his disposable income into the plan. Additionally, Debtor's plan does not provide for payments to any creditors, has various misclassified claims, and fails to properly account for Debtor's ongoing 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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

32. 16-23056-E-13 PPR-1 | **ANDREW KNIERIEM** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC** **6-17-16 [24]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Chapter 13 Trustee on June 17, 2016. By the court's calculation, 60 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Nationstar Mortgage, LLC, asserting a secured claim in this case, opposes confirmation of the Plan on the basis that:

A. The plan fails to require the maintenance of the ongoing post-petition monthly payments or otherwise provide for treatment of the Secured Creditor's claim, such as surrender of the Subject Property to Secured Creditor. Without express treatment in the Plan for Secured Creditor's claim, the Plan may not be confirmed. Additionally, if the Debtor intends to keep the Subject Property, the Plan must also provide for the full payment of prepetiton arrearages owing to Secured Creditor.

B. The Debtor's Plan may not have been filed in good faith.

C. The Debtor has filed the following prior bankruptcy cases:

Case Number	Date Filed	Result
10-30250	April 21, 2010	Dismissed May 3, 2010
11-34354	June 1, 2010	Discharge Granted September 13, 2010
15-23632	May 1, 2015	Dismissed June 29, 2015
16-23056	May 11, 2016	Current Case

All of the above filings have occurred during a time in which Debtor has been delinquent due to Secured Creditor. Debtor has not demonstrated any changed circumstances which support a finding that the Debtor likely to confirm a Chapter 13 Plan in this case

D. Additionally, Debtor failed to file a Schedule D; exempted the subject property for its full market value, above the proscribed homestead limit; scheduled Secured Creditor's claim as a general unsecured claim in his bankruptcy; is silent with respect to the treatment of the over $300,000.00 in pre-petition arrears owed to Secured Creditor; and the Plan makes no mention regarding the ongoing payments due to Secured Creditor.

While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matters in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Fed. R. Bankr. P. 9018 for contested matters. Nationstar Mortgage, LLC has improperly attempted to join three separate contested matters with three separate claims for relief in this single pleading:

A. Objection to Confirmation.

B. Demand for injunctive relief with the court imposing an "180-day bar" on Debtor filing another bankruptcy case. FN.1.

FN.1. Creditor offers no explanation or authority for why or how it is proper for this court to issue an injunction in this contested matter and ignore the Supreme Court and the requirement for an adversary proceeding as specified in Federal Rule of Bankruptcy Procedure 7001.

C. Demand that the bankruptcy case be dismissed and the court order a "180-day bar pursuant to Section 109(g)." Again, no basis is shown for the issuance of such an

injunction as part of this contested matter. Further, no basis has been shown for this court to "order" the imposition of a 180-day bar on filing when 11 U.S.C. § 109(g) is a Congressionally mandate limitation on filing of bankruptcy cases, not "court ordered." FN.2.

FN.2. While Nationstar Mortgage, LLC appears to flounder about on this point, Congress created express relief for a creditor with a secured claim that thinks it is being subject to a scheme to abuse the Bankruptcy Code. 11 U.S.C. § 362(d)(4) does expressly authorize a bankruptcy judge to issue a prospective order preventing the automatic stay going into effect for a period of two years with respect to the property - irrespective of who the debtor is in the future case(s). That Code section provides the court with the authority to effect the automatic stay, by motion, into the future. But such relief has not been sought by this objecting party.

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

As to the Creditor's remaining objection, the Creditor has failed to file a Proof of Claim or provide any evidence as to amount of the claim and the arrearage. Something as simple as filing a proof of claim or a declaration from the creditor will carry the day on this point. See ¶ 2.04 of the Chapter 13 Plan, Dckt. 11. While the Motion states that the Creditor is in the process of preparing one, where they will accurately allege the pre-petition arrearage, no such Proof of Claim has been filed. The Creditor does not provide any properly authenticated evidence or competent testimony as to pre-petition acreage or the amount of the secured claim.

Therefore, the objection is overruled. FN.3.

FN.3. Overruling this objection is of little consequence, as the court is denying confirmation of the plan based on the objection of the Chapter 13 Trustee.

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

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

33. 12-24258-E-13 DARRELL WILLIAMS MOTION TO MODIFY PLAN
FF-8 Nekesha Batty 7-6-16 [141]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. 15-23258-E-13 MOSES/PATRICIA MERCADO CONTINUED MOTION TO MODIFY PLAN
BLG-1 Paul Bains 5-27-16 [34]

The Tentative Ruling States Terms For Amendments to Address the Objections The Parties Are to Review the Terms and be Prepared to Address Them at the Hearing

Tentative Ruling: The Motion to Confirm Modified 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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2016. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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, as amended, is granted.

