

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

**August 19, 2014 at 2:00 p.m.**

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1. [14-27700](#)-C-13 DANIEL/EMILIA POPA MOTION TO EXTEND AUTOMATIC STAY  
MMM-1 Mohammad M. Mokarram 8-4-14 [[11](#)]

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

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

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

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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 Chapter 13 Trustee and Office of the United States Trustee on August 4, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-23880) was filed on April 16, 2014 by a different counsel. The case was dismissed on June 30, 2014. Therefore,

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pursuant to 11 U.S.C. § 362(c)(3), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse or did not make plan payments. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states the previous case was dismissed because Debtors' janitorial business contracts that were performed in full were delinquent in payments. The business contract have now been paid by the vendors (See Declaration at Docket 13) and Debtors can adequately make trustee payments. Further, in the previous case Debtors were represented by a different attorney and there was some confusion over tax return document furnishing. The tax issue has since been resolved.

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, unless terminated by 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, unless terminated by further order of this court.

Final Ruling: No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

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

July 2, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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).**

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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 (*pro se*) on July 23, 2014. 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.

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

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

1. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on July 17, 2014 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor did not report prior filings. Debtor has filed at least 12 cases in the Eastern District of California since 2008, these prior cases are not disclosed on the petition. The current case was filed on June 5, 2014, one day after the Debtor's previous case, 14-23050-A-13 was dismissed. Case No. 12-31597-B-7 filed on June 20, 2012 received a discharge on December 4, 2012.

- a. The United States Trustee has brought an adversary case against Debtor, requesting an injunction against filing another bankruptcy case under 11 U.S.C. §§ 105 and 349, to prevent Debtor from continuing her pattern of filing abusive bankruptcies "that are marked by an intentional disregard of the law, failure to perform the Defendant's legal duties as a debtor, and failure to propose, confirm and execute in good faith a Chapter 13 plan of reorganization." Adversary Complaint, Case No. 14-02178, Dckt. No. 1. Detailed below are the cases that Debtor has brought this court, most dismissed for failure to file bankruptcy paperwork.

Case No.	Filed	Dismissed	Reason for Dismissal	Filing Fees Due
<u>08-33793-B-7</u>	9/26/2008	N/A - closed 04/02/09	Discharge withheld for Failure to Submit Cert of Instructional Course for Personal Financial Mgmt.	\$0
<u>09-28320-D-13</u>	04/29/09	6/15/2009	Failure to file information	\$274
<u>09-38098-C-7</u>	8/25/2009	10/14/2009	Failure to file information	\$299
<u>09-47136-B-13</u>	12/11/2009	1/26/2010	Failure to file information	\$274
<u>10-27493-B-13</u>	03/25/10	4/12/2010	Failure to file information	\$274
<u>10-34185-B-13</u>	5/28/2010	6/15/2010	Failure to file information	\$274
<u>10-49339-B-13</u>	11/5/2010	11/23/2010	Failure to file information	\$274
<u>10-52097-E-13</u>	12/08/10	12/27/2010	Failure to file information	\$274
<u>11-37390-E-13</u>	7/15/2011	9/16/2011	Failure to Pay Filing Fee	\$274
<u>11-44542-C-13</u>	10/14/2011	1/26/2012	Failure to file information	\$274
<u>12-31597-B-7</u>	6/20/2012	N/A	<b>Received discharge on 12/4/2012</b>	\$0

<u>14-23050-A-13</u>	3/26/2014	6/4/2014	Trustee's Objection to Confirmation of the Chapter 13 Plan and Motion to Dismiss Case with Prejudice	\$211 (Debtor paid one installment of \$70 on 4/29/14)
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3. Debtor has not filed the correct standard Chapter 13 Plan. Debtor used EDC 3-080 (effective 10-17-04), when the proper form is EDC 3-080, effective May 1, 2012.
4. Debtor's plan payment is insufficient to fund the plan. In Class 1 of the Plan, Debtor lists ongoing mortgage payments to Wells Fargo, in the amount of \$3,400.00. Debtor only proposes, however, to pay \$1,800 a month. Debtor deducts on Schedule J (Dckt. No. 13, page 29), \$1,200 for rent/ mortgage expenses. This appears to be a duplicate expense which could be removed from Schedule J to be applied to the plan to allow for mortgage payments to be made in Class 1.
5. Trustee is unable to determine whether creditors were noticed of the bankruptcy filing and service of the plan by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(b). Debtor does not provide addresses for creditors listed on Schedule D, and a description of the property securing the loans.
6. The Debtor has not provided the Trustee with proof of income or 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).
7. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e) (2) (A) (1).
8. Debtor's plan may not comply with the applicable law of 11 U.S.C. § 1325(a) (1). The plan does not provide a dividend to unsecured claim holders, it does not state 0% but has left the dividend blank, which does not designate a treatment for claims of a particular class under 11 U.S.C. § 1322(a) (3). Not providing a treatment may result in the inability to discharge unsecured debts under 11 U.S.C. § 1328(a).

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, both the Creditor and Chapter 13 Trustee have filed opposition to the proposed plan.

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

1. Debtor is not entitled to Chapter 13 relief under 11 U.S.C. § 109(e). According to Schedule F, Debtor lists unsecured debts totaling \$27,595.27. Debtor lists on Schedule D, a judgment lien held by Rhonny Dhawliwal in the amount of \$315,661.13. Debtor has a priority unsecured claim owed to the State Board of Equalization, Court Claim No. 3, in the amount of \$44,226.13.

Debtor's First Amended Plan, filed on July 8, 2014, Dckt. No. 21, indicates that the Debtor's intention is to file a motion to avoid the judicial lien held by Rohnny Dhaliwal as the value of the real property securing the lien is \$350,000.00 and Debtor's First Deed of

Trust held by Nationstar Mortgage is \$314,810.00. Adding Debtor's Schedules E, F, and the judgment held by Ronny Dhaliwal totals \$373,257,40. However, based on the amended plan's treatment of claims; the unsecured claim holders total \$387,482.54 (Ronny Dahliwal \$315,661.13, unsecured on Schedule F, \$25,595.27, and State Board \$44,226.13). The unsecured debt limit totals \$360,475.00.

There was some confusing testimony at the 11 U.S.C. § 341 Meeting which leads the Trustee to believe that there may be additional debts not listed. Attorney Sean Gavin appeared at the 341, on behalf of his client, Ronny Dhailwal. Mr. Gavin questioned the debtor about debt not reported on the schedules owed to Kiron Virk for \$25,000.00. Mr. Gavin also alleged that the Debtor had additional debt owed to his father not listed on the schedules. Debtor denies these claims. Trustee thought it may be wise to raise the issue as counsel for creditor, as the creditor suggested that he may file a joining objection to the plan, indicating the same.

2. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Trustee is unable to determine the feasibility of the plan. Debtor's original plan, Dckt. No. 12, called for payments of \$900.00 per month for 60 months, paying BMW Financial \$5,821.00 at 4% in Class 2; State Board of Equalization, \$20,000.00, and IRS \$20,000 in Class 5; and avoiding the liens of the IRS and Ronny Dhaliwal in Class 2 of the plan, treating their claims as unsecured which was to receive 0%. A total of \$54,000 was to be paid into the plan.

In his First Amended Plan, Debtor now proposes payments of \$900.00 per 1 month, \$1,000 for 11 months, \$1,400 for 12 months, and \$1,710.00 for 36 months. It appears that the Debtor proposed the First Amended Plan with the proposed payment increases in order to address the claims filed by State Board of Equalization and secured claim of IRS. Debtor does not state how he intends to increase the plan at each interval, and why he was unable to propose these increases in the original plan.

3. Debtor's Schedule I inaccurately reports Debtor's deduction from the payroll. According to a review of Debtor's payroll stubs, Debtor has approximately \$1,572.98 per month, or approximately 29% of his payroll deducted for tax withholding. Debtor has also approximately \$348.79 per month deducted for mandatory retirement, \$191.10 for health insurance, \$5.10 for life insurance, and \$43.34 per month for union dues. AS reported the figures are either not reported or grossly inaccurate. The Trustee is unable to determine whether the Debtor is attempting to mislead the court, or whether the documents were prepared with little attention paid to detail. Payroll stubs, Exhibit A.
4. The Plan relies on the pending motions. The Debtor propoes to avoid the secured lien of Ronny Dhaliwal, but has not filed a motion to avoid the lien. Debtor's plan does not have sufficient monies to pay the claims in full.
5. It appears that the plan provides all of the Debtor's projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). Debtor is over median income. Form 22C shows 14.81. On

Line #32, Debtor deducts \$8.80 for life insurance. Debtor does not report an expense for life insurance; however, there is a deduction of approximately \$5.50 per month on Debtor's payroll for life insurance. \$3.20 should be added into Line #59.

On Line 36, Debtor deducts \$20.25 for healthcare, in excess of the amount of entered on line 24b of the form, which allows the debtor \$60. On Schedule I, Debtor reports \$25.20 medical and dental expenses, which is not in excess of the \$60.00 allowance. \$25.20 should be added back into line 59.

On Line 39, Debtor deducts \$571.10 for health insurance. On Debtor's payroll stubs, the monthly average deduction for health insurance is \$191.10 per month. Paystubs, Exhibit A. \$380.00 should be added back into Line 59.

On Line 47(a), Debtor deducts \$166.47 for payments to Carmax Auto Finance. In the plan, Debtor reports that this automobile is being paid by a third party. Debtor is not entitled to a deduction for payments not being made by the Debtor. \$166.47 should be added back into Line 59.

On Line 55, Debtor deducts \$957.32 for qualified retirement deductions. On this line, the Debtor should be deducting \$0. Instead, Debtor should be deducting \$43.34 in union dues and \$348.79 in retirement contributions on Line 31 "involuntary contributions." Either way listed, the Debtor is only entitled to the amount deducted from his payroll for union dues and retirement which total \$392.13 per month. \$565.19 should be added back into Line 59.

Trustee reminds the Debtor that it is not the Trustee's responsibility or in his duties to properly complete Form 22C or to educate counsel or the debtor on how to complete the form, but in this case, the trustee will note that there are deductions which are wrong on the form in the favor of the debtor.

Line No. 30, Debtor deducts \$436.34 for tax withholdings. According to payroll deductions, this figure would be more accurately reported at \$1,572.98, not the amount reported on the form or on Schedule I, giving the Debtor an additional \$1,136.64 to subtract from Line 59.

Line 49, Debtor deducts \$500.02 for payment on priority claims. Payment to priority claims total \$44,228.13. An additional \$237.09 should be subtracted from Line 59. Due to the additions and subtractions on the form, Line 59, does remain negative approximately \$204.48.

6. Additional Income Not Reported: On Statement of Financial Affairs No. 2, Debtor reports income from a tax refund of \$6,408.00. On Schedule I, Debtors report their average net income of \$4,656.60 per month. If the Debtors contributed their tax refund into their household income at 1/12 per month, he would have an estimated additional \$534.00 per month. Trustee is not opposed to the Debtor proposing turnover of any future returns in the order confirming, if the court deems this reasonable and necessary.

7. The Debtor's Plan may not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). On Schedule B, Debtor lists on #18, lawsuit against R.D. for fraud, and on 21 Debtor lists lawsuit for real property defects. It appears that Debtor has not considered the liquidation analysis when listing these debts. Any non-exempt portions of any settlements realized during the pendency of the bankruptcy should be paid to the Trustee for distribution to unsecured claims. Trustee is not opposed to Debtor adding a provision to the order confirming.

On Schedule E, Debtor lists the State Board of Equalization, Dckt. No. 11, with a comment: "\$139K less \$85K on hand in deposit account-audit-pending-debtor believes that the amount on hand equals what is to be owed after audit." Trustee is unable to determine what this means: whether Debtor is telling the court that the State Court was holding funds of the Debtor in the amount of \$85,00 at the time of filing, or he may owe the State Board \$139,000.

#### **OPPOSITION OF CREDITOR RONNY DHALIWAL**

Ronny Dhaliwal ("Creditor"), who identifies himself as a creditor the bankruptcy case, opposes confirmation of the proposed plan. Dckt. No. 32.

First, Creditor argues that the debtor will not be able to make all payments under the plan and to comply with the plan (11 U.S.C. §1325(a)(6)). The Debtor's First Amended Plan reduces the value of Creditor Ronny Dhaliwal's state Court judgment (which is identified only by virtue of the lien on Creditor's real property) to \$0.

However, Debtor has not filed any Motion to Value that Collateral, either at the time of the filing of the Motion to Confirm the First Amended Plan or ever.

