UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 19, 2014 at 3:00 p.m.

1.	**11-43500-E-13**	**MICHAEL PANNELL AND LORI CHERNEY**	**MOTION FOR COMPENSATION FOR ANDY C. WARSHAW, DEBTORS' ATTORNEY**
	ACW-5	**Andy C. Warshaw**	**7-11-14 [97]**

Tentative Ruling: The Motion for Compensation 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 11, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is denied without prejudice.

Financial Relief Law Center, Andy C. Warshaw, Counsel for the Debtor, requests interim fees in the amount of $4,064.00 for the period of July 22, 2013 to June 23, 2014.

However, Counsel's "motion" appears to be a created form comprised of several tables. This is not the practice in the Eastern District of California, Sacramento Division. The court notes that this form appears to be one used in the Fresno Division of this District. While the judges in the Southern portion of the District may accept this form in lieu of counsel preparing a simple motion, this Department does not, and the court is not aware of this form being used in the other three Sacramento Departments and the Modesto Division of this court.

The Motion to Confirm does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The "motion" merely lists a series of tables with various entries to correspond with a set of exhibits, which the court must comb through to determine whether the requested fees are appropriate pursuant to the Bankruptcy Code.

The Motion states with particularity the following grounds and requested relief thereon.

A. Section 1, Summary Table.

1. Applicant is Financial Relief Law Center.

2. Amount of Compensation Requested

"Andy C. Warshaw
$300/hr x 13.7 hrs (.5 no charge)=
$3,960 Matthew Avetoom
$85/hr x 1.5 hrs=$0 (all no charge)
Melissa Markle
$130/hr x 0.8 hrs = $104.00

No Charge: 2 hours overall.

Total: $4,064."

3. Expenses, $0

4. Time Period

a. July 22, 2013 - June 23, 2014

5. No fees to be paid by Trustee or Debtor Directly.

6. Fees to be paid in part by Trustee and in part by Debtor.

7. No prior fee applications.

8. Not a business case.

9. Fees Charged $ – Substituted into case.

10. No Rights and Responsibilities Form Executed in Filed

11. No Pre-Filing attorneys' fees filed.

12. No Fees provided in Plan.

13. No Fees paid to date by Trustee.

14. Chapter 13 Monthly Administrative Payment is $25.

15. Compensation is requested pursuant to 11 U.S.C. §§ 329 and 300.

16. No Pre-Filing Attorneys' Fees paid.

17. No Retainer held in trust.

18. Fees Reserved for in Plan, $25 a month for 25 months = $625.00.

19. Fees for 1st Amended or Modified Plan, Motions, Objections, Motion to Modify [does not specify which, if any apply] = $3,210.00 (10.7 hours).

20. Motions to Dismiss = $150 (.5 hours).

21. Fee Applications = $300 (1.5 hours).

22. Case Administration = $404 (1.8 hours).

23. Attached exhibits are

    a. Narrative Summary

    b. Itemized Time Entry by Date

    c. Itemized time Entries by Project

    d. Itemized Costs (though identified as exhibit it also states "No Exhibit")

    e. Fee Agreement

    f. Debtor(s) Consent.

24. Instead of a declaration, Paragraph 9 is titled "Declaration" and purports to say that everything in the Form and Attachments is true and correct under penalty of perjury by counsel.

25. A statement, under penalty of perjury (based on Paragraph 9) that counsel has not accepted or demanded from debtor or any other person payment for services or costs without first obtaining court authorization.

26. The court is instructed to see the attachment for the grounds upon which the Motion is based.

Fresno Division Form, Dckt. 97.

Spread over Dckts. 99, 100, 101, 102, and 104 are the various exhibits that counsel has instructed the court to read and pull out the grounds upon which the Motion is based. Exhibit A, Dckt. 99, is an 11 page "narrative" consisting of a points and authorities. Buried in the extensive citations, quotations, and arguments which possibly could be grounds that counsel may have wanted to assert in support of the Motion.

Exhibit B, Dckt. 100, is a table of billings identified by biller. Exhibit C, Dckt. 101, is a table of billings identified by biller.

Exhibit D, Dckt. 102, is a statement under penalty of perjury by the Debtors that they want to have counsel be allowed fees pursuant to 11 U.S.C. § 330 in the amount of $4,064. In addition to the Debtors counsel also purports to so testify as part of this declaration under penalty of perjury (Paragraph 9 of form).