Moses J. And Patricia A. Mercado ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 27, 2016. Dckt. 34

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on June 13, 2016. Dckt. 51. The Trustee opposes confirmation on the following grounds:

A. The attorney's fees in § 2.06 of the proposed modified plan are different from the confirmed plan. The Confirmed Plan provided for attorney's fees in the amount of $4,000.00, with $1,400.00 paid prior to filing and $2,600 to be paid through the plan. § 2.06 of the Proposed Plan indicates attorney's fees paid prior to filing in the amount of $500 with $3.500 to be paid through the plan. The Trustee has already disbursed $2,600 in attorney's fees pursuant to the terms of the confirmed plan and the order confirming.

B. Debtor may have borrowed additional funds from retirement accounts. Debtor's original Schedule I reflect monthly deductions for two 401K loans of $90.24 for the first loan and $70.37 for the second. Debtor's supplemental Schedule I continues to show payroll deductions for two 401K loan, but the monthly payment for the first loan has increased from $90.24 to $222.76.

    1. It appears Debtors have borrowed additional funds from their 401K account. The Trustee is unable to locate within the docket that the Debtors obtained permission to borrow additional funds. Debtor provides no explanation for the increased payment, when the additional funds were borrowed, why they were borrowed, or when the payments will end.

C. Debtor has provided conflicting information regarding the monthly rent expense for Patricia Mercado. Supplemental Schedule J-2 for Patricia Mercado indicates Debtor's monthly rent payment is $1,640.00, but later states, "RENT Increase will occur in July 2016 from $1,470 to $1,495". The Trustee is uncertain the amount budgeted on Debtor's Supplemental Schedule J is an accurate reflection of Debtor's current rent expense.

STIPULATION AND ORDER CONTINUING

On June 12, 2016, the parties filed a stipulation to continue the hearing on the instant Motion o 3:00 p.m. on August 16, 2016. Dckt. 54.

On June 12, 2016, the court granted the request and continued the matter to 3:00 p.m. on August 16, 2016. Dckt. 55.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's opposition on August 9, 2016. Dckt. 60. The Debtor states :

A. Debtor's counsel admits that there is an error in the plan. The Debtor's counsel has received $1,400.00 prior to filing and $2,600.00 was to be paid through the plan. The Debtor recommends that this be corrected in the order confirming.

B. As to the statement on Schedule J as to the rental expense and the statement at the end of Schedule, the Debtor states that the rent increased to $1,640.00 and that the latter statement was inadvertently added.

C. The Debtor admits that the Debtor did take out an additional 401K loan in July 2015 in the amount of $9,825.00, which was taken without court permission. The payment on the new 401K loan is $102.81 per month.

1. Debtor Moses Mercado submits that he in no intended to violate the law in borrowing the money without receiving court permission. The Debtor requests that the order confirming reflects that the monthly payment will be $428.00 in May, June, and July 2016 and then increase to $530.00 in August 2016 for the remainder of the plan. It is estimated that the general unsecured will receive 17.72% of their allowed claim

DISCUSSION

The Debtor appears to be suggesting changing substantial items in the plan through an order confirming. The purpose of correcting terms in the order confirming is to typically correct scrivener's errors. If the only objection was as to the attorney's fees, correcting that error in the order confirming would be proper.

However, the Debtor is attempting to not only adjust the monthly payments, but also increase the proposed dividends to unsecured creditors as well as an unauthorized 401K loan that, to date, has not been approved.

The existing confirmed Chapter 13 Plan in this case requires monthly plan payments of $1,350.00 a month for a period of sixty months. Dckt. 5. Debtor now wants to drop the payment to only $428.00 month, cutting it by two-thirds.

In the Motion, it is explained that the two debtors have separated, and therefore they are incurring the expenses of two separate households. Dckt. 34. The protection of bankruptcy does not

insulate parties from these other real-life events. The Motion continues to state that the projected disposable income for Debtor is not $0.00.

In the updated income information filed, Debtor Moses Mercado ("Debtor 1") lists gross income of $5,268.66 and Debtor Patricia Mercado ("Debtor 2") lists gross income of $5,861.46. In addition to taxes, dental, and a medical deduction of $1,059.13 (which is not listed as "insurance," Debtor 1 deducts $263.42 for a 401(k) contribution and $302.13 for 401(k) loan payments – in effect, Debtor 1 paying himself $568.55 a month before paying creditors. After the deductions, including the payments to himself, Debtor 1 lists having $2,855.19 in take-home income.