Second, the Creditor argues that the plan has not been proposed in good faith (11 U.S.C. §1325(a)(3)), because it does not explain the source of the large step increases in the second, third, and fourth through fifth years of the plan. Although Debtor has listed his monthly salary as \$5,880.161, he has indicated that his net monthly income after expenses is \$900.04. Debtor suggests he will be able to increase his plan payments by \$500 (from \$900 to \$1,400) by month 13, representing an 8.5% raise (\$500/\$5,880). Debtor further proposes yet another \$310 increase to his plan payments by month 36, representing yet another 4.85% raise (\$310/[\$5,880 + \$500]). Creditor claims that this is unreasonably optimistic, and also contrary to the published Sutter County Step Table of published salaries.

Creditor asserts that the Debtor has not listed all of his debts. Debtor testified during a debtor's examination conducted on May 16, 2014 that he borrowed approximately \$15,000 to \$25,000 from his brother, Karran Virk, to assist with the repair of underground gasoline storage tanks associated with his former business, Skymart. Debtor also testified that his father, Darshan Virk (who has also filed a bankruptcy petition) lent him approximately \$40,000 to \$50,000 between 2008 and 2010. Debtor further testified that these funds were to be repaid when he had the financial ability.

Similarly, Debtor had testified at his Meeting of Creditors that his

brother, Karran Virk, had paid for his bankruptcy counsel's fee, and yet the Disclosure of Compensation of Attorney for Debtor declares (under the penalty of perjury) that the Debtor paid the \$4,000 fee.

Furthermore, Creditor states that the underlying state Court judgment that Creditor Ronny Dhaliwal has is for money lent as well as wages earned. The wages were earned through January 7, 2011 through Mr. Dhaliwal's employment by Debtor through his unincorporated business entity known as Skymart. Debtor has testified that his interest in Skymart was foreclosed in late 2010 or early 2011. As a result, Creditor Dhaliwal's wages were earned within 180 days of the Debtor's business and consequently are entitled to priority pursuant to 11 U.S.C. §507(a)(4). They have not been listed as such.

#### **DEBTOR'S RESPONSE**

Debtor responds to the Objections with the following:

1. Debtor qualifies for Chapter 13 relief under 11 U.S.C. § 109(e). According to Trustee, unsecured claims total \$387,482.53; however, Debtor argues the claim of Ronny Dhaliwal is contingent, unliquidated, and disputed. The claims totals \$373,257.40.
2. Debtor argues the plan is feasible and he is proposing a "step-up payment plan." Debtor has regular base pay of \$1,643.13, which increased to \$1,680.05 on May 23, 2014. Debtor expects to receive increases over the next twelve (12) months totaling \$310 in additional income.
3. Debtor argues that the most recent pay stubs reflect accurate payroll deducts totaling \$436.34.
4. Debtor states he will have filed the required motions to avoid liens before the date of this hearing.
5. Regarding the large tax refund in 2013, Debtor attributes it to being a new officer and receiving lower income, which allowed for greater deductions and a full refund. In 2014, Debtor is expected to make substantially more money and is not anticipating as large of a refund. Debtor will report all tax refunds to the Trustee.
6. Debtor asserts there is no Chapter 7 liquidation analysis issue with regard to pending lawsuits. No personal recovery is anticipated at this time.
7. Debtor is in a dispute with the State Board of Equalization, which seems to be resolved by the filing of the \$44,228.13 claim.
8. Debtor requests a 90-day continuance to ensure success on the motions he intends to file.

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed. As of August 18, 2014, Debtor has not filed the requisite lien avoidance Motions and the court sees no utility in continuing the Objection for an open-ended period of time while counsel for Debtor engages in various reorganizing efforts.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the plan for three reasons.

First, the Trustee is uncertain of the proposed term and plan payments of the modified plan. Section 6.01 states that payments shall commence April 25, 2012, with a payment of August 25, 2015. This would be 41 payments. However, the petition was filed on February 23, 2012, and the first payment was due on March 25, 2012. Thus, if the last payment is to be August 25, 2015, the term would be 42 months. \$39,612.56 has become due through July 2014 under the terms of the proposed plan. The Debtor has paid a total of \$39,700.63 with the last payment posted on July 2, 2014.

Second, Debtor has not filed supplemental Schedules I and J in support of the plan. The most recent schedules I and J were filed on February 23, 2012, and reflect the ability to pay \$1,474.95 monthly. The proposed plan payment is \$1,374.90.

Third, while the Debtor has filed a Declaration, the declaration does not provide sufficient evidence to prove all of the components of 11 U.S.C. § 1325(a), including whether the modified plan is the form plan required by the court, the total amount that the Debtor has paid into the plan, the amount of non-exempt equity, where the Debtor valued the property and claimed the amount of exemptions, and the treatment of secured claims, and whether it has changed from the confirmed 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.

6. [14-26220](#)-C-13 SHIRLEY SHANNON  
DPC-1 Douglas B. Jacobs  
**Thru #7**

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
7-15-14 [[23](#)]

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

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

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

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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 and Debtor's Attorney on July 15, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

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

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

1. It appears that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). This is the third case filed by Debtor since March 25, 2012. The three cases were all dismissed. The plans filed on Case No. 13-20033 all contain language that states that the Debtor is either "in the process of negotiating," "selling properties," or "applying for a reverse mortgage loan." It does not appear that the Debtor has the ability to file a confirmable case, since her attempts starting on March of 2012, 29 months ago.
2. The Debtor is attempting to modify a debt secured by her principal

mortgage, which may also be a priority claim. Debtor has not provided a verification that creditors have agreed to this treatment; unless the creditor's silence can be considered agreement. Section 6.02 of the plan states "Debtor is in the process of selling two of her properties, and applying for a reverse mortgage loan on her residence. The entire proceeds of both sales will be forwarded to the trustee to pay to the above creditors. After which time, the Debtor is able to get the reverse mortgage and sell the two properties, she will modify her plan to include the remaining amount owed to the class two creditors, in order to have them paid in full through the plan."

3. Debtor testified at the First Meeting of Creditors that she is selling two of her properties. No details have been provided as to when or if she has been approved for such a sale, the terms of sale, including how much in proceeds the debtor has or will receive.
4. Debtor testified at the First Meeting of Creditors that she is pursuing a reverse mortgage on her residence, located at 13624 Autumn Lane Chico, California. No details have been provided as to when or if she has been approved for a reverse mortgage, which property is encumbered, and how much in proceeds the debtor has or will receive.
5. While the plan proposes to pay the attorney \$2,000 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtor appears to list in Item 6 of that the attorney services do not include some services required under Local Bankruptcy Rule 2016-1(c), such as relief from stay actions. Trustee believes that the attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

#### **RESPONSE BY DEBTOR**

Debtor states that the Plan relies on the sale of two pieces of property owned by debtor and on the granting of a reverse mortgage on debtor's residence. The two pieces of property are in escrow, and two motions will be filed with this court to allow such sales to proceed. Further, Tri Counties Bank has made an informal commitment to grant a reverse mortgage to debtor on her home. That commitment, however, is pending a favorable resolution of the debtor's obligation to Butte County for unpaid property taxes on the property.

A motion for relief from stay by Butte County is set to be heard on August 5, 2014. Should the County be successful in obtaining such relief, the Debtor's residence will be scheduled for sale in the immediate future. That will negate the possibility of a reverse mortgage and dramatically change the Debtor's economic situation.

Debtor's attorney also states that the inconsistency between the Disclosure of Compensation Form and the Rights and Responsibilities document filed by Debtors was caused by software used to prepare the Debtor's petition and schedules, was duly noted at the 341 hearing, and the Debtor will have filed an amendment to the Form 2016 before the hearing date. It appears that no such amendment has been filed.

Debtor acknowledges that the plan is not ready to be confirmed. ¶ 8, Dckt. No. 35, Motion. The Motion for Relief from Stay needs to be resolved, and the two motions filed for the sale of Debtor's property needs to be resolved before the plan can be confirmed.

### **CHAPTER 13 TRUSTEE RESPONSIVE DECLARATION**

The Chapter 13 Trustee filed a response to the Declaration and Exhibits filed in support of Douglas Jacobs on August 8, 2014 (Dkts. 44 & 45).

The declaration states in part that Mr. Jacobs has reached out to Tri Counties Bank to receive confirmation of processing on the reverse mortgage; however, Exhibit A (Dkt. 45, pg. 2) offers no commitment or guarantee for a reverse mortgage. Further, the Declaration states that Mr. Jacobs requested the escrow company provide documentation that debtor's properties are currently in escrow; however, Exhibit B are both supplemental escrow instructions and are dates June 2013 and December 2012.

### **RULING**

By the Debtor's admission and as discussed by the Trustee, the Plan is not yet confirmable and 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.

7. [14-26220](#)-C-13 SHIRLEY SHANNON  
HLC-1 Douglas B. Jacobs

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION TO DISMISS CASE  
7-2-14 [[16](#)]

BUTTE COUNTY TREASURER/TAX  
COLLECTOR VS.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 42 days' notice was provided. Twenty-eight days' notice is required.

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

**The court's decision is to grant the Motion for Relief from Stay.**

**Prior Hearing**

The court continued the hearing on the Motion for Relief from Stay from August 05, 2014 to August 19, 2014, for it to be heard in conjunction with the Chapter 13 Trustee's Objection to Confirmation.

**Motion for Relief**

Butte County Treasurer/Tax Collector seeks relief from the automatic stay to proceed with pending tax sales, scheduled to occur on August 25, 2014, and to take all action necessary and appropriate to evict Chapter 13 Debtor Shirley Joyce Shannon from the following properties:

1. 0 Takara Ranch, Chico, California
2. 13624 Autumn Lane, Chico, California

Movant further requests that the order be binding and effective in any bankruptcy case subsequently commenced by or against Debtor for a period of at least 180 days, so that no further stay shall arise as to the properties. Movant also seeks a waiver of the fourteen-day stay imposed under FRBP 4001(a)(3). Alternatively, Movant requests that the court dismiss Debtor's case with prejudice against refiling for a period of at least one year.

The moving party provided the Declaration of Amy Barker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Barker Declaration states that as of the filing date, the Debtor owes Movant real property taxes totaling \$73,956.84, consisting of \$1,118.21 incurred during the years 2011, 2012, and 2013 as to the Takara Ranch parcel, and \$72,838.63 for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013 for the Autumn Lane property. In addition, property taxes are owing on both properties for the 2014 tax year.

### **Chapter 13 Trustee Response**

Chapter 13 Trustee responds. At the time of the Trustee's response no payments had come due in Debtor's case. The first plan payment of \$3,089.73 was due on July 25, 2014.

Trustee has filed an Objection to Confirmation (Dkt. 23) that is set for hearing on August 19, 2014.

### **Debtor's Response, filed 7/22/14 (Dkt. 30)**

In response, Debtor asserts that she has tried to sell property to pay her tax obligations and has worked with Tri County Bank to obtain a reverse mortgage. Debtor informs the court that she has two properties in escrow and will be seeking permission from the court to complete those sales. Debtor alleges that the sales will provide for payment of Butte County's claim.

Debtor claims that her situation has significantly changed and she needs a few months to close the escrows, obtain the reverse mortgage, and pay off Butte County.

Debtor requests that the Motion be denied or continued for ninety (90) days to allow time for Debtor to arrange payment of the Butte County debt.

### **Creditor's Response, filed 07/29/14 (Dkt. 33)**

Movant responds to Debtor's response and notes that Debtor did not provide any details regarding the properties or sale terms. Debtor's contention that she has "an informal commitment" from Tri Counties Bank is not new and Movant does not find it surprising that Debtor did not provide details of the alleged commitment or that she did not disclose the commitment in her Schedule E. Movant overall takes issue with Debtor's lack of support for statements made in her declaration and points out that Debtor does not explain what her "changed circumstances" are in this case compared to past cases.

**Supplemental Declaration of Debtor's Attorney**, filed 8/8/14 (Dkt. 41)

Counsel for Debtor declares that he reached out to Tri Counties Bank to "get confirmation that after the debtors (*sic*) tax issues have been resolved they will be able to resume processing of a reverse mortgage for Ms. Shannon." In support of this statement, Debtor's counsel attached a letter dated August 6, 2014 from Tri Counties Bank Reverse Mortgage Consultant, Philip Onnigian, where Mr. Onnigian states that the liens against the property must be removed so to ensure that an FHA reverse mortgage will be in first position. The letter is not a guarantee or a loan commitment, but a statement that the Bank is prepared to process Ms. Shannon's application and underwrite it to current FHA practices. (Exh. A, Dkt. 42).