Exhibit F, Dckt. 103, is the Fee Agreement. This Agreement includes the following provisions:

a. Section 4: Legal Fees and Billing Practices. Debtors agree to pay Counsel:

   i. $0.00 in attorneys' fees prior to filing,

   ii. $0.00 by bankruptcy plan;

   iii. The Attorneys' Fee is a flat fee.

   iv. The fee in Section 4 will be honored for 72 hours.

b. Section 2: Scope of Services. Counsel will provide the following services for the Section 4 fees:

   i. Consultation regarding Debtors' financial condition;

   ii. Evaluation of bankruptcy options;

   iii. Referral of all creditor calls to Counsel;

   iv. Preparation and review of bankruptcy petition;

   v. Filing bankruptcy petition;

vi. Appearance at one 341(a) meeting of creditor and confirmation hearing [apparently without regard to the meetings and confirmation hearings which are necessary for counsel to perform the services].

vii. Any other services are not included in this Agreement.

viii. Separate arrangements must be agreed on for any other services, which must be documented by separate written agreement.

c. Section 4: Payment Arrangement

i. Bankruptcy will not be filed until all fees are paid in full.

d. Section 5: Billing Statements.

i. Since the Fee Agreement is for a flat fee, no billing statements will be provided or bills sent, unless there is a separate written agreement for other services.

e. Section 8: Entire Agreement

i. The written Fee Agreement Contains the entire agreement of the parties. No other agreement, statement or promise made before the date of the Fee Agreement is binding on the parties.

f. Section 10: Modification

i. The written Fee Agreement may be modified only by a subsequent written agreement, or an oral agreement "only to the extent that the parties carry it out."

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic

recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the short-and-plain-statement standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

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

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

ADDITIONAL DEFICIENCY OF PLEADINGS

While this court acknowledges that other Division in this District and other Districts create "fill in the blank, check the box" form for attorneys to use, the present Motion shows the shortcoming of such practices. Further, this court believes that attorneys who have post-graduate degrees, have passed the California Bar Examination, and charge their clients hundreds of dollars an hour are capable of properly preparing a Motion, preparing a separate points and authorities, preparing separate declarations, and complying with the Local Rules (9004-1 and Revised Guidelines for Preparation of Documents) in this District.

While a lot of information is inserted in various boxes on the form, at no point does counsel state any grounds as to why or how the services for which compensation is sought is of benefit to the Debtors or estate. Counsel may believe that it is so simple that even the judge and Chapter 13 Trustee can figure it out – if it is that simple then it can be simply stated by counsel in the Motion.

While in the Caption to the Form counsel has checked the box for that the fees are "interim," the actual motion (the form in which the "grounds" are stated) makes no reference to the basis for the fees. In the Points and Authorities, filed as Exhibit A, the only (extensive) citations and quotations are to 11 U.S.C. § 330 (final fee applications).

On page four of Exhibit A is a statement that the services were "Necessary and Beneficial" to administration of the Debtors' case. It is argued in this one paragraph,

A. "The analysis of what is necessary and what benefits the estate is a big picture examination which cannot be done by a cursory review of the docket to observe what has been filed with the court."

B. "The Applicant have an ethical duty to zealously represent clients and spend the requisite amount of time on Debtors' case to fully represent the Debtors and required time to fully comprehend both the case and Debtors' current financial situation."

C. "Time was spent exploring options that ultimately benefitted the estate by enabling the Debtors to stay in their current plan."

D. "Had the Applicant not prepared the requisite motion work, spent time understanding the case, and spent time with Debtors in determining appropriate actions, the Debtors' case would likely have been dismissed."

Exhibit A, pgs 4:28, 5:1-8. These appear to be generic, stock statements, devoid of any specific information (if the court were willing to cull them out of the Points and Authorities and amend them into the motion as part of the grounds stated by Counsel). Possibly all of the "legal services" provided were nothing more than generic, fill in the blank pleadings performed by secretaries and para-professionals in counsel's office.

Another "fill in the blank" practices problem is that the Fee Agreement provided by Counsel states that he is entitled to $0.00 in fees. Possibly there is another written fee agreement, but such has not been provided to the court.