After her deductions, Debtor 2 shows $3,640.26 in take-home income. The court cannot tell if the tax withholding is based on two separate tax payers, or if the withholding is being treated as if the two debtors were filing a joint return and pyramiding one income on the other.

For Debtor 1, his monthly expenses are shown to be ($2,611). This results in there being $244.00 of net monthly income, before considering whether some portion of the 401(k) contribution or loan payback should not be deducted from Debtor 1's income. Exhibit E, Dckt. 64.

For Debtor 2, with $3,640.26 in take-home income, her monthly expenses are stated to be ($3,354.00), almost $1,000.00 more than Debtor 1. This leaves her with only $186.00 a month to fund the Plan. *Id.*

On the updated schedule J expense forms (Dckt. 64), the two debtor list a joint take-home income of $6,495.45. This is consistent with the prior income information - if Debtor 1 continues to make the 401(k) contribution and pay the two 401(k) loans. Thus, the payment drops to the $428.00 a month.

The problem for the two debtors is that while seeking and availing themselfs of this great relief available under the Bankruptcy Code, they missed one of their major duties – not borrowing money or diverting monies. Even if done "innocently" in the heat of a separation in which these two debtors report that they are not talking to each other, the court cannot ignore this misconduct. To do so would make the court appear to be the patsy for every less than scrupulous debtor and sharp dealing attorney who are looking to pillage and plunder while safely ensconced in the protection of the bankruptcy laws.

Fortunately, there is a solution which will be of minimal impact to the parties during the remaining forty-four months of the Plan (September 2016 - April 2020) - Debtor Moses Mercado can case making a $263.42 a month 401(k) contribution. That increases the monthly plan payment to $691.00 a month for the final forty-four months of the Plan.

During the Plan, as Debtor Moses Mercado finishes paying himself for his pre and post-petition 401(k) loans, he can use that money to begin making new 401(k) contributions (after having received the benefit of replenishing his 401(k) account with the payments from his earlier borrowing.

Looking at original Schedule I, the 401(k) loan payments at the commencement of this case were $169.61 a month. Dckt. 1 at 40. Now, on the new expense schedule they have grown to $302.00 a month. Making the $263.00 a month additional plan payment re-balances the finances so that Debtor's post-petition misconduct in borrowing money without authorization does just because another loss for creditors. Given

that the two debtors have been making the lower plan payment, while Debtor Moses Mercado as been continuing to put new contributions in his 401(k) for the months of April - August 2016 (six months), both of these debtors end up even better off, avoiding paying $1,567.00 to creditors while making payments to themselves for the unauthorized post-petition loan. FN.1.

FN.1. While some may consider that even with this amendment the plan cuts the corner concerning the post-petition unauthorized credit. The court has taken into account the significant personal toll and stress on the two debtors by the non-bankruptcy issues they are addressing, and believes that the above resolution honors the Bankruptcy Code while allowing it to be flexible enough so the two debtors can continue to move forward.

At the hearing, the two Debtors agreed to amend the plan to provide that the monthly plan payments are:

A. $428.00 a month for the months of May through August 2016, and

B. $691.00 a month commencing with the September 2016 payments and continuing for each month thereafter for the remaining months of the sixty-month plan.

The plan payment terms having been amended by Debtor and concurred in by the Trustee, the proposed modified plan, as amended above, 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 Motion to Confirm the Plan is granted, and the Modified Chapter 13 Plan filed on May 27, 2016, as amended to provide that the plan payments for the months of May through August 2016 are $428.00 and then increase to $691.00 a month for each month of September 2016 through the sixtieth month of the plan (which amendment shall be stated in the order confirming the plan) is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

35. 16-23259-E-13 DPC-1 | **CHRISTOPHER/LORA CLARK** **Robert Fong** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-6-16 [25]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The Debtor's plan relies on the Motion to Value Collateral of GM Financial at $10,950.00.

B. The Debtor has failed to file all pre-petition tax returns required for the four years preceding the filing of the Petition. On July 1, 2016, The Internal Revenue Service filed Court Claim #1, which indicates that Debtor's have not filed tax returns for 2012 and 2015.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtors' plan relies on the Motion to Value Collateral of GM Financial. On August 2, 2016, the Court entered an order (pursuant to a stipulation of the Parties) valuing the Collateral of GM financial at $11,937.50. Dckt. 43. However, the Plan still relies on the collateral being valued at $10,950.00. Without the claim being valued at $10,950.00, the plan may not be feasible. 11 U.S.C. § 1325(a)(6).