**Creditor's Response**, filed 08/15/14 (Dkt. 50)

In response, Creditor objects to the supplemental exhibits of Debtor's counsel, except insofar as they constitute admissions against self interest, on the basis that Mr. Jacobs lacks personal knowledge of the statements and the statements contain admissible hearsay (FRE 602 & 801).

Creditor wrongfully characterizing the letter in supplemental Exhibit A as "undated" and argues that the letter makes clear "there is not FHA reverse mortgage in prospect, and Debtor's assertions to the contrary . . . are disingenuous."

Creditor also takes issue with Exhibit B, which are supplemental escrow instructions. Creditor notes that this document reflects two escrows which were apparently pending during Debtor's prior bankruptcy case filed January 2, 2013. The first document is dated June 13, 2014, and was likely considered during the course of Debtor's previous bankruptcy. The second document is dated December 14, 2012, and was likely also considered and rejected in Debtor's previous case.

**Discussion and Ruling**

The court is aware of the Debtor's filing history and has reviewed the Trustee's Objection to Confirmation, which asserts that no significant changes have occurred since Debtor's last filing (Dkt. 23). Further, Trustee stated that it does not appear that the Debtor has the ability to file a confirmable case, since her attempts starting on March of 2012, twenty-nine months ago.

The court questioned the veracity of Debtor's statements concerning her ability to reorganize her debt through a reverse mortgage and was not persuaded by the non-committal letter from Tri Counties Bank that this bankruptcy is going to be any different from the previous efforts to reorganize. In its previous civil minutes, the court stated that, if, by the hearing on August 19, 2014, the Debtor has not filed with the court undisputed evidence that she is selling her two properties and engaged in a loan workout with Tri Counties Bank, the court will be inclined to either grant the Motion for Relief from the Automatic with *in rem* relief or the Motion to Dismiss with prejudice. The court has not received the evidence it requested.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in

the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor is using bankruptcy as a means to delay the pending tax sales. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Movant further argues it is entitled to an *in-rem* order on the basis that Debtor's successive filings are in bad faith. Movant makes this request based on the following:

This is Debtor's third bankruptcy petition filing since March 25, 2012:

Case Number	Filing Date	Disposition
12-25817	March 25, 2012	Dismissed on August 14, 2012 due to unreasonable delay that was prejudicial to creditors.
13-20033	January 2, 2013	Voluntarily dismissed by Debtor on November 7, 2013.
14-46220	June 12, 2014	Pending

Debtor's first two cases contemplated use of loans and sales to pay taxes and other secured debts. Confirmation of the plan in Debtor's first case was denied because the efforts to cure pre-petition arrearage and pay secured claim holders were too contingent as they relied on a refinance and the selling of two real properties. See Dkt. 29, Civil Minutes. After the Trustee's Objection to Confirmation was sustained, Debtor did not amend the plan and the Trustee's Motion to Dismiss was granted (Dkt. 37).

Debtor's second case similarly relied on extensions of debt and sales to effectuate a plan of reorganization. In that case, Debtor received approval from the court to sell real property, with the net proceeds earmarked for the payment to the Internal Revenue Service (Dkt. 66). Debtor filed a Motion to Incur Debt (a reverse mortgage), to pay creditors, including Movant; however, it was withdrawn by Debtor after opposition was filed by the Trustee (Dkts. 58 and 62). The court denied Debtor's Motion to Confirm First Amended Plan on May 14, 2013 (Dkt. 72) based on the contingency of the sale and general lack of clarity regarding payments to taxing agencies.

Three months later, Debtor filed a renewed Motion to Incur Debt in the second case (Dkt. 75), along with a Second Amended Plan and another Motion to Sell real property (Dkt. 90 and 93). Debtor ultimately withdrew the second Motion to Sell, the court denied the Motion to Incur Debt on procedural and evidentiary grounds, and the court denied confirmation of the Second Amended Plan for lack of feasibility.

Debtor moved to voluntarily dismiss the second case on November 5, 2013 and the Motion was granted by order entered November 7, 2013 (Dkt. 124).

Debtor's third case was filed June 12, 2014 and the plan is not materially different from prior plans, other than Movant's claim has been

increased three fold. It does not appear that Debtor closed on any sale previously approved by the court and there is no indicated that Debtor has attracted a lender willing to loan money against Debtor's residence.

Movant argues that the first and third bankruptcy filings were motivated in part by pending tax sales, as follows:

<b>Auction Date</b>	<b>Filing Date</b>
June 16, 2012	March 25, 2012 (Case 12-25817)
June 14, 2014	June 12, 2014 (Case 14-46220)

Movant argues that Debtor has filed serial bankruptcy petitions to frustrate and delay it's bi-annual tax sales of the properties, rather than to advance any honest attempt to reorganize debt. Further, Debtor has demonstrated over the course of these cases an inability to reorganize her financial affairs to such an extent that the court has denied confirmation of a Chapter 13 plan four times. Nothing significant has changed in Debtor's circumstances and Debtor is now ten years in arrears to movant.

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the same property.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject properties. The court finds the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the properties by the filing of multiple bankruptcy cases.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay/Motion to Dismiss with Prejudice 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 the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Butte County Treasurer/Tax Collector, its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 0 Takara Ranch, Chico, California and 13624 Autumn Lane, Chico, California

**IT IS FURTHER ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the creditors, Chapter 13 Trustee, and the United States Trustee on June 25, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the confirmation of Plan for two reasons.

First, the Debtors' Plan is not their best efforts under 11 U.S.C. § 1325(b). Debtors are below median income, proposing a 60 month plan paying \$250.00 for 5 months and \$300 for 55 months.

On Schedule I, Dckt. No. 39, Debtors report \$453.00 per month being paid to a 401K loan. According to Debtors' testimony at the 341 held on February 27, 2014, the loan ends in approximately 3 years. Debtors do not propose to increase their plan by the loan payment of \$453. Debtors have not yet supplied evidence of the exact day of the payoff, but have provided 3 years as the approximate date.

Second, Debtors' declaration is insufficient in that it merely states the component of 11 U.S.C. § 1325(a). The Debtors bear the burden of proof in meeting the requirements of confirmation. *In re Wolff*, 22 B.R. 510, 512 (9<sup>th</sup> Cir. B.A.P. 1982). Debtors should provide the following

factual evidence (this is not an exhaustive list):

- Their ability to make the plan payments based on their employment, length of employment, income from all sources, and expenses as they currently exist.
- What is being provided to the creditors in the case, what led to the bankruptcy, what caused the need to file multiple amended plans.
- What assets they have, how they compute a Chapter 7 liquidation analysis, and the distribution to be made under the Chapter 13 Plan.

Debtors made extensive changes to their Schedules I and J, but do not explain those changes and how they were able to make adjustments to their income and expenses or why they were inaccurate to begin with.

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.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The 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 July 3, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the

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

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes confirmation of the plan on the basis that the Debtors' valuation of their license is not supported, and opposition to Debtors' Additional Provision Plan Language.

First, the Debtors claims that the delay in amending their plan was due to an inability to obtain a written valuation of their liquor license in writing. Dckt. No. 47. Debtors have not supplied evidence supporting the value of the license. While they have filed an Amended Schedule B, Dckt. No. 43, showing a current value of \$25,000, Debtors offer no other documentation of value. The Trustee is not opposed to the court continuing the matter to allow debtors time to file documents supporting the value of the liquor license.

Second, the Trustee opposes the language in Section 6.02 of the plan, where Debtors state: "Any mortgage arrears due on the mortgage listed under Class 4 that is less than \$5,000 shall be paid by the Debtor(s)

directly." The Trustee does not oppose the Debtors striking this language in the order confirming.

#### **RESPONSE BY DEBTORS**

Debtors respond by stating that the Trustee correctly objects to confirmation on the basis that Debtors did not supply evidence supporting the value of the liquor license. Debtors inadvertently did not attach this evidence to their moving papers. The evidence is now being submitted as Exhibit B.

Trustee objects to certain language in the additional provisions and indicates that he has not objection to the language being stricken in the order confirming the plan. Debtors agree that this language should be stricken in the order confirming the plan.

Debtors have filed Exhibit B, labeled as an email from a Liquor License Broker, in support of their valuation of the liquor license. Dckt. No. 61. The Exhibit is authenticated pursuant to the Federal Rules of Evidence 901 by Debtor Amrik Cheema, who states that the email is a true and correct copy of an email received by the Debtors from Terri Bryant, a Broker/ Consultant with License Locators which brokers the sale and purchase of liquor licenses.

In the email, Mr. Bryant indicates that Debtors' liquor license is valued approximately at \$25,000. ¶ 2, Declaration of Amrik Cheema, Dckt. No. 62. The email states that the current market value for a "Sacramento County Type 21 Off-Sale General liquor license" is approximately \$25,000. The email then includes a list of different prices listed for comparable liquor license values, culled from the Notices of Intended Transfer recorded at the Sacramento County Recorder's Office, for all of 2013 and 2014. Dckt. No. 61.

The court is satisfied that Debtors have met their burden of proof in supporting their valuation of the Debtors' liquor license. The amended Plan, striking the language of the Plan's Additional Provisions regarding the Debtors' mortgage arrears, complies with 11 U.S.C. §§ 1322, 1323 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on June 23, 2014, striking the following language from Section 6.02 of the Plan and to be amended in the order confirming:

Any mortgage arrears due on the mortgage listed under Class 4 that is less than \$5,000

shall be paid by the Debtor(s) directly.

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2014. 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 court's decision is to deny the Motion to Confirm the Modified Plan as moot.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed Modified Plan on the following grounds:

1. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$1,600 under the terms of the proposed plan. According to the proposed modified plan, payments of \$5,550.00 have become due. Debtor has paid a total of \$3,950.00 to the Trustee with the last payment posted on July 23, 2014 in the amount of \$200.00.

According to the Trustee's calculations the Plan will complete in more than 36 months proposed, possibly taking 45 months. It appears that this is due to the proposed increase in the percentage to unsecured claim holders from .5% to 2%.

2. Trustee is uncertain debtors have the ability to make the proposed payments. Debtors filed Amended Schedules I and J, Dckt. No. 91, which reflect a net monthly income of \$3,100.17 and expenses of \$2,895.56. Net income for Henry Mazur consists of \$721.17 from his business as a contractor, \$805 in social security, and \$851.30 in monthly income due to expenses paid by the business. Net income for Debbie consists of \$722.70 as a home health provider.
3. Trustee is uncertain how Henry Mazur has calculated the \$721.17 monthly net business income since the business income and expenses statement filed in conjunction with the Amended Schedules I and J reflect a \$0.00 gross business income for the last 12 months and \$3,800.35 in monthly expenses. Trustee is also uncertain as to what monthly personal expenses Debtor is purportedly paying out of the business that amounts to \$851.30. Any personal expenses included within the Business Income and Expenses statement are not discernible.

Debtors have filed as Exhibits 2 and 3, spreadsheets and statements for personal and business expenses and accounts from January 2014 through May 2014. In reviewing the personal and business spreadsheets and their respective bank accounts for the months provided, the Trustee would not that Debtor includes in their personal spreadsheets for the months of January through April the monthly mortgage payment of \$1,605.61. When comparing this expense with the bank statements provided over that period of time, it would appear that the mortgage payment is being paid through a business account, not a personal account.

Debtors previously agreed per stipulation filed on April 21, 2014, Dckt. No. 86, to increase their plan payment at that time from the proposed \$150 to \$1,750 commencing on May 25, 2014, due to Debtors' business paying the ongoing mortgage payments directly-contrary to Debtors' Schedule J representations. Debtors filed an Amended Schedule J on May 20, 2014, Dckt. No. 89, removing the mortgage payments therein allowing for the increased plan payment.

4. Debtor is now proposing a \$200.00 plan payment under the modified plan beginning on June under the modified plan beginning on June 2014, and filed an Amended Schedule J which includes the mortgage payment once again, even though the bank statements provided reflect the mortgage continues to be paid through the business. Trustee notes the business bank statement for the period of April 21, 2014 through May 21, 2014, does not reflect that a mortgage payment was made. Debtors' spreadsheet for the month of May does not include the mortgage payment, nor does Debtors' personal bank account.

In reviewing Debtors' business checking account for the months provided, the Trustee calculates \$10,304.55 in deposits, or \$2,060.91 average over the 5 month period. Debtors state on Schedule I, page 2, number 13, that "Expenses are shown using the May expenses at what the minimum cost is to keep the business operating (sp) when business is slow." The May spreadsheet for business expenses reflects expenses for that month were \$1,109.03, and income was \$1,050.00. As with the Business Income and Expenses Statement filed with Amended Schedules I and J, whether personal expenses are included within the May business spreadsheets, it is

not discernable.