The court also notes that the first motion to confirm a modified plan by this Counsel was denied. Civil Minutes, Dckt. 76. The denial was for several reasons. First, Counsel failed to properly serve the Internal Revenue Service. Second, the Debtors were in default with their proposed modified plan payments. (This second ground is not one in which Counsel would have to accept the "blame.") Third, the motion stated conflicting plans which were purported be subject of the motion. Fourth, counsel had improperly modified the mandatory plan form and failed to set forth the amendments in additional provisions which are required to be set forth on separate pages attached to the mandatory plan form. It appears that counsel is seeing to be paid fees (computed at $300.00 per hour) for that fundamentally defective motion. See Exhibit C, Itemized Time Entry by Project, Dckt. 101.

While these deficiencies have not been significant for the Trustee to question more than $4,000.00 in fees, the court cannot let them pass.

The Motion is denied without prejudice. Counsel can go back and prepare a proper motion (consistent with the skill level of an attorney seeking fees at $300.00 an hour). Counsel can provide his separate declaration providing competent testimony (Fed. R. Evid. 601, 602) to provide the necessary evidence and to properly authenticate the documents. (Counsel's declaration should not purport to state that he is also testifying under penalty of perjury to the separate declaration of his Clients).

The new motion can clearly allege what was accomplished and how it actually benefits the estate (and not merely contain a generic, canned statement). Further, Counsel can properly adjust his fees for the fundamentally defective first motion to confirm modified plan which was denied.

Finally, Counsel can go back and produce (or create with his clients) a fee agreement by which Debtors have agreed to pay counsel for his services. Since Counsel seeks to have most of the fees paid after the case is over, he can make sure to provide the court with an explanation as to why and how the Debtors can afford to defer such fees when they cannot pay them through the Plan. Further, the Debtors can provide their declaration with sufficient evidence of why the court should burden them with such "pay down the road" fees.

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 Compensation filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

2. 14-22500-E-13 MET-2 | **JOSE ACOSTA GOMEZ AND ANA ACOSTA** | **MOTION TO CONFIRM PLAN 6-22-14 [35]**
Mary Ellen Terranella

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 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.

The Chapter 13 Trustee opposes the motion on the basis that the Declaration filed by the Debtor's on June 22, 2014 lacks detail regarding the use of the total amount of $39,476.00 from the sale of stock. Trustee further states that the debtors Motion to Confirm filed June 22, 2014 states in part that Mr. Acosta did sell stocks for $37,467.00, funded IRSs in the amount of $22,000.00 and some of the funds from the sale was used to cure an escrow shortage. Trustee states that the debtors Statement of Financial Affairs lists $4,473 was the amount of the escrow shortage. Therefore, Trustee argues that it appears that $12,994.00 remains unaccounted for by the debtors. ($39,476.00- $22,000.00- $4,473.00 = $12,994.00) Additionally,

the Trustee further objects as it appears the debtors may owe taxes in 2014 in the amount of $4,138.00 pursuant to page 4, lines 11-13 of their Motion. The plan does not call for treatment to any pre-petition taxes.

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.

3. 10-53003-E-13 SCOTT/ANA PANNETTA MOTION TO MODIFY PLAN
HLG-4 Kristy A. Hernandez 7-8-14 [88]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on August 26, 2014.

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

The Chapter 13 Trustee opposes the motion on the basis that the income and expense information for the Debtor as of the August 2014 confirmation hearing is stated under penalty of perjury to be exactly the same as at the time of filing on 12-17-10. The Debtor indicates a 401K loan repayment deduction of $257.23 ending 9-25-13. Additionally the debtor states in the declaration that "My full-time employment was terminated and I have been reduced to a twenty-four hour part-time employee with decreased

wages from $15.46 per hour to $11.00 per hour." Trustee states the debtor has not submitted recent pay stubs in support of the schedule. Additionally the debtors stated in item 3 of the declaration "our monthly household income has remained the same."

Trustee also states the information for debtor 1 is reported incorrectly on the form. A second job is reported net on line 8h. The instructions state this is to be combined on lines 2 through 7. The Trustee notes the schedule reports a deduction for a TSP loan in the amount of $71.98 which was to have ended 6-21-13. The Trustee is unable to compare this Schedule I with the one filed at th time of filing. The Trustee does note gross wages are reported as $5,450.36 versus $4,401.08 at the time of filing. Payroll deductions increased from $1,881.67 to $4,076.96. The debtor additionally reports a second job net income of $1,220.37 on 8h. The Trustee states the debtor has not submitted recent pay stubs in support of the schedule.