Additionally, the Debtors have failed to file tax returns for all required pre-petition tax years for which a return was required. Specifically, Debtor's have not filed tax returns for 2012 and 2015. Filing of the returns is required. 11 U.S.C. § 1308. Debtors' failure to file the returns is grounds to deny confirmation. 11 U.S.C. § 1325(a)(9).

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

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

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

36. 16-22360-E-13 DERRICK NOBLES
DPC-1 Chinonye Ugorji

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-6-16 [30]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

A. The Plan fails the Chapter 7 Liquidation Analysis. The Debtor's non-exempt equity totals $77,600.00. The Debtor is proposing a 2% dividend to unsecured creditors, which amounts to approximately $623.00.

B. The Debtor may be unable to make the proposed plan payments of $87.00. Debtor's Schedule I reports income from rents of $350.00 as net income from rental property which Debtor's plan proposes to surrender in Class 3. Without this property, the Debtor will no longer be receiving the $350.00 per month.

C. The Debtor's Schedule I also shows $850.00 per month from "Additional Room Rental". The Statement of Financial Affairs reflects $6,400.00 of "Rental" income for the year to date, the case was filed on April 14, 2016. It appears that Debtor's rental income has decreased and Debtor's assertion in Schedule J that the Debtor will receive additional rental room is not credible without a detailed declaration, with exhibits including copies of rental contracts and proof of a history of receiving such income.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor's Plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While the Debtor proposes a 2% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the penalty of perjury, that the unsecured claimants are entitled to a 2% dividend when there may be upwards of $77,600.00 in non-exempt equity.

The Trustee's also objects because the Debtor may be unable to make payments under the proposed plan. The Debtor has failed to explain how plan payments will be made with the loss of $350.00 per month of income from rents after the Hasper Way Property is surrendered. Also, Debtor offers no proof other than the statement in Debtor's Schedule J to support the claim that Debtor will be receiving $850 per month from "Additional Room Rental". The failure of the Debtor to provide complete, accurate, and truthful information has made in indeterminable for the court whether the plan is viable, feasible, or the Debtor's best effort.

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

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

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

37. **16-23660-E-13** **LEILA POURSAED** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
7-19-16 [26]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

38. 16-24661-E-13 RONNETTE ROGERS RUNNINGS MOTION TO EXTEND AUTOMATIC STAY
DAO-1 Dale Orthner 7-19-16 [10]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Extend Automatic Stay 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 Extend the Automatic Stay is granted.

Ronnette Lorea Rogers Runnings ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-21233) was dismissed on July 5, 2016, due to the Debtor's delinquency in plan payments to the Trustee. *See* Order, Bankr. E.D. Cal. No. 15-21233, Dckt. 37, June 22, 1016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

A. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor's Plan failed to properly account for the $70,000.00 balloon payment that would have been due at the expiration of the plan. Debtor did not realize this fact until after her previous case was filed. Debtor stopped making her previous plan payments because her Plan did not provide for the payment on the HELOC on her home. Had Debtor continued with her previous Plan, she would have came out of it with the full $70,000.00 plus balance due and payable on her 2nd mortgage with no way to pay it or avoid foreclosure at the time. Debtor chose to file a new Chapter 13 case with a new 5 year Plan in which she could account for these previous shortcomings.

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

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

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

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

39. **16-23267-E-13 DPC-2** | **GEORGE NJENGE AND RACHEL EKINDESONE** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**

D. Randall Ensminger | **7-6-16 [20]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is **$2,135.00 delinquent** in plan payments to the Trustee. The Debtor has paid $0.00 into the plan to date.

2. The Debtor cannot make the payments or comply with the plan.

   a. Debtor's plan relies on the Motion to Value Collateral of Faye Servicing, LLC listed in Class 2C.

   b. Debtor's Schedule E/F lists a priority tax debt owed to the Internal

Revenue Service of $158,000.00. Section 2.13 of Debtor's proposed Plan indicates that the debt is disputed. The Plan cannot be confirmed without a resolution of the priority claim of the Internal Revenue Service.

c. The Debtor lists 3513 Domich Way, Sacramento California as their address. Debtor's Schedule A/B lists real property at 550 Watson Avenue, Sacramento California. Debtor's Schedule J fails to list any rent expense for the Domich Way property.