Debtors' Schedule J includes \$159.12 per month in payments for Debtors' second mortgage. Debtors stipulated, Dckt. No. 41, to this monthly payment as a resolution to debtors opposed Motion to Value regarding their second deed of trust. Wells Fargo Bank, N.A., and Debtor agreed that the secured value of the second deed of trust is \$15,000.00 with interest accruing at 5.00%. The parties agreed that Debtors would pay directly \$159.12 commencing September 15, 2013. An order valuing the second deed of trust at \$15,00 was filed on August 20, 2013. Dckt. No. 43.

In reviewing Debtors personal and business spreadsheets, the monthly payment for the second deed of trust is absent. Debtors' business and personal bank statements do not include any type of payment to Wells Fargo, N.A. for the second deed of trust, and the plan no longer provides for the second deed of trust in Class 4. The Trustee cannot ascertain whether the Debtors can afford the proposed plan payment of \$200 because the amended schedules, statements, and spreadsheets do not support the other.

After many objections by the Trustee and the potential of an evidentiary hearing, Debtors modified their plan to comport with their actual circumstances, increasing their plan payment by the amount of their first mortgage, since it was actually being paid by their corporation, and not by them as the schedules stated. Here, the same is true, the spreadsheet ledgers for the Debtors' personal expenses and Amended Schedule J, purport to include their first mortgage expense, yet the business bank statements which coincide with the personal expense spreadsheets ledgers, show the first mortgage is still being paid by the corporation.

### **Debtors' Reply**

Debtors' filed an amended modified plan on August 14, 2014.

### **DISCUSSION**

As Debtors filed a new plan on August 14, 2014, the current plan at issue is *de facto* withdrawn. The motion is denied as moot 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 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 as moot and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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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 and Debtor's Attorney on July 15, 2014. By the court's calculation, 35 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 continued the Objection to [date] at [time].**

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

1. The Trustee objects to attorney fees under the "no look" procedure. While the plan proposes to pay attorney \$4,000.00 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtors, Dckt. No. 1, appears to list in Item 6 that the attorney services do not include some services under that rule, such as judicial lien avoidances and relief from stay actions. The attorney appears to be effectively opting out of 2016-1(c), and Trustee has objected to allowance of fees under that section, requiring the attorney to file a separate motion for any attorney fees.
2. It appears that the Plan may not meet the Chapter 7 Liquidation

analysis under 11 U.S.C. § 1325(a)(4). Schedule C, Dckt. No. 1, asserts a "100%" exemption in the 2002 Suzuki Gran Vitara JLX asset. The Trustee is not aware of any legal authority authorizing the 100% exemption claimed. Schedule D also asserts liens against 220 Modoc Street of \$46,000, \$17,928.00, and \$13,579, and a lien in the Chevrolet Colorado in the amount of \$799.00.

This would leave equity of \$11,216.50, \$45,591.50, \$2,250.50, and \$250.00 in each property--assuming the Debtor concedes that the 100% exemption in the 2002 Suzuki cannot be claimed--totaling \$59,308.50. Debtor's non-exempt equity totals at least \$59,308.50, and the Debtor proposes to pay the unsecured creditors a 21% dividend, or approximately \$12,793.20. Schedule A reflects for each real property, "Value based on recent comparable sales," and the Trustee objects to the valuation as hearsay, where the Debtor is not an expert on recent comparable sales, and the Debtor bases his opinions on those sales and the original writing showing the comparable sales has not been produced.

Schedules A-C conflict as to the value of the real property and personal property of Debtor, versus the amount being exempted.

- a. Schedule A: Modoc Street property: Value, \$50,000. Amount of Secured Claim: \$77,567.00. Schedule C lists the value of the property as \$100,000.00 Schedule D lists the value of the property as \$100,000.00.
  - b. Schedule A: 8th Street property. Value: \$30,000. No liens. Schedule C lists the value of the property as \$60,000.
  - c. Schedule B: 2005 Chevrolet Colorado Short Bed valued at \$2,650.00 Schedules C and D both list the value of the Chevrolet as \$5,300.00 Chapter
3. The Debtor's Chapter 13 Documents are incomplete. Cap one (Account #1448), Chase (Account #3870), US Bank (Account #0946), Us Dept of Education (Account #9924 and #9824) were listed as amounts unknown on Schedule F. Debtor may be unfairly discriminating against general unsecured claims under 11 U.S.C. § 1322(b)(1).
  4. Debtor seeks to pay a \$13,579.00 secured claim of "Discover Fin," which may refer to Discover Financial, based on a judgment lien on 220 Modoc Street, Schedule D, Dckt. No. 1, the amount of \$226.32 a month for 60 months of the plan. If there is no equity in the Debtor's interest in that property, which will be the case if the value of the property is \$50,000 and the Debtor's interest is encumbered by senior Bank of America liens totaling \$46,060.00 and \$17,928.00, Debtor should value the secured claim at \$0.00 and pay it as general unsecured.

While Counsel has provided an abstract of Judgment to the Trustee, it is not clear whether the abstract has been sufficiently recorded, as no recorder's stamp appears on its face and the matter was not disclosed on the Statement of Financial Affairs (where the recording was within 90 days of filing). Where Discover Bank by DB Servicing Corporation has filed a \$13,579.61 as UNSECURED, the Trustee objects to the proposed secured treatment as unfair discrimination as to

general unsecured claim holders who are to receive no less than 21%.

### **Debtor's Response**

1. Debtor filed an amended Disclosure of Compensation of Attorney for Debtors on July 23, 2014, which purports to correct an inadvertent mistake as a result of software malfunction.
2. With regard to the Chapter 7 Liquidation Analysis, Debtor asserts that Trustee's issues are a result of Trustee's misunderstanding of how Debtor calculated the interest in the properties.

At the time of the filing, the house was valued at \$100,000 with three secured liens: (1.) Bank of America at \$46,060; (2.) Bank of America at \$17,928; and Discover with a judgment lien at \$13,579. These liens leave equity of \$22,433. Debtor asserts a fifty (50) percent interest in the home, as he is a Joint Tenant with Maria Martinez. This means only \$11,216.50 of value enters the estate. Debtor exempted this amount with CCCP § 704.140(b) (1).

As for the property located at 421 8<sup>th</sup> Street, it was valued at \$60,000 at filing and it has no liens. At filing Debtor believed he only had a fifty (50) percent interest in the property; however, he has since learned that his interest is only twenty-five (25) percent, leaving him with \$15,000 of value entering the estate. Debtor exempted \$14,408.50 of his interest in this property in Amended Schedule C.

The 2005 Chevrolet Colorado is a pick-up truck in fair condition that Debtor valued at \$5,300 at the time of filing. Debtor holds a fifty (50) percent interest in the truck, leaving the estate is \$2,250 of value. The property has \$799 in liens against it, leaving \$1,451 in equity and Debtor has exempted \$2,250 of his interest in the vehicle.

The 2002 Suzuki Gran Vitara has a listed value of \$250, and the Debtor corrected the exemption to show \$250 in Amended Schedule C.

3. Regarding the incomplete documents concerning the five accounts with unknown balances, Debtor states he has no was of knowing how much is owed to those creditors. Debtor discovered the creditors by pulling his credit report. The report did not indicate a "\$0.00" balance, in fact, it did not indicate any balance. Debtor has not received statements for these debts in recent memory. As far as Debtor is concerned, the debts do not exceed \$322,255.
4. Debtor argues the Trustee's objection to the title issue and treatment of discover is frivolous as Trustee state he is not sure whether the abstract was properly recorded and later states that the recording of the abstract happened within 90-days of the filing of the petition. Trustee attached a copy of the judgment and referenced it; according to Debtor

Trustee knew the Abstract had been recorded properly.

## **DISCUSSION**

The court's decision is to continue the hearing on the Objection to **[date]** at **[time]**. The court recognizes Debtor's efforts to remedy the Trustee's concerns and believes that many of the points discussed in Debtor's response effectively resolve issues raised by the Trustee. The outstanding issue for the court is the validity of the abstract of judgment for Discover Financial and the outstanding unknown debts.

First, with regard to the abstract of judgment, the court's docket contains no documents included with the Exhibit list cover sheet uploaded by the Trustee at Dkt. 19. Debtor did not file a copy of the abstract with his exhibits. Therefore, the court cannot make a determination on the validity of the document because it has yet to see the document.

Second, the court understands that Debtor may be unable to determine whether any debt is owed to the creditors on Schedule F with "unknown" scheduled debts; however, the court would be interested in reading a declaration from Debtor detailing the steps he took to determine the status of those accounts. Did Debtor call representatives for the respective creditors and inquire about the status of his accounts? Perhaps he wrote a letter seeking guidance as to whether any balances were due on the accounts? Whether Debtor took these steps speaks to his good faith in prosecuting his Chapter 13 case.

The hearing on the Objection to confirmation is continued to **[date]** at **[time]** for reconciliation of the above discussed issues.

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 continued to **[date]** at **[time]**.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Motion to Approve Loan Modification is denied without prejudice.**

The Motion to Approve Loan Modification filed by Kenneth Howie and Virginia Howie ("Debtors") seeks court approval for Debtors to incur post-petition credit. Debtors purport Ocwen Loan Servicing, LLC, to be the creditor in this matter; Debtors state that Ocwen Loan Servicing, LLC, which supposedly holds a deed of trust against the property known as 7965 Diamond Rock Dr, Antelope, California, has agreed to a loan modification which will reduce Debtors' mortgage payment to \$1,026.04 per month beginning on March 1, 2014 and each and every month thereafter until March 1, 2035 at which time any and all amounts still owed will become due and payable.

The Debtors state that the interest rate will be 2% until the maturity date of the loan, and that the monthly mortgage payments of \$1,026.04 are made up of principal and interest. Debtors provide that this payment scheme will remain in effect until the maturity date of the modified loan.

The Motion is supported by the Declaration of Kenneth Howie and

Virginia Howie. The Declaration affirms the Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms. Dckt. No. 43.

#### **INCORRECT PARTY TO LOAN MODIFICATION**

Based on the evidence related to the pending loan modification, and pleadings presented, the court cannot approve a loan modification agreement entered between Debtors and the alleged "lender" in this case, Ocwen Loan Servicing, LLC.

Debtors seek modify the subject loan that is allegedly "held" by "Ocwen Loan Servicing, LLC." However, it has been repeatedly represented in this court that loan servicing companies like Ocwen Loan Servicing, LLC are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the subject loan is held by Ocwen Loan Servicing, LLC, indicates that Debtors have no knowledge of who the actual creditor in interest is.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Ocwen Loan Servicing, LLC. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

In most cases where Debtors have filed a Motion to Approve Loan Modifications naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights. In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt that was never modified.

Debtors provide no exhibits showing that Ocwen Loan Servicing, LLC is the actual owner of the underlying obligation. There are no references to Ocwen Loan Servicing, LLC in Debtors' originally filed and amended schedules. No assignment or transfer of claim appears on the docket transferring any interest to Ocwen Loan Servicing, LLC. The court is not certain how Debtors can Ocwen Loan Servicing, LLC as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

Ocwen Loan Servicing, LLC filed Proof of Claim No. 14 on May 31, 2012. The Proof of Claim identifies the name of the creditor as Wells Fargo Bank, N.A., but specifies that notices and payments must be sent to Ocwen Loan Servicing, LLC, to their bankruptcy and cashiering department. The

amount of the claim is \$297,564.37, and the basis for the claim is for "money loaned." The court is uncertain as to how Debtors can name Ocwen Loan Servicing, LLC, as the "Lender" in a Loan Modification for an obligation that appears to be owed to Wells Fargo Bank, N.A. The court cannot approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Wells Fargo Bank, N.A.. The real creditor of interest in possession of the Note may not have received notice of the Debtor's bankruptcy, and may not have been served notice and the pleadings in this Motion that fundamentally affects its right as a Creditor in this case.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

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FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case - whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

"unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

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This court will not issue "maybe effective, maybe not effective"

orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

#### **TRUSTEE'S OPPOSITION TO MODIFICATION AGREEMENT**

The Trustee opposes the Debtors' Motion on the basis that Debtors have identified the incorrect party to the loan modification agreement. Debtors state in their Motion, Dckt. No. 41, that "Lender OCWEN Loan Servicing, LLC, holds a deed of trust against the property which is secured by a Note," and that "Lender has offered Debtors a permanent modification." Debtors state the proposed principal and interest mortgage payment is \$1,026.04 beginning on March 1, 2014, and that the interest rate will be 2%.