Additionally, the Trustee states that although the Schedule J reflects a 25 year old niece and her daughter live with the Debtors, no income is reported on line 8c. The Trustee has the following concerns with the supplemental Schedule J, Exhibit B:

The debtors report on line 4- home mortgage expense of $1,082.00 versus $1,992.00 at the time of filing. The debtors' state in item 3 of their declaration the mortgage payment was reduced from $1,992.00 to $1,083.00. The Trustee assumes this is the result of a loan modification but cannot find court approval for any modification. Total expenses per the supplemental Schedule I are $4,600.00. Expenses adjusted at the time of filing for the decrease in mortgage payment are $3,800.00 ($4,710.00-$910.00 mortgage decrease). Thus, Trustee states the expenses other than the mortgage have increased $800.00. The Trustee notes $425.00 of this increase is in transportation and $155.00 is in auto repairs and maintenance.

DEBTOR'S AMENDED PLEADINGS

Debtor filed a response and several amended pleadings, including a motion, declaration, Schedule I, Schedule J. Debtors also state that a loan modification resulted in Debtor's monthly mortgage expense decrease but that Debtors never obtained court approval because they "were not aware they needed to do so." Counsel for Debtor states a motion will be filed shortly.

First, it appears that Debtors have entered into a loan modification without authorization from this court. Declaration, Dckt. 111. By virtue of the secret, undisclosed loan modification, it appears that the Debtors have had $900.00 of additional projected disposable income for a number of months which must be properly accounted for in this case. Notwithstanding the other issues this raises regarding Debtor conduct, without approval of the loan modification on which the plan relies, the plan cannot be confirmed. A motion to approve the loan modification does not appear to have been filed to date.

Second, Debtors state on June 2012 they purchased a 2006 Toyota Corolla for $2,500, but did not obtain court approval prior to making the purchase. Declaration, Dckt. 111. Debtors state they will file a motion for

approval. A review of the court docket shows that one has not been filed to date. Again, the court cannot confirm a plan in which Debtors have purchased a vehicle without court approval and have acted without regard for the Bankruptcy Code. FN.1.

FN.1. This is a very troubling, and troubled case, relating to all of the attorneys who purport to have represented the Debtors, and who now purport to not representing the Debtors. How Debtors represented by counsel could have believed, in good faith that no court approval for modifying loans outside of the plan and spending money to buy vehicles is one which will required clear, detailed explanations by not only the Debtors, but the various attorneys who have been or conceivably could seek to be paid for that representation.

Another troubling aspect of this case and its prosecution by the Debtors and the multiple attorneys representing the Debtors is that out of $8,381.79 in monthly gross income, the Chapter 13 Plan proposes monthly plan payments of $23 a month for 3 months, $121.00 for 1 month, $56.00 for 7 months, $65.00 for 1 month, $56.00 for 22 months, $57.00 for 2 months, $346.00 for 4 months, and then $205.00 for 20 months. In looking at the latest Amended Schedule I the Debtors are diverting from their gross income $1,016 for voluntary retirement and "Allotment SV." These are in addition to Debtor's federal government defined benefit retirement plan and TSP loan repayment. For Amended Schedule J the Debtors list $650.00 for transportation and $100 for charitable contributions (which no evidence of actual, historical contributions). Dckt. 126.

Second, it does not appear Debtor has provided pay stubs to the Trustee or otherwise to support the contention that co-debtor has been reduced to a part-time position with decreased wages.

The court's decision is to continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on August 26, 2014 to be heard in conjunction with the Order to Show Cause.

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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on August 26, 2014.

4. 10-25007-E-13 JEFFERY/JUANITA SCHAFF
RPB-10 Raymond P. Burton

MOTION FOR COMPENSATION FOR RAYMOND P. BURTON, JR., DEBTORS' ATTORNEY
7-18-14 [132]

Tentative Ruling: The Motion for Compensation 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 18, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is denied without prejudice.