3. The plan may not be the Debtor's best effort.

a. The Trustee objects t the Debtor's deductions on Form 122C-2 as follows:

i. Lines 9b and 33a. Debtors deduct $500 per month for payment to Faye Servicing, LLC for the 2nd Deed of Trust on Debtors real property. Debtors list Faye Servicing, LLC in Class 2C of the plan, proposing to strip the 2nd lien on the Wilson Avenue Property. Since Debtor does not intend to pay this debt, the deduction should not be allowed.

ii. Line 30. Debtor deducts $64.00 for additional food and clothing expense. Debtor fails to show any evidence of additional food and clothing requirements beyond the national standards as required by the form.

iii. Line 35. Debtor deducts $2,633.37 for payment toward priority tax debt, which is listed as disputed in Class 5 of the Plan.

Omitting these deduction, the Trustee calculates the monthly disposable income on line 45 to be $2,909.26. Based on the applicable commitment period of 60 months, unsecured creditors would be entitled to receive $174,555.60 over the life of the plan. This amounts to 100% of the scheduled unsecured claims. Debtor currently proposes to pay a 0% dividend to unsecured creditors.

b. Debtor's Schedule J shows net income on line 23c of $2,477.58 per month. Debtor's Plan proposes payments of only $2,135.00 per month. Debtor may have additional income of $342.58 per month which should be paid into the plan.

c. Debtor's Schedule A/B lists real property at 550 Wilson Avenue, Sacramento, California, valued at $250,000.00. Debtor's Schedule

D indicates the total debt against the property is $371,636.00. Class 1 of the plan indicates the ongoing mortgage payment on this property is $1,975.00 per month. Debtor's Schedule I does not list any rental income from this property. Debtor testified at the First meeting of Creditors that Debtor's family lives in the Property, but do not pay any rent to the Debtor. Debtor is retaining the property with no equity and negative cash flow of at least $1,975.00 per month to the detriment of creditors.

4. The additional provisions in Section 6 of Debtor's plan indicate that Debtor has applied for a mortgage loan modification. However, Debtor has not provided in the additional provisions:

   a. The details of their loan modification, including why it was made;

   b. Why the Debtor became $118,500.00 in arrears on the property;

   c. How an adequate protection payment amount was determined;

   d. Whether property taxes are included in the adequate protection payment;

   e. Whether property insurance is included in the adequate protection payment; and

   f. Whether the Debtor is entitled to renew an existing loan modification if it is rejected solely for insufficient information without triggering the default under the plan.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $2,135.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan to date. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Fay Servicing, LLC. The Motion is set for hearing September 13, 2016. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained. FN.1.

FN.1. It appears, that in response to the Trustee's Objection, that Debtor filed a Motion to Value on August 9, 2016. Dckt. 28. There appear to be some serious shortcomings with respect to the Motion to Value. First, the Motion requests that the court value the secured claim of "Bank of America, as serviced by Faye Servicing, LLC." As this court has noted, both orally at hearings for the law and motion calendars and in writing, the creditor named "Bank of America" is not sufficient to identify any specific creditor entity. The FDIC identifies more than forty federally insured financial institutions with the words "Bank of America"

in their name. https://research.fdic.gov/bankfind/index.html. The California Secretary of State identifies seven corporations and one limited liability company with the words "Bank of America" in its name. http://kepler.sos.ca.gov/. While not all of the entities are report to be in "active status," many are. Additionally, the court has no way of knowing whether the inactive "Bank of America" entity is not the target and has been merged into another entity.

In the Motion, the prayer requests and most of the Motion requests relief against "Fay Servicing." On its face, it appears that Debtor only seeks a determination as against that entity. A closer look reveals that Debtor has created a specially defined term for the creditor, not choosing to use words from the creditor's name, but from the loan servicing company. This only adds further potential confusion to the situation, but is a definition for which the court cannot identify any good faith rationale.

In light of the failure to identify any creditor entity which the court can identify for the Motion to Value, the court will be denying that Motion. The time for the court to continue hearings to correctly identify a creditor ended several years ago.

As to the issue over the disputed Internal Revenue Service claim, the Trustee is correct that the plan cannot be confirmed without a resolution of the priority claim or payments to creditor. The plan is not feasible unless the debt is disallowed. Since the priority claim, if allowed would have to be paid in full, the court cannot determine the feasibility of the plan until the dispute is resolved.

If it was the Debtor's intention to confirm a plan which includes a loan modification negotiation provision with adequate protection payments to the creditor, that has not been presented to the court. For almost four years attorneys in this court have utilized such an Ensminger Additional Plan Provision (so named after the consumer attorney who worked with creditor attorneys and other consumer attorneys to develop such a provision which is consistent with the Bankruptcy Code). Without these provisions and without any information as to the loan modification, the court cannot determine the viability and feasibility of the plan.