The Declaration in support of the Motion affirms Debtors' desire to obtain the loan modification. Debtors file Exhibit A, a copy of the Home Affordable Modification Agreement, as being offered by Ocwen Loan Servicing, LLC as Servicer.

This Agreement provides for a new principal balance of \$288,264.33, with \$43,795.08 deferred, and \$39,595.08 of the deferred amount eligible for forgiveness. The interest rate is 2% with the first monthly payment due on March 1, 2014, of \$1,026.04, which includes escrow.

On May 31, 2012, Ocwen Loan Servicing, LLC filed Proof of Claim No. 14, asserting a claim for money loaned in the amount of \$297,564.37. Ocwen Loan Servicing, LLC, identifies the Creditor as Wells Fargo Bank, N.A., on page 1, and Wells Fargo Bank, N.A. as Trustee for Pooling and Servicing Agreement Dated as of November 1, 2004 Asset-Backed Pass-Through Certificates Series 2004-WHQ-2 in Part 2 of the Claim. Attached is the original Deed of Trust (page 7), which identifies the Lender as Argent Mortgage Company, LLC.

Trustee asserts that the parties have not identified the actual creditor entering into the modification agreement. The Agreement does not properly identify the creditor, or if the Agreement is being executed by an agent. It does not identify the agent or provide proof of its authority.

Based on the Trustee's and the court's concerns regarding the authority of Ocwen Loan Servicing, LLC, to enter into the subject loan modification agreement, and the undisclosed identity of the true creditor in interest, as expressed above, the Motion to Approve the Loan Modification is denied without prejudice.

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

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

The Motion to Approve the Loan Modification filed by Debtors Kenneth Howie and Virginia Howie having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve the Loan Modification is denied without prejudice.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the plan on the following grounds:

1. **Post Petition Taxes:** the Motion states that the purpose of the modification is to provide for the Internal Revenue Service and Franchise Tax Board Claims for post-petition taxes due for the years of 2012-2013. Debtor's modified plan, pursuant to Section 2.13, proposes to add the Internal Revenue Service and State of California Franchise Tax Board for post-petition tax liabilities as Class 5 claims. The Trustee objects to the extent that the plan calls for the post-petition tax claims to be paid without a proof of claim, the creditors have not filed one, and the debtor does not have the ability to file a claim on behalf of the creditor pursuant to 11 U.S.C. § 1305.

2. **Declaration Insufficient:** The Trustee cannot tell if the Debtors can afford the plan payments based on their declaration, 11 U.S.C. § 1325(a)(6). Debtors' Declaration does not adequately explain the numerous changes in their expenses and income.

The Trustee compares Debtors' current reported income and expenses with their prior schedules, Dckt. Nos. 39 and 1, below.

Type of Expense	Difference between expenses from November 21, 2012, to July 1, 2014
Water/ Sewer	+\$5.00
Telephone/Cell	+\$88.00
Garbage	+\$35.00
Home Maintenance	+\$50.00
Food	+\$25.00
Laundry/Dry Cleaning	+\$10.00
Transportation	+\$78.00
Recreation	+\$20.81
Life Insurance	+\$4.00
Auto Insurance	+\$15.00
Rental Property Taxes	-\$129.00
Business Operation Expenses	-\$241.06
Rental Expenses	-\$1,204.71
Vehicle Reg/Maint.	-\$150.00

Debtors' Amended Schedule I appears to include gross income for Robert from employment in the amount of \$1,212.50, net \$1,406.85. This income was not included in Debtor's prior schedule, and Debtor

has not updated the employment information regarding occupation, name of employer, and how long employed.

While Debtor's modified plan continues to provide for Wells Fargo Home Mortgage and John and Janis Vandecovering in Class 4 regarding their rental property, Debtors no longer includes rental income on Schedule I, or budgets for rental expenses and taxes on Schedule J. Section 2.11 of Debtor's modified plan indicates monthly payments on the rental property are \$779.83 to Wells Fargo Mortgage and \$2080.00 to John and Janis Vandecovering. A Notice of Mortgage Payment Change filed on April 25, 2014 for Wells Fargo Home Mortgage indicates that the mortgage payment effective May 15, 2014, is \$693.04. Section 2.11 states that the monthly payment to Wells Fargo Home Mortgage is #779.83.

Additionally, a Notice of Mortgage Payment Change was filed on May 14, for Bank of America, indicating that the mortgage payment effective July 1, 2014, for the residence is \$1,796.56. Debtors continue to budget \$1,820.00 for this expense.

3. **Incorrect Forms**: Debtors' Amended Schedules I and J were not filed using the Official Form B 6I and B 6J effective December 2013.

### **Debtors' Response**

Debtor's state they will file an Amended Plan correcting the issues discussed by the Trustee.

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

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

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

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

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

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2014. By the court's calculation, 63 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 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.**

This matter was continued from July 22, 2014, to this hearing date. Dckt. No. 75. Here, the Debtor seeks to obtain an order confirming his amended Chapter 13 plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee objects to confirmation of the plan for two broad reasons.

First, there appear to be numerous defects with the drafting of the plan. The most recent plan, Dckt. No. 53, does not list an administrative expenses divided in Section 2.07 or Section 6 of the plan. Additional provisions indicate that attorney fees are due through the plan of \$2,650.00.

There is also an unsecured percentage error with the plan: Section 2.15 of the amended plan indicates that unsecured claim holders will receive no less than a "77,234%" dividend, and lists the total unsecured debt as "0.00." Debtor's original plan indicated that unsecured creditors were to receive 0% of \$77,234.00.

Second, Debtor's plan may not be his best efforts under 11 U.S.C. § 1325(b). The original plan called for payments of \$521.01 for sixty months, totaling \$31,260.60 over the life of the plan. Debtor's amended plan calls for payments of \$521.01 for sixteen months, then \$821.01 for twenty six months due to the completion of Debtor's \$300 support obligation in the sixteenth month of the plan. The term of the amended plan is now forty-two months. While Debtor is under median income according to the amended Form 22C, no explanation is offered in the Motion or Declaration as to why the plan now proposed is forty-two months long, when Debtor originally proposed (and could presumably afford) a sixty month plan. An explanation may be needed to satisfy 11 U.S.C. § 1325(a)(3).

Debtor will pay in a total of \$29,692.42 under the most recent plan, which is less than the original \$31,260.60 proposed. The Debtor shortened the plan length after the court sustained the Trustee's original objection to confirmation. Dckt. No. 35.

#### **RESPONSE BY DEBTOR**

Debtor responds by stating that the Chapter 13 Plan omitted to list the administrative expense dividend, and that the calculated expense dividend which was typographically omitted, is \$484.52 a month.

Debtor also concedes that Section 2.15 of the Chapter 13 Plan contains a typographic error indicating that unsecured claim holders will receive no less than a 74,234% dividend of \$0.00 total unsecured claims. Debtor requests that the court confirm the plan with an order confirming the plan, that provides for an administrative expense dividend of \$484.52, and that unsecured claims of approximately \$77,234.00 will be entitled to receive no less than a 0% dividend.

Debtor also contends that, in response to Trustee's third point of objection, Debtor is entitled to propose and confirm the current 42 month plan. However, Debtor appears to misinterpret the Trustee's objection on this issue. The Trustee is not objecting to the duration of the Plan, but rather, is confused as to why Debtor changed the plan length following the court sustaining the Trustee's objection to confirmation based on 11 U.S.C. § 1325(b). Debtor originally committed to paying \$31,260.60, and now proposes to pay \$29,682.42 under the recent plan.

For purposes of 11 U.S.C. § 1325(a)(3), in order to ensure that the present plan was proposed in good faith, the court will require that Debtor file a statement explaining why the plan is now forty-two months long, and why Debtor is now proposing to pay a total of \$29,682.42 under the plan, rather than the original \$31,260.60 proposed. The court will continue this Motion to permit Debtor to file and serve this statement.

#### **REPLY BY TRUSTEE**

Debtor responds to the Notice of the Continued Hearing of the Motion to Confirm the First Amended Chapter 13 Plan by stating that Debtor's

response, Dckt. No. 72, has not addressed the second point of the Trustee's Objection to Debtor's Motion to Confirm as requested by the court (Civil Minutes, July 22, 2014 hearing, Dckt. No. 75.

The court's minutes state:

Debtor appears to misinterpret the Trustee's objection on this issue. The Trustee is not objecting to the duration of the Plan, but rather, is confused as to why Debtor changed the plan length following the court sustaining the Trustee's objection to confirmation based on 11 U.S.C. § 1325(b). Debtor originally committed to paying \$31,260.60, and now proposes to pay \$29,682.42 under the recent plan.

Dckt. No. 75. Debtor has not explained the change in the plan term from 60 months to 42 months, other than to state that the Debtor is entitled to propose a 36 month plan, as the Debtor is under the median income. The Trustee does not dispute this point. The Trustee's concern is the showing of good faith of the Debtor in proposing the plan, and the fact that Debtor has ignored a part of the court's request to explain the plan changes.

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.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed modified plan, for three reasons.

First, the Trustee is unsure if the Debtor can afford the proposed plan payment. Debtor is proposing an increased plan payment from \$685.00 as confirmed to \$815.00, beginning on August 25, 2014, for the remaining 40 months of a 60 month plan. This is a \$130.00 increase in plan payments based on anticipated additional income. The supporting motion, Dckt. No. 124, lines 16-18 states in part, "Debtor has applied for a second part-time job as a baker with La Bou. She hopes to obtain new, additional employment with La Bou at a rate of \$11.00 per hour, 15-16 hours a week." No evidence in support of the additional income has been provided to date. Trustee questions Debtor's income reduction of \$127.44.

Second, according to Schedule I filed on July 7, 2014, the Debtor's

employer is listed as Elk Grove Unified School District, employed as Food Processor since March 31, 2012, and gross wages reflect an amount of \$1,372.56. The prior Schedule I filed on August 27, 2013, lists the Debtor with gross wages of \$1,590.00, employed with same employer and occupation.

Third, the Debtor fails to explain the income reduction in the supporting motion or declaration. The Debtor's Schedules for income and expenses are on incorrect forms. The Debtor has used the schedules for income and expenses that were effective on December 7, when the latest form was effective on December, 2013.

### **Debtor's Response**

Debtor admits that her modified plan is not feasible, as it depended on her obtaining new employment. Debtor has been unable to obtain secondary employment. Debtor requests fourteen days to file a new modified plan with motion to confirm and intends on developing a plan that involves either surrendering her home or entering a loan modification.

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.

**Tentative Ruling:** The Objection to Notice of Mortgage Payment Change 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).**

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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 the Chapter 13 Trustee, the respondent Creditor, parties requesting special notice, and Office of the United States Trustee on July 19, 2014. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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. -----.

**The Objection to Notice of Mortgage Payment Change is sustained.**

The Debtor, Elizabeth Rodas Barrios ("Debtor"), moves the court to determine that the Chapter 13 Trustee conduit disbursements to Bank of America are not in accordance with § 1322(B)(5).

The Debtor's confirmed plan directs that Bank of America, N.A., be disbursed \$872 each month as for the Class one Ongoing "Conduit" disbursement. The trustee has made these disbursements up until the end of June, 2014. Beginning in June, 2014, the trustee began disbursing a higher amount in the monthly payments sum of \$1,052.35. Exhibit 1, Trustee Web System Printout, Dckt. No. 63.

Debtor's attorney states that he has reviewed Claim 4 on behalf of the Debtor. Debtor's attorney believes that the Rule 3002.1 Supplement to Claim 4 may not correctly state the correct ongoing contractual payment amount on the Deed of Trust obligation owing to respondent. Debtor's attorney admits that it may be that \$872 monthly payment disbursed with the inception of the case continues to be the correct ongoing payment.

However, in order to ascertain whether the escrow calculations and that the Rule 3002.1 notice filed on June 5, 2014 is correct, Debtor's attorney states that he must need versions of the attachments to the notice in English. The attachments to the Notice of Mortgage Payment Change (which has not been given a docket control number, but was filed with the court on June 5, 2014), consist of Spanish-language statements addressed to the Debtor and sent to her West Sacramento address.

Debtor's attorney, Richard L. Jare, stated that he contacted Bank of America, N.A. to request a copy of the English version of the attachments to the notice. Mr. Jare states that Bank of America called him back and stated that they will NOT be amending this document to provide and supplement it with English language attachments for billing or escrow analysis.

As such, Debtor's attorney states that as counsel, Mr. Jare would have to be unnecessarily restricted to Spanish language editions which he does not have the ability to read. As federal court matters must largely be conducted in English, this Objection requests on the behalf of the debtor that the objection to the Rule 3002.1 notice filed by respondent on June 5th, 2014 be sustained, and that the notice is to be disallowed and disregarded without any prejudice to respondent to file and amended notice with English Language supporting billing and escrow analysis documents.