FEES REQUESTED

Raymond P. Burton, Counsel for the Debtors, moves the court for an Allowance of Attorney's Fees and Expenses in this case. The period for which the fees are requested is February 25, 2010, through July 15, 2014. Counsel was previously awarded $5,000.00 pursuant to the court's no-look fee guidelines. *See* Dckt. 51 at 2.

Description of Services for Which Fees Are Requested

Counsel requests fees and expenses for post-petition fees including:

A. The performance of such legal services as required by the United States Bankruptcy Code and the above-entitled Court to commence and prosecute this case and to enable Debtors to fulfill the objectives of the Bankruptcy Code;

B. The rendering of legal advice to Debtors with respect to their powers and duties under the United States Bankruptcy Code;

C. The filing, service and representation of Debtors regarding opposition to a motion filed by the Chapter 13 Trustee objecting to Debtors' Chapter 13 and to Dismiss this Case.

D. The filing, service and representation of Debtors regarding various motions, including three Post-Confirmation Motions to Dismiss filed by the Chapter 13 Trustee, three Motions to Modify Confirmed Chapter 13 Plan, and this pending Motion for an Allowance of Fees and Costs.

E. The preparation on behalf of Debtors of such other documents as may have been required to carry out the purposes of the Bankruptcy Code and general representation of Debtors regarding their rights and duties as a Chapter 13 Debtors under the Bankruptcy Code.

TRUSTEE'S STATEMENT

The Chapter 13 Trustee is not certain that the total fees requested in the motion should be approved by the court based on three reasons. First, Trustee states that four modified plans have been filed, along with four Motions to Modify as follows:

a. Debtors Motion to Modify RPB-4 was filed on February 7, 2011 and denied at the hearing held March 29, 2011. The minutes indicate that the Motion was denied for service deficiencies. Dckt. 67.

b. Debtors Motion to Modify RPB-5 was filed March 31, 2011 and was granted at the hearing held on May 10, 2011. Dkct. 77.

c. Debtors Motion to Modify RPB-6 was filed on November 11, 2011 and denied at the hearing held on January 10, 2012. The minutes indicate that the Motion was denied as moot since a new amended plan had been filed. Dckt. 105.

d. Debtors Motion to Modify RPB-7 was filed on December 30, 2011 and granted at the hearing held on February 7, 2012. Dckt. 108.

Second, the Trustee states that three motions for compensation have bene filed in this case, two motions which were denied and the instant motion. The first motion sought fees of $3,665.43 but was denied because service was not proper and the motion failed to plead with particularity the grounds for requesting additional fees. Dckt. 115. The second motion sought fees of $3,640.43 and was denied for failing to submit a task billing analysis in support of the motion. Dckt. 122.

Lastly, the Trustee states that counsel has submitted exhibits consisting of statements of accounts separated by pre-confirmation services

and expenses and post-confirmation services and expenses, but that the billing does not appear to be in the property task billing format preferred by the court.

DID NOT PROVIDE TASK BILLING ANALYSIS

In seeking the approval of fees, the court requires that applicant provide a task billing analysis in which the various activities, time charged, and fees by task area is provided. These can include Administrative Work (such as applications to employ, communicating with the Clerk's office for procedure, and the organizational activities of counsel); motions for relief from the stay; motions for sale, use or lease of property, for obtaining credit, or abandoning property; preference and avoiding adversary proceedings, other adversary proceedings; plans, disclosure statements, and confirmation; and the like. Within each of the task areas a brief description is provided and the time and fees relating to those items. For the present Motion, applicant appears to have provided vague descriptions of tasks.

Exhibits A and B filed in support of the Motion are applicant's raw time records ordered by date, in which all of the activities are mixed together, leaving it for the court to mine the document to construct a task billing analysis. The court declines the opportunity, leaving it to applicant who intimately knows the work done and his billing system to correctly assemble the information.

NO-LOOK FEES

The pre-confirmation payment that counsel receives is viewed by the court as generally sufficient to fairly compensate counsel for all pre-conformation and most post-confirmation services such as reviewing notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to claims filed. *See* Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases. "Only in instances where **substantial and unanticipated** post-confirmation work is necessary should counsel request additional compensation." *Id.* (emphasis added). Based on Counsel motion, the court is not convinced that there was **substantial and unanticipated post-confirmation work**, or that counsel is entitled to payment beyond that which he already received from the Chapter 13 Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the application of Raymond P. Burton is denied without prejudice.