It is odd to the court that the attorney who is credited for such provisions failed to provide the basics that such provisions are meant to provide. There is fundamental information missing in the additional provisions that Debtor's counsel certainly knows is required.

The court also notes that the additional real property being maintained, at creditor expense, as free housing for family members raises significant, and serious issues. The evidence presented so far is scant, with Debtor providing none and the Trustee providing testimony as to what Debtor stated at the First Meeting of Creditors. From reviewing this case, and the Debtors' prior cases, the court cannot divine a good faith, bona fide, economic reason for retaining significantly overencumbered property, diverting more than $2,000 a month to keep the property for family members to live in rent free (effectively having creditors subsidize the extended family of Debtor.

Compounding Debtors' challenges, and credibility, is that this is not the Debtors' first, or second, or third bankruptcy case filed in the past three-years – this is Debtor's fourth bankruptcy case. A summary of the prior cases is as follows:

15-25260 Chapter 7 Case Counsel: D. Randall Ensminger	Filed: June 30, 2015 Discharge: October 13, 2015	
	Petition: Residence 3513 Domich Way Schedule A Real Property: 550 Wilson Ave Schedule J: Two Minor Children and one 19 year old. Schedule J: Net Monthly Income After Reasonable, Necessary Expenses.....$51.00. Statement of Financial Affairs Employment Income.....Joint Debtor Additional Income.....CalPers Retirement Businesses.....Camrock, Co (Ended 2012) Camrock, Co, Inc. (Ended 2011)	
15-20164 Chapter 13 Counsel: D. Randall Ensminger	Filed: January 1, 2015 Dismissed: April 27, 2015	
	Petition: Residence, 3513 Domich Way Schedule A Real Property: 330 Wilson Ave Schedule J: Two Minor Children and one 19 year old. Schedule J: Net Monthly Income After Reasonable, Necessary Expenses.....$2,180.79. Statement of Financial Affairs Employment Income.....Joint Debtor Additional Income.....CalPers Retirement Businesses.....Camrock, Co (Ended 2012) Camrock, Co, Inc. (Ended 2011)	
13-32643 Chapter 7 Counsel: Donald Ullrich and D. Randall Ensminger	Filed: September 28, 2013 Discharge: None Final Decree: May 19, 2014	

	Petition: Residence, 3513 Domich Way Schedule A Real Property: 330 Wilson Ave Schedule J: Three Minor Children and one 19 year old. Schedule J: Net Monthly Income After Reasonable, Necessary Expenses.....($338). Statement of Financial Affairs Employment Income.....Retirement and Joint Debtor Additional Income.....None Businesses.....Camrock, Co (current) Camrock, Co, Inc. (Ended 2011)

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

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

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

40. 15-25168-E-13 DEBRA MCCLAIN **MOTION TO CONFIRM PLAN**
PLC-3 Peter Cianchetta **6-30-16 [93]**

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

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

Below is the court's tentative ruling.

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

Correct Not 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 June 27, 2016. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

Debra McClain ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 30, 2016. Dckt. 93.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the Instant Motion to Confirm the Modified Plan on August 2, 2016. Dckt. 106. The Trustee opposes the confirmation on the following grounds.:

1. The parties in interest may not have been properly served with the Notice, Motion, Declaration, Plan, and Exhibits. The Debtor's Proof of Service states the recipients on the attached mailing matrix were served however, no mailing matrix was attached or filed.

2. The Plan fails the Chapter 7 Liquidation Analysis. The Debtor's non-exempt equity

totals $14,985.17 and the Debtor proposes to pay the unsecured creditors a 0% dividend.

DISCUSSION

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

The Trustee's objections are well taken.

The basis for the Trustee's objection is that the Proof of Service does not show that the moving papers were served on all parties in interest. The Proof of Service does state that the moving papers were served by mail "[a]ddressed to the recipients on the attached mailing matrix". However, no such matrix is attached. The service issue appears to be a clerical error in filing a complete Proof of Service, as opposed to an actual defective service.

Proper service requires compliance with both the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. Under Federal Rule of Bankruptcy Procedure 6004(b) states that an objection to proposed sale, lease or use of property shall be filed and served not less than seven days prior to the date set for the proposed action or such other time period provided by the court. Additionally, Federal Rule of Bankruptcy Procedure 2002(a)(2) provides that at least 21-days' notice be given of any proposed use, sale or lease of property. Reading these two Rules together, the Rules Committee and Supreme Court envision providing at least 14 days for parties in interest to formulate, draft, file, and serve an opposition to the proposed use, sale, or lease of the property.