The Debtor requests that the court grant this motion and issue an order directing the trustee to, restore the Class 1 ongoing contractual payment amount to \$872 each month unless a Rule 3002.1 Statement with appropriate English language attachments is filed.

The apparent Claimant, the Bank Of New York Mellon FKA The Bank Of New York As Trustee for the Bank of America, not having filed a response to the duly noticed Objection to Notice of the Mortgage Payment change filed on June 5, 2014, or English language supplements showing payment activity and the calculation of the increased mortgage loan payment that is now being demanded of Debtor, the Notice of the Mortgage Payment (filed on June 5, 2014, not having been assigned a Docket Control Number pursuant to the requirements of Local Bankruptcy Rule 9014-1(c)) is disallowed without prejudice to the Bank Of New York Mellon FKA The Bank Of New York As Trustee for the Bank of America filing an amended notice, with English language supplemental billing and escrow analysis documents.

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 Elizabeth Rodas Barrios, 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 Objection to the Notice of Mortgage Payment Change filed on June 5, 2014, by the Bank Of New York Mellon FKA the Bank Of New York As Trustee for the Bank of America, is sustained and that the stated changes in the required escrow payments are disallowed in their entirety. This disallowance is without prejudice to the Bank of New York Trustee, or its successor, from providing notice of such future, prospective changes allowed or required under the Note and Deed of Trust upon which Proof of Claim No. 4-1 in this case is based, however, such changes shall not be based on any amounts, asserted defaults, or expenses which predate the date of this Order.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, parties requesting special notice, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Brian Andrew Felion and Kathleen Ann Felion, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtors declaration. Debtors are the owner of the subject real property commonly known as 24020 Forest Avem Colfax, California, "Property." Debtors seeks to value the Property at a fair market value of \$218,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately \$231,136.00. Creditor's second deed of trust secures a claim with a balance of approximately \$59,704.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized.

#### **STIPULATION**

Debtors and Creditor, U.S. Bank National Association, have filed a stipulation providing for the following:

1. Creditor's claim shall be allowed as a non-priority general unsecured claim.

2. The avoidance of Creditor's Deed of Trust is contingent upon the Debtor's completion of a Chapter 13 Plan and the Debtor's receipt of a Chapter 13 discharge.

3. Upon receipt of the Debtor's Chapter 13 discharge and completion of their Chapter 13 Plan, this Stipulation and any Judgment thereon may be recorded by the Debtor with the Placer County Recorder's Office.

4. Creditor shall retain its lien for the full amount due under the Subject Loan in the event of either the dismissal of the Debtor's Chapter 13 case or the conversion of the Debtor's Chapter 13 case to any other Chapter under the United States Bankruptcy Code.

5. In the event that the holder of the first lien on the Subject Property forecloses on its security interest and extinguishes Creditor's Deed of Trust prior to the Debtor's completion of a Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the Subject Loan balance at the time of the sale.

6. In the event that the Debtor attempt to sell or refinance the Subject Property prior to the Debtor's completion of a Chapter 13 Plan and receipt of a discharge, Creditor will retain its lien for the full amount of the Subject Loan balance at the time of the sale and/or refinance.

7. The terms of this Stipulation may not be modified, altered, or changed by the Debtor's Chapter 13 Plan, any confirmation order thereon, any subsequently filed Amended Chapter 13 Plan of reorganization and confirmation order thereon without the express written consent of Creditor. The terms of this stipulation shall be incorporated into Debtor's Plan and/or any subsequently filed Amended Chapter 13 Plan of Reorganization.

Dckt. No. 24. Stipulation, re: Avoidance of Lien. The court signed an order jointly submitted and signed by both parties on August 7, 2014. Dckt. No. 27.

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 Brian Andrew Felion and Kathleen Ann Felion, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted pursuant to the terms of the parties'

executed stipulation, approved by the court on August 7, 2014, which provides as follows (Dckt. No. 27):

1. Creditor's claim shall be allowed as a non-priority general unsecured claim.
2. The avoidance of Creditor's Deed of Trust is contingent upon the Debtor's completion of a Chapter 13 Plan and the Debtor's receipt of a Chapter 13 discharge.
3. Upon receipt of the Debtor's Chapter 13 discharge and completion of their Chapter 13 Plan, this Stipulation and any Judgment thereon may be recorded by the Debtor with the Placer County Recorder's Office.
4. Creditor shall retain its lien for the full amount due under the Subject Loan in the event of either the dismissal of the Debtor's Chapter 13 case or the conversion of the Debtor's Chapter 13 case to any other Chapter under the United States Bankruptcy Code.
5. In the event that the holder of the first lien on the Subject Property forecloses on its security interest and extinguishes Creditor's Deed of Trust prior to the Debtor's completion of a Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the Subject Loan balance at the time of the sale.
6. In the event that the Debtor attempt to sell or refinance the Subject Property prior to the Debtor's completion of a Chapter 13 Plan and receipt of a discharge, Creditor will retain its lien for the full amount of the Subject Loan balance at the time of the sale and/or refinance.
7. Unless the court orders otherwise, the terms of this Stipulation may not be modified, altered, or changed by the Debtor's Chapter 13 Plan, any confirmation order thereon, any subsequently filed Amended Chapter 13 Plan of reorganization and confirmation order thereon without the express written consent of Creditor. The terms of this stipulation shall be incorporated into Debtor's Plan and/or any subsequently filed Amended Chapter 13 Plan of Reorganization.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2014. By the court's calculation, 58 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan on the following grounds:

1. Trustee's Objection to Confirmation, which was sustained by the court on June 24, 2014, has not been entirely resolved, particularly with respect to the issues listed below:

- A. Income: The plan payment required is \$212,81. However, Debtors budget does not support the plan payment. Debtors Schedule J indicates monthly net income of \$63.00. Debtor admitted at the First Meeting of Creditors held on May 15, 2014, that her husband is a wage earner and is employed through the people or persons that bought his trucking business. This case was originally filed as a Chapter 7 on December 12, 2014, and was converted to Chapter 13 on March 24, 2014.

Debtor amended Schedule J on June 23, 2014. Dckt. No. 64. The

amended Schedule still does not list any tax or medical deductions, where the gross income is still listed as \$4,000 per month. To date, the Trustee received two check images which were paid to the order of Dan Olievskiy dated November 29, 2013, and November 15, 2013, for \$1,135.89 and \$2,544.55 respectively. No further information was provided to the Trustee such as the gross income earned, breakdowns of taxes or other withholdings, etc. The two checks received does not resolve the issues listed in the previous Objection. The income listed for Mr. Olievskiy differs where it is not clear if the net income listed on Schedule J is accurate, in the amount of \$212.81 per month.

B. Classification of secured Creditors: The plan does not provide treatment to the following secured creditors listed on Schedule D:

i. Toyota Financial for a 2013 Toyota Camry

ii. Toyota Financial for a 2013 Toyota Venza. (1) Debtor admitted at the first 341 Meeting that these two automobiles have been surrendered.

It appears that the creditor should be listed in Class 3.

iii. Western Truck Parks and Equipment Company: 2013 Volvo and 2005 Raven Flatbed trailer

iv. Western Truck Parts and Equipment Company: 2013 Volvo and 2005 Raven Van trailer.

Debtor admitted at the First Meeting of Creditors that the secured creditors are being paid by a third party and believes the banks have agreed to said treatment, which Trustee is not aware of. Trustee is concerned for the potential liability the community may have, since Debtor has listed these debts on Schedule D, and Debtors non-filing spouse appears to be still liable for the debts.

The amended plan filed on June 23, 2014, now lists Western Truck Parts and Equipment Com. in class 4. The Trustee received two General Purchase Contract Agreements. Exhibits A and B. It is not clear if the creditor has agreed to this treatment, and if the agreements encompass the property listed on Schedule D in regards to the Western Truck Parts and Equipment Com. The agreements contain language as to the 2013 Volvos VNL64T670. Neither agreement lists any information regarding either of the 2005 Raven Flatbed.

C. Secured Not Provided for in Plan: Wells Fargo Bank filed a Claim on May 19, 2014, but is not listed on Schedule D or the Plan.

The amended plan does not resolve this portion of the Trustee's Objection.

D. Priority Claim Not Provided for in the Plan: Douglas M Whatley, the Chapter 7 Trustee appointed to this case, filed a priority Claim, Claim No. 1, in the amount of \$1,799.50, which is not listed on the Schedules or provided for in the plan.

The amended plan does not resolve this portion of the Trustee's

Objection.

2. Debtor's rights and Responsibilities of the Chapter 13 Debtors and their Attorneys on June 15, 2014, but did not use the correct form. The correct form was revised on May 1, 2012.
3. Debtor's Chapter 13 plan is not properly signed by the Debtor and Debtor's counsel. Local Bankruptcy Rule 9004-1(c) states the name of the person signing the document shall be typed underneath the signature. Debtor did not type his name and the signature lien does not reflect the "/s/" signature lien. (The generic designations of "Debtor" and "Debtor's Attorney should be replaced with actual names.)

While the act of e-filing counts as a signature for the registered user, Local Bankruptcy Rule 9004-1(c)(1)(A)), by not physically signing the plan, the attorney has prevented parties other than the court from knowing if the attorney has signed the document. Trustee does not know if the attorney actually signed 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.

**Tentative Ruling:** The Objection to Confirmation 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).**  
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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 and Debtor's Attorney on July 15, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to Confirmation 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.

**The hearing on the Objection to Confirmation is continued to September 9, 2014 at 2:00 p.m.**

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on July 10, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Continued meeting is set for August 14, 2014 at 10:30 am.
2. Debtor is \$41.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$270.00 is due on July 25, 2014. Debtor has paid \$229.00 into the plan to date.

The Chapter 13 Trustee requests the court continue this Objection to

Confirmation to September 9, 2014 at 2:00 p.m., which is after the continued Meeting of First Creditors. The court will continue the hearing per the Trustee's request.

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 hearing on the Objection to confirmation is continued to September 9, 2014 at 2:00 p.m.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the proposed modifications for the following reason(s):

1. The Trustee is uncertain of Debtor's proposed plan payments. Section 1.01 of the proposed plan states the monthly plan payment is \$2,754.27. It appears Debtor may be proposing additional provisions listing plan payments as: \$2,754.27 for months one (1) through seventeen (17) and then \$2,884.27 for months nineteen (19) through sixty (6). Based on the above, Debtor is proposing no payment for month eighteen (18). June 2014 was month eighteen (18) and Debtor made two payments to the Trustee totaling \$5,508.54.
2. Debtor deleted preprinted text from the standard form plan. Specifically, Debtor removed original language from

section 6. Not only has the preprinted text been deleted, but it has also been inserted above the signature lines on page 6 of 6, rather than on a separate piece of paper appended at the end of the plan, as required by the standard form.

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.

**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).**  
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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 and Debtor's Attorney on July 23, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtors did not report all assets on their schedules. Debtor did not report an interest in real property located at 346 S. 19<sup>th</sup> Street, Richmond California. At the Meeting of Creditors, Debtors admitted they owned the property. Debtors deduct \$122.00 per month for life insurance on Schedule J, but do not report interest in life insurance on Schedule B. Debtor Aaron Turner has a pay deduction for 401K contributions; however, Debtors did not report a 401K interest on Schedule B.
2. Debtors did not report all debtors on Schedule D. Debtors testified at the Meeting of Creditors that they owed two secured creditors not disclosed on Schedule D. Specifically,

Debtors have a mortgage with PNC Bank secured by the property at 346 S. 19<sup>th</sup> Street, Richmond California, and an account with Wilshire Credit secured by a Ford F-150.

3. Trustee is not confident Debtors' can make the requirement payments. 11 U.S.C. § 1325(a)(6). Debtors have multiple expenses not reported on Schedule J, including a \$1,301 monthly mortgage payment, a \$495.00 auto payment, city utility bills, PG&E bills, and cable bills for the Richmond property, and a 401K deduction.

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.

**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).**  
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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 and Debtor's Attorney on July 24, 2014. Fourteen days' notice is required. That requirement was met.

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

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

PNC Mortgage, a division of PNC Bank as servicer for Federal National Mortgage Association ("Fannie Mae"), opposes confirmation of the Plan on the basis that the proposed plan does not provide for arrearages to secured creditor. Creditor is preparing a Proof of Claim with supporting documentation demonstrating that pre-petition arrearages of \$1,335.66 are due and owing. 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B).