5.	14-20708-E-13 SDH-2	NOEL ORLANDO Scott D. Hughes	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 20 7-1-14 [57]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee on July 1, 2014. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Cavalry SPV I, LLC is overruled without prejudice.

Noel Orlando, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC, Proof of Claim No. 20. ("Claim"), Official Registry of Claims in this case.

However, the creditor that filed the Claim is Cavalry Investments, LLC, not Cavalry SPV I, LLC, which is the only entity named in the motion. The Objecting Debtor not having named the correct party in interest, the objection is overruled without prejudice.

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

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

The Objection to Claim of Cavalry SPV I, LLC, Creditor filed in this case by Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 20 of Cavalry SPV I, LLC is overruled without prejudice.

6.	**14-20708-E-13** **SDH-3**	**NOEL ORLANDO** **Scott D. Hughes**	**OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 21** **7-1-14 [61]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee on July 1, 2014. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Cavalry SPV I, LLC is overruled without prejudice.

Noel Orlando, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC, Proof of Claim No. 21. ("Claim"), Official Registry of Claims in this case.

However, the creditor that filed the Claim is Cavalry Investments, LLC, not Cavalry SPV I, LLC, which is the only entity named in the motion. The party not having named the correct party in interest, the objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Cavalry SPV I, LLC, Creditor filed in this case by Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 21 of Cavalry SPV I, LLC is overruled without prejudice.

7. 12-40512-E-13 LEVELL/VALLIE COOPER — MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso — 7-11-14 [60]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 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 11, 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.

8. 14-25114-E-13 JSO-2 TIMOTHY/AMBER BOLLMANN Jeffrey S. Ogilvie MOTION TO CONFIRM PLAN 6-2-14 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 78 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 Trustee objects to confirmation on the basis that the Debtor cannot afford to make the payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Trustee states that the debtors plan filed May 15, 2014, Dckt. 5, lists the Internal Revenue Service in Class 2C for tax liens as to their 2010, 2007 and 2006 1040 taxes. Section 6.02, page 7 of the plan states in part that the Internal Revenue Service lien(s) are completely under secured and the claim if filed should be treated as a Class 7 unsecured creditor.

The debtors have also listed the Internal Revenue Service in Class 5 in the amount of $32,634.00. The Internal Revenue Service filed a claim on July 7, 2014 (Claim #6). The secured portion of the claim is $42,492.00 for the 2006 tax period. The priority portion of the claim totals $145,860.21 for tax period 2006, 2007, 2010, 2011 and 2012.

The IRS Claim states the Debtors have not filed their 2011 or 2012 tax returns. No Motions to Value have been filed regarding the Secured Portion and the priority portion of said claim is $113,226.21 higher than the priority amount scheduled.

Trustee also states that the Debtors' plan relies on the Motion to Value Collateral of JP Morgan Chase, which is set for hearing on July 22, 2014. The motion having been granted, the court overrules this portion of the Trustee's objection.

Lastly, the Trustee states that Section 2.07 calls for a monthly distribution of $38.02. Section 6.01 states in part that the sum of $2,219.00 will be paid prior to Class 5 and Class 7 creditors. It will take approximately 58 months to pay the attorneys fees in full according to the Trustee's Calculation. ($2,219/38.02)

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.

9. 14-21316-E-13 SHAWN JACKSON — MOTION TO MODIFY PLAN
PLC-1 Peter L. Cianchetta — 7-14-14 [17]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

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

SERVICE

Debtor's modified plan proposes to provide for the Internal Revenue Service as Class 5 priority claims. Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

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

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

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

. . .

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

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

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

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

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

None.

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

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

MOTION

Furthermore, the motion fails to state with particularity the grounds upon which the requested relief is based pursuant to Federal Rule of Bankruptcy Procedure 9013, as the Debtor fails to provide sufficient factual matter regarding the modification of the plan. The Motion states that "financial circumstances of the Debtor and/or the legal circumstances of the Plan have changed" and refers the court and the parties to other pleadings to determine what these grounds are. This is not sufficient under Federal Rule of Bankruptcy Procedure 9013.

TRUSTEE'S OBJECTION

The Trustee opposes confirmation offering evidence that the Debtor is $146.20 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also opposes the motion on the grounds