Though not routinely discussed, Federal Rule of Bankruptcy Procedure 9006(f) further provides that when notice is given by mail, an additional 3 days must be added to the notice period. The court does not express an opinion, at this time, whether this requires there to be 31-days' notice under Local Bankruptcy Rule 9014-1(f)(1) or 17-days' notice under Local Bankruptcy Rule 9014-1(f)(2). The court waives the requirement, if it exists, under the facts and circumstances of this Motion and service made by Movant.

Local Bankruptcy Rule 9014-1(f)(1)(A) requires that at least 28 days' notice of the hearing on a motion be provided. A written opposition must be filed at least 14 days prior to the hearing. When the timing is perfect and exactly 28-days' notice is given, the opposition must be filed 14 days after service of the motion. This corresponds to the 14-day period established by Federal Rule of Bankruptcy Procedure 6004(a) and (b), and 2002(a)(2).

When there has been improper notice under Local Bankruptcy Rule 9014-1(f)(1), some courts will convert the notice to one under Local Bankruptcy Rule 9014-1(f)(2), which requires only 14-days notice of the hearing and allows oral opposition to be presented. This court does not so apply the rules as it can lead to confusion or create the "opportunity" for a less than scrupulous party to try and chill opposition by giving inadequate notice and misrepresenting that written opposition must be filed.

This is clearly not the situation for the present Movant, but the court does not believe in selectively applying the law or rules. This court does not so convert a defective Rule 9014-1(f)(1) notice into a 9014(f)(2) notice.

Additionally, the Trustee opposes confirmation of the Plan on the basis that the Debtor's Plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While the Debtor proposes a 0% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upwards of $14,985.17 in non-exempt equity.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

41. **16-23671-E-13** **ALEKSANDR MOLITVENIK** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
7-19-16 [23]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

42. 13-31975-E-13 JACK/LINDA GANAS CONTINUED MOTION TO MODIFY PLAN
PLC-5 Peter Cianchetta 5-17-16 [123]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. By the court's calculation, 70 days' notice was provided. 35 days' notice is required.

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

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

Jack G. And Linda M. Ganas filed the instant Motion to Modify Plan on May 17, 2016. Dckt. 123.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on July 11, 2016. Dckt. 137. The Trustee objects to the confirmation on the following grounds.

1. The Debtors have not provided an amended [supplemental] Schedule J in support of the proposed Modified Plan.

2. The amount of the proposed payments under the Modified Plan is unclear.

3. The Debtors are $791.00 delinquent under the proposed plan. The Debtor's have paid

the Trustee $59,621.00 to date.

JULY 22, 2016 STIPULATION

On July 22, 2016, the Debtor and Trustee filed a stipulation to continue the hearing to 3:00 p.m. on August 16, 2016 due to Debtor's counsel's unfortunate family emergencies.

DISCUSSION

No supplemental papers have been filed to date.

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

The Trustee's objections are well-taken. The Trustee states that the Debtor's have not provided an amended Schedule J in support of the proposed Modified Plan. The Modified Plan proposes monthly plan payments of $2,017.91. Debtor's Amended Schedule I shows an average monthly income of $4,405.67, however the Debtor's Schedule J has not been amended to reflect this and still shows average monthly income of 5,178.00.

The Trustee's second and third objections are intertwined regarding the amount of the payments under the Modified Plan. It appears that this is a mere scrivener's error on part of the Debtor and could be corrected in an order confirming plan. The court believes that the Debtor intended for the plan payment to be $1,300.00 as stated in the Debtors' declaration, as the Debtor would not be proposing a plan under which they would be delinquent. However, given the nature of the Trustee's first objection, the plan cannot be confirmed until a supplemental Schedule J has been filed which accurately reflects the Debtors' income and expenses.

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

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

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

43. 16-23279-E-13 DPC-1 | **SANDRA PENNIX** **Michael Benavides** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-13-16 [23]**

Final Ruling: No appearance at the August 16, 2016 hearing is required

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

A. The Debtor failed to provide all business documents to the Trustee, including: Questionnaire, six months of profit and loss statements, and proof of license and insurance or written statements that no such documentation exists.