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

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

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

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

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

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

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

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

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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 and Debtor's Attorney on July 15, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor admitted at the first meeting of creditors that she is no longer employed. Further, the Internal Revenue Service is listed in Class 2 and Class 5 as "disputed;" however, no action to object to the claim has been filed by the Debtor.
2. Trustee is in receipt of Debtor's 2004 tax return; however, Trustee was not provided with a copy of the most recent pre-petition tax year for which a return was required. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days

before the date first set for the meeting of creditors. 11  
U.S.C. § 521(e)(2)(A)(1).

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

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

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

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

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

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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 and Debtor's Attorney on July 23, 2014. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value the secured claim of Select Portfolio Servicing & Carrington Mortgage, MAC-1. The court is prepared to grant the Motion to Value the secured claims of Carrington and Select Portfolio Servicing at the hearing on August 19, 2014. Therefore, the court's decision is to overrule the objection and confirm the plan.

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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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 Chapter 13 Trustee, respondent creditor(s), and Office of the United States Trustee on July 17, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value secured claims of Carrington Mortgage and Select Portfolio Servicing is granted.**

The Motion to Value filed by Christy Leyva Navaroo, "Debtor" to value the secured claims of Carrington Mortgage and Select Portfolio Servicing is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1658 Montrose Lane, Lincoln, California, "Property." Debtor seeks to value the Property at a fair market value of \$270,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior deed of trust of Carrington Mortgage secures a

claim with a balance of approximately \$288,201.23. Select Portfolio Servicing's second deed of trust secures a claim with a balance of approximately \$75,075. Therefore, Carrington Mortgage's claim, secured by a senior deed of trust, is partially under collateralies and Carrington Mortgage's secured claim is determined to be in the amount of \$270,000. Meanwhile, Select Portfolio Servicing's claim secured by a junior deed of trust is completely under-collateralized and Select Portfolio Servicing's secured claim is determined to be in the amount of \$0.00, and therefore no payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Carrington Mortgage secured by a deed of trust recorded against the real property commonly known as 1658 Montrose Lane, Lincoln, California, is determined to be a secured claim in the amount of \$270,000. The value of the Property is \$270,000.

**IT IS FURTHER ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Select Portfolio Servicing secured by a second in priority deed of trust recorded against the real property commonly known as 1658 Montrose Lane, Lincoln, California, is determined to be a secured claim in the amount of \$0.00 and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$270,000 and is encumbered by senior liens securing claims which exceed the value of the Property which is subject to Creditor's lien.

**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.**

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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, and Office of the United States Trustee on July 15, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is denied.**

The Motion to Approve Loan Modification filed by Nationstar Mortgage LLC seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage LLC, 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 \$1,340 a month to \$999.95 a month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 4.00%.

**CHAPTER 13 TRUSTEE OPPOSITION**

The Chapter 13 Trustee opposes the motion based on the following:

1. Neither the moving Creditor nor the Debtor filed a Declaration in support of the Motion.
2. Creditor filed the Modification Agreement as an Exhibit to the Motion and not as a separate document. This makes it difficult for parties to review the matter on PACER.

**DEBTORS' RESPONSE**

Creditor provides the Declaration of Steven Mendoza and Christy Mendoza to support the Motion and notes that the lender filed the Motion to Approve the Loan Modification with the Agreement as an exhibit.

Now, the Motion is supported by the Declaration of Steven Mendoza and Christy Mendoza; however, the Declaration is neither signed nor dated. The court lacks sufficient competent evidence affirming Debtor's desire to obtain the post-petition financing and has no evidence of Debtor's ability to pay this claim on the modified terms.

The Motion is denied for lack of evidentiary support upon which the court could find grounds to grant the relief requested.

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 Nationstar Mortgage LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Loan Modification is denied without prejudice.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Motion to Value filed by Jane Weeks, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 12036 Pine Forest Drive, Truckee, California, "Property." Debtor seeks to value the Property at a fair market value of \$270,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately \$282,567.98. Creditor's second deed of trust secures a claim with a balance of approximately \$103,474.95. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 12036 Pine Forest Drive, Truckee, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$270,000 and is encumbered by senior liens securing claims which exceed the value of the Property which is subject to Creditor's lien.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the proposed modification because Debtors are delinquent \$3,642.00 under the proposed plan. The case was filed February 5, 2014, and five (5) payments have come due under the confirmed plan. Payments totaling \$17,953 have come due under the proposed modified plan. Debtors' plan states that Debtors have paid a total of \$14,311 to the Trustee through June 2014 with the July payment changing to \$3,642.00 for the life of the plan. Debtors have paid the Trustee \$14,311 through June 2014, with the last payment of \$3,642 being posted on June 30, 2014. However, Debtors have made no plan payment for July 2014 and one more plan payment of \$3,642 will come due on August 25, 2014.

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.

**Thru #32**

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the proposed modifications for the following reason(s):

1. Debtor's modified plan, pursuant to section 2.13, proposed an unsecured priority claim to the Internal Revenue Service be paid through the plan in the amount of \$131,396.27. The Trustee objects to the extent that the plan calls for post-petition taxes to be paid without a proof of claim. The creditor has not amended his claim to include post-petition taxes and Debtor does not have the ability to file a proof of claim on behalf of a creditors. 11 U.S.C. § 1302.

The IRS filed a proof of claim on June 20, 2013 (Claim 6), for \$80,758.80. The claim is comprised of \$3,308.94 in secured claims, \$71,177.27 in unsecured priority claims, and \$6,272.59 in unsecured general claims.

2. Debtors' Schedules I & J were not filed using the Official Form B 6I and B 6J.
3. Debtors' declaration (Dkt. 101) does not provide a sufficient explanation for the 2013 tax liability.

#### **DEBTORS' RESPONSE**

Debtor responds to the Trustee's opposition and provides the following:

1. The IRS Insolvency Division has filed a Proof of Claim that includes the 2013 taxes showing \$131,396.27 as entitled to priority.
2. Debtors will file a stipulation concerning tax liabilities with the Franchise Tax Board before the hearing on confirmation.
3. Debtors filed a supplemental declaration referring to updated Schedules I & J, which are filed as exhibits to the response.
4. The Declaration of Timothy Nelson explains that the reasons for the tax liability are as follows:
  - a. Debtors' central air conditioning fell into disrepair, costing about \$13,000 to replace.
  - b. Debtors' car clutch had to be replaced at \$1,300.
  - c. Debtors had to pay \$6,000 in 2013 as a down payment for a 2011 Ford Edge
  - d. Lighting in the home was replaced as a cost of \$3-4,000.
  - e. Lawn sprinklers required replacing.

#### **DISCUSSION AND RULING**

The Amended Proof of Claim filed by the Internal Revenue Service resolves Trustee's Objection because it asserts a priority unsecured claim of \$131,396.27, as provided for in Debtors' modified plan.

While Debtor did file updated Schedules I & J on the proper forms as exhibits to their response to the Trustee (Dkt. 112), the forms were not filed as Amended Schedules on the Docket and no party reviewing the docket, including the court or the Trustee, would have reason to believe any Amended forms were filed on the docket.

Debtor addressed some of the reasons for the 2013 tax liability; however, the Trustee requested more testimony in a declaration. Trustee was seeking estimates, statements, or proof of payments for such repairs. Debtor did not provide sufficient support for the 2013 tax liability.

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

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

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

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

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

32. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON  
RK-11 Richard Kwun

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF BOWMAN AND  
ASSOCIATES, APC FOR RICHARD  
KWUN, DEBTORS' ATTORNEY(S)  
7-7-14 [[92](#)]

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

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 July 7, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion for Allowance of Professional Fees is granted.**

**FEES REQUESTED**

Richard Kwun, the Attorney ("Applicant") for Timothy and Kimberly Nelson the Chapter 13 Debtors ("Client"), makes a first and final Request for the Allowance of additional Fees and Expenses in this case. The period for which the fees are requested is March 25, 2013 through July 3, 2014.

**Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (4) (A) .

### **Benefit to the Estate**

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

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

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

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

*Id.* at 959.

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

**FEES ALLOWED**

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Richard Kwun	23.7	\$240.00	\$5,688.00
<b>Total Fees For Period of Application</b>			<b>\$5,688.00</b>

Applicant was previously approved for \$4,000 in fees which has been paid in full. The court is confused by applicant pleadings; however, because in the moving papers, Applicant computes the total hours at 23.7 billed at a rate of \$240 for a total fee amount of \$5,640.00. Applicant then deducts the previously paid \$4,000 to calculate the amount he is now seeking, \$1,640.00. When the court multiplies 23.7 by \$240 per hour, the resulting fee is \$5,688.00. That figure, reduced by \$4,000 previously received leaves a fee balance of \$1,688.00. There is a \$48.00 discrepancy in the numbers presented by counsel. The court will move forward with the request as presented by counsel and afford counsel the opportunity to adjust the amount requested at the hearing on the Application.

The court finds that the hourly rates requested reasonable and that Applicant effectively used appropriate rates for the services provided.

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

Fees	\$1,640
Costs and Expenses	\$73.32

pursuant to this Application in this case.

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

that:

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

The Motion for Allowance of Fees and Expenses filed by Richard Kwun ("Applicant"), Attorney, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Richard Kwun is allowed the following fees and expenses as a professional of the Estate:

Richard Kwun, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$1,640  
Expenses in the amount of \$73.32,

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

**Final Ruling:** The Debtors having filed a "Notice of Withdrawal" for the pending Motion to Confirm Plan, the court interprets the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Confirm, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm Plan.**

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

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

A Motion to Confirm Plan having been filed by the Debtors, the Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm Plan is dismissed without prejudice.

34. [12-41786](#)-C-13 JAMES LANINI  
SDH-7 Scott D. Hughes

MOTION FOR COMPENSATION FOR  
SCOTT D. HUGHES, DEBTOR'S  
ATTORNEY  
7-21-14 [[100](#)]

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2014. Twenty-eight days' notice is required.

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

**The Motion for Allowance of Professional Fees is granted.**

#### **FEES REQUESTED**

Scott D. Hughes, the Attorney ("Applicant") for James Robert Lanini the Chapter 13 Debtor ("Client"), makes a first and final Request for the Allowance of additional Fees and Expenses in this case. The period for which the fees are requested is December 21, 2012 through August 19 2014.

#### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a) (4) (A).

### **Benefit to the Estate**

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

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

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

(c) To what extent may the estate benefit if the services are rendered and what is the

likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

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

**FEES ALLOWED**

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Scott D. Hughes	29.7	\$250.00	\$7,425.00
<b>Total Fees For Period of Application</b>			<b>\$7,425.00</b>

At the outset of the case, counsel received a \$1,500.00 retainer from Debtor and total fees in the amount of \$4,000.00 are being paid through the Chapter 13 plan. To date, fees in the amount of \$2,500.00 have been paid through the plan.

Therefore, counsel is seeking allowance of the \$3,425.00 in additional fees and \$49.96 in additional costs.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided.

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

Fees	\$3,425
Costs and Expenses	\$49.96

pursuant to this Application in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Scott Hughes ("Applicant"), Attorney, having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Scott Hughes is allowed the following fees and expenses as a professional of the Estate:

Scott Hughes, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$3,425  
Expenses in the amount of \$49.96,

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Bank of America, N.A., "Creditor," is denied without prejudice.**

Debtors seek an order valuing the collateral securing the claim of Bank of America, N.A. ("Creditor"); however, Debtors did not service the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor Bank of America, N.A. is a federal insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institutions, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise and after service upon

the institution by certified mail or notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Debtors effectuated service via certified mail on the following addresses for Bank of America, N.A.:

150 N. College St. NC1-028-17-06  
Charlotte, NC 28255

The FDIC website reveals the address for Bank of America, N.A. for purposes FRBP 7004(h) to be:

100 North Tyron Street  
Charlotte, NC 28202

Further, counsel for Bank of America, N.A. filed a Notice of Appearance and requested that all pleadings be served at the following address:

Prober & Raphael, A Law Corporation  
20750 Ventura Boulevard, Suite 100  
Woodland Hills, California 91364

See Docket Control Number 24. Debtor did not serve the Motion at this address.

Debtors are seeking to modify the rights of a secured creditor without having property provided service of the Motion and supporting documents to the subject creditor. Without proper service on the creditor, the court will not entertain modifying a creditor's legal rights. Therefore, the motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Orlando Capco Estacio and Myrna Lopez Estacio, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value is denied without prejudice.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

**Prior Hearing**

The first hearing on this matter was held February 25, 2014. At that hearing, the court continued the matter to August 19, 2014 to see whether negotiations with the Internal Revenue Service would be sufficiently resolved so as to confirm the modified plan.

**Background**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objected to the Motion for the following reasons:

1. Debtor is delinquent \$2,590.00 under the proposed plan. The case was filed on February 28, 2013, and 23 payments have come due under the plan; payments totaling \$59,570.00 have become due under the proposed modified plan. As of January 7, 2013, Debtor has paid a total of

\$56,980.00 into the plan and commencing January 25, 2014, the plan payment shall be \$2,590.00 for the remainder of the plan. Debtor has paid the Trustee \$56,980.00 with the last payment of \$2,210.00 posted on January 9, 2014.

2. Trustee is uncertain if the proposed modified plan will complete in 60 months. The additional provisions of the proposed modified plan states in section 6.02 that the claim of the Internal Revenue Service will be paid by Debtor directly in accordance with an offer and compromise that is being negotiated between Debtor and the Internal Revenue Service. There appears to be nothing on file about such negotiations. The Internal Revenue Service filed a priority proof of claim in the amount of \$27,334.70 on March 28, 2012. If negotiations between Debtor and the Internal Revenue Service are non-existent, the proposed modified plan will be overextended and will complete in 106 months. Trustee is requesting proof to be filed showing these negotiations.

**DEBTOR'S REPLY**, filed 02/21/14

Debtor asserts he is not delinquent under the terms of the plan. Debtor also asserts that he submitted an "Offer in Compromise" to the IRS on February 21, 2014. Debtor attached the "Offer in Compromise" as an Exhibit to the response (Dkt. 103).

**SUPPLEMENTAL DECLARATION OF CHARMINE JONES**

On August 5, 2014, Charmine Jones, an employee of the Chapter 13 Trustee, submitted a supplemental declaration on this matter. According to the declaration, Debtor remains delinquent under the terms of the modified plan. Trustee's record reflects twenty-nine (29) payments having come due under the plan; however, Debtor remains delinquent \$5,934 under the terms of the proposed plan.

Debtor filed an "Exhibit" that consists of an IRS document of Offer in Compromise (Dkt. 103); however, there is no evidence of the IRS agreeing to compromise and the IRS has not filed an amended claim.

**DISCUSSION AND RULING**

Debtor has not resolved either of the Trustee's outstanding concerns. The court granted an extended continuance because it believed that it would be in the interest of judicial economy to permit time for the Offer in Compromise to be considered by the IRS. Not only has Debtor not provided the court with an update on the status of the IRS claim, Debtor remains delinquent under the terms of 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.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor is \$88.60 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$263.48 is due on July 25, 2014. Debtor has paid \$1,228.80 into the plan to date.
2. Trustee previously objected to confirmation and the following objections remain outstanding:
3. Attorneys' Fees: The case was filed as Chapter 7 and converted to Chapter 13 on January 24, 2014. The Disclosure of Compensation of Attorney for Debtor provides that counsel agreed to accept \$1,200 for her services. Prior to the filing of the statement, counsel

received \$300.00, leaving a balance due of \$900.00. The Statement was filed by Rajdep Chima, who is not currently showing as attorney of record in the case.

In the Rights and Responsibilities filed on February 7, 2014 and the Chapter 13 Plan, Debtors state they paid their attorney \$1,200.00. It appears Debtor paid \$900.00 sometime between October 8, 2013 through January 25, 2014. This means Debtor may have as much as \$900.00 in excess income.

4. Debtors cannot make the payments required under the plan and the plan may not be Debtors' best efforts. 11 U.S.C. §§ 1325(a)(6) & (b). Debtor made changes to income and expenses on April 18, 2014 without explanation as to why the changes occurred.

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.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor is \$4,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,000.00 is due on August 25, 2014. Debtor has paid \$5,800.00 into the plan to date.
2. Debtors may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors' Motion (Dkt. 140) indicates on page 2, lines 1-4 that Debtor had obtained new employment as of July 9, 2014. On July 24, 2014, Debtors' counsel informed Trustee by email that Debtor did not yet have updated pay advices to substantiate the new income.

**AMENDED MOTION TO CONFIRM**

Debtors filed their original Motion to Confirm Chapter 13 Plan on June 17, 2014. The hearing was set for August 5, 2014. On July 9, 2014, Debtors filed the Amended Motion to Confirm Chapter 13 Plan, with the hearing date set for August 19, 2014.

Trustee's Objection to the Motion was filed August 5, 2014, and the docket indicates that the Objection was made in reference to the original Motion to Confirm (Dkt. 135); however, the substance of the objection refers specifically to Docket Control Number 140, which is the Amended Motion to Confirm. Therefore, the court will consider the objection in light of the amended motion.

Debtors' Amended Motion provides that Debtors are current on payments under the plan.

As the Trustee stated, the Amended Motion does provides that Debtor Rodney Lambert commenced new employed on July 9, 2014 and anticipates a net income of \$2,700 per month. The Declaration in Support of Confirmation (Dkt. 139) supports the statements made in the Amended Motion; however, no exhibits were attached to the Declaration or Motion containing the pay advices required by the Trustee.

While Debtors may have remedied their plan payment delinquency, without pay advices evidencing Rodney Lambert's income, the court cannot conclude that the proposed plan payments are feasible because the court cannot confirm that sufficient funds will be made available to the Trustee on a monthly basis.

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.

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

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

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

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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 Chapter 13 Trustee and Office of the United States Trustee on July 8, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

#### **PRIOR HEARING**

The initial hearing on this Motion was held July 8, 2014. At that hearing, the court continued the matter because opposition was presented at the hearing. The court ordered parties to submit their oppositions and responses to be heard at the continued hearing on August 19, 2014.

#### **MOTION TO EXTEND AUTOMATIC STAY**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 12-40994) was filed on December 5, 2012 and dismissed on May 1, 2014, for Debtor's delay in confirming a modified plan.

Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

## **OPPOSITION**

Creditor, Sterling Bank and Trust, FSB, opposes the court's granting of the Motion to Extend the Automatic Stay. Creditor holds a note secured by 703 W. 2<sup>nd</sup> Avenue, Chico, California. The note and security documents were initially executed between Creditor and Jean Wright. On June 30, 2006, Ms. Wright sold the property to Debtor and Debtor assumed the obligations under the terms of the note and deed of trust. The Loan Assumption Agreement was recorded on July 14, 2006.

Prior to this case, Debtor filed a Chapter 13 proceeding on December 2, 2012 (12-40994). Creditor opposed confirmation of a plan on the grounds that the plan did not provide for repayment of Creditor's secured claim in full over the five (5) year term of the plan. Debtor filed a second Amended Chapter 13 Plan that remedied Creditor's objections (Dkt. 95, Case No. 12-40994). Other creditors opposed the plan and Debtor filed a Third Amended Plan (Dkt. 112, Case No. 12-40994). Other creditors opposed the plan and a Fourth Amended Plan was filed on September 18, 2013 (Dkt. 173, Case No. 12-40994). While the fourth plan correctly stated the pre-petition arrears owing to Creditor, it did not amortize the balance of the loan over the five (5) year term. Instead, it proposed to repay the loan through a refinance. Creditor opposed confirmation of the Fourth plan on feasibility grounds. A Fifth Amended Plan was filed and suffered from the identical issues as the Fourth (Dkt. 209, Case No. 12-40994). Creditor's objection to the Fifth plan was sustained. On January 27, 2014, Debtor filed a Sixth Amended Plan, it was identical to the Fourth and Fifth Amended Plans (Dkt. 230, Case No. 12-40994). Creditor opposed confirmation of the plan, and it was sustained.

On March 18, 2014, Creditor filed a Motion to dismiss Debtors' case as it had been pending for over fifteen months and Debtor had proposed seven (7) Chapter 13 plans, all of which were non-confirmable and caused unreasonable delay that was prejudicial to creditors. The court granted the Motion at a hearing held on April 29, 2014. The court's reasoning included the following:

Regarding the seventh amended plan, which the debtor claims is confirmable, the court notes that, each time it denied confirmation of the debtor's three prior plans, one of the bases for denial of confirmation was the debtor's failure to provide sufficient evidence of an ability to obtain refinancing in years four and five of the plan in order to pay off loans owed to Rush Funding, LLC and Sterling, respectively. The seventh amended plan contains the same refinancing language in Section 6.03 yet, as was the case with the prior amended plans, the debtor's only evidence of an ability to obtain refinancing are the statements he has made in his supporting declaration (Dkt. 247).

The instant Motion claims that Debtor now has a commitment from a lender to refinance the mortgage and Debtor attaches an letter from Capital Alliance that specifically states it should "not be construed as a commitment."

Creditor argues that the instant case should be presumed to be filed

not in good faith because there has not been a substantial change in the financial or personal affairs of the debtor to support the conclusion that Debtor will be able to confirm and fully perform the proposed Chapter 13 plan in this case. 11 U.S.C. § 362(c)(3)(C). The value of the property has not changed; Debtor's net income is unchanged and the proposed Chapter 13 plan is identical to the Debtor's seventh Amended plan filed in the prior case the court founds to be facially unconfirmable. Debt due to Creditor increased since the filing of the prior case, as has priority tax indebtedness owing to the IRS.

Creditor posits that Debtor cannot show that the instant case was filed in good faith. First, there has been no substantial change in financial or personal affairs of the Debtor. The commitment letter Debtor provides with the instant Motion is not a commitment at all and the proposed loan amount is insufficient to refinance the property.

Second, looking at the totality of the circumstances, Debtor's past history indicates an inability to reorganize debts under a Chapter 13 plan and there is no credible evidence that Debtor will be able to refinance the real property. Any statements made by Debtor in his Declaration are self-serving, speculative, and do not demonstrative good faith.

#### **DEBTOR'S RESPONSE**

Debtor responded to Creditor's objection on August 4, 2014 and asserts that he has cured both issues that resulted in him not confirming a plan in the previous case.

First, Debtor argues that he has presented a plan here that falls within the purview of 11 U.S.C. § 1322. Second, he states he has provided evidence that he may be able to obtain a refinance of the note at issue. Debtor points out that the language of the letter from the refinancing creditor is not as suspect as it seems, as it states that the letter is ". . . a conditional offer to make a real estate loan . . ." Debtor informs the court that Creditor is being paid in full under the proposed plan and is being afforded adequate protection payments for both the arrears and the on-going mortgage payments in Class 1.

#### **DISCUSSION AND RULING**

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 not in good faith if the debtor does not demonstrate a substantial change in financial or personal affairs since the dismissal of the next most previous case or any other reason to conclude that the later case will be concluded with a confirmed plan that will be full performed. 11 U.S.C. § 362(c)(3)(C)(i)(III)(bb). 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(

and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Reviewing Debtor's case history and the reasoning posited as to why the court decided to dismiss Debtor's previous case, the court is inclined to grant an extension of the automatic stay.

In the Civil Minutes on the Motion to Dismiss the previous case, the court noted that the seventh amended plan contained the same issue as past plans, namely that it relied on refinancing and the Debtor could not provide sufficient evidence of the ability to refinance in order to pay off the loans of Rush Funding, LLC and Sterling. Now, Debtor has a letter from Capital Alliance that states the letter serves as a "conditional offer to make a real estate loan . . . subject to a final property inspection with normal lender due diligence and requirements." The proposed loan amount of \$375,000 for a term of 24 months at 11% interest. Monthly payments are anticipated at \$3,437.00. (Dkt. 14).

Sterling filed a proof of claim (Claim 1) asserting a secured claim of \$403,749.35, of which \$65,184.30 is arrearage as of the time the case was filed. In the proposed plan, Debtor lists Sterling in Class 1, owed \$35,907 in arrears with a monthly dividend of \$3,009.00. In Section 6.01 of the plan, Debtor states he will make the ongoing mortgage payments and payment on the arrears owed to Sterling through the plan. Debtor plans on refinancing the debt with Sterling before the balloon payment comes due in April 2015 and then modifying his plan to remove the debt owed to Sterling. He then refers the court to the "conditional offer to refinance through Capital Alliance."

The court's decision is to grant the Motion Extending the Automatic Stay on the basis that Debtor has submitted a letter with a conditional offer for a refinance. The conditional nature of the letter appears routine, as it refers to Lender due diligence and a property inspection being required. The court expects that the Debtor will move forward efficiently and promptly in presenting the court with an executed lending agreement that will provide sufficient monies to make the expected payments in the later years of the plan. The letter alone is not enough to make a plan confirmable, but is a sufficient change in circumstances that the court will grant Debtor a stay extension and the breathing space necessary to prosecute his case.

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

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

The Motion to Extend 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, unless terminated by further order of this court.