TRUSTEE'S NOTICE OF DISMISSAL

The Trustee filed a Notice of Dismissal of Objection on August 1, 2016. Dckt. 28. The Trustee states that the Debtor has provided her business documents to the Trustee prior to the continued Meeting of Creditors. The Objection is not resolved.

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

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

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

on June 3, 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.

44. **16-21089-E-13** **STEPHEN MAR** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Peter Cianchetta** **4-20-16 [27]**

Tentative Ruling: The Objection to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and set for final hearing.

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)(2) Motion - Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation is sustained.

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

1. Debtor is delinquent in plan payments.

2. The Debtor has failed to provide the Trustee with a copy of the tax return.

3. Debtor has failed to provide the Trustee with 60 day pay advices.

4. The plan is not the Debtor's best efforts.

5. The secured claim of Unifund CCR, LLC is not provided for in the plan.

6. The Trustee calculates that the plan could pay all creditors at 100% within 36 months if the plan payment were increased to $585.00 per month.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a supplemental declaration on May 4, 2016. Dckt. 33. The Trustee states that the Debtor has resolved the first three objections. However, the remaining objections still remain.

STIPULATION

On May 20, 2016, the Debtor and Trustee filed a stipulation to continue the hearing due to allow Debtor's counsel opportunity to resolve the remaining issue and due to a conflict Debtor's counsel has at the time of the scheduled hearing. The parties stipulate to continue the hearing to 3:00 p.m. on July 26, 2016.

MAY 24, 2016 HEARING

The hearing was continued to 3:00 p.m. on July 26, 2016.

TRUSTEE'S SUPPLEMENT

The Trustee filed a supplement on July 6, 2016. Dckt. 39.

The Trustee reports that the following matters have been resolved: (1) tax returns; (2) pay advices; and (3) delinquency.

However, the Trustee reports that the following objections remain unresolved:

1. Debtor's plan is not the Debtor's best efforts. Debtor is over median income according to the Statement of Current Monthly Income, Form 122C-1, Debtors Schedule J shows net monthly income on line 23c of $2,243.00, while the plan proposes a payment of $182.83 per month for 60 months.

2. Secured claim of Unifund CCR, LLC not provided for in the plan.

3. Based on the Trustee's calculations the plan could pay all creditors at 100% within 36 months (including the secured Unifund debt at 4.25% interest), if the plan payment were increased to $585.00 per month.

JULY 22, 2016 STIPULATION

On July 22, 2016, the Debtor and Trustee filed a stipulation to continue the hearing to 3:00 p.m. on August 16, 2016 due to Debtor's counsel's unfortunate family emergencies.

JULY 26, 2016 HEARING

At the hearing, in light of the stipulation and the extenuating circumstances, the court continued the instant hearing to 3:00 p.m. on August 16, 2016.

DISCUSSION

No supplemental papers have been filed in connection with the instant Motion since the continued hearing.

The Trustee's objections are well-taken.

First, the Debtor's plan does not appear to be the Debtor's best efforts. 11 U.S.C. § 1325(b)(1) provides:

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

The Plan proposes to pay a monthly payment of $182.83, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $2,243.00. As the Trustee's calculations highlight, the plan could pay all creditors at 100% within 36 months (including the secured Unifund debt at 4.25% interest), if the plan payment were increased to $585.00 per month. Thus, the court may not approve the plan.

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

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

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

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

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

Here, the Unifund CCR, LLC claim is a judgment lien against real estate. Debtor's plan fails to provide for this as a secured claim and as the creditor has a lien against the Debtor's real property, Unifund will presumably foreclose and prevent the Debtor from making plan payments.

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

The Trustee's objections are well-taken. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

45. **16-21294-E-13** **JOSE GODINEZ** **CONTINUED MOTION TO CONFIRM PLAN**
WW-2 **Mark Wolff**
6-13-16 [40]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2016. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Jose Godinez ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 13, 2016. Dckt. 40.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on July 6, 2016. The Trustee objects to the plan on the following basis:

A. Debtor is delinquent $2,175.00 in plan payments. The Debtor has paid $0.00 into the plan to date.

B. The Debtor's plan indicates that additional provisions are appended to the plan, yet do not appear to be attached.

JULY 26, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 16, 2016. Dckt. 53.

DISCUSSION

No supplemental papers have been filed in connection with this case.

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

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $2,175.00 delinquent in plan payments. The Debtor has made $0.00 plan payments to date. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The concerns over the viability and plausibility of the plan is just further exasperated when the Debtor indicates that the plan has additional provisions but fails to attach them. The court nor any other party in interest can determine if a plan is confirmable without the Debtor fully presenting the plan.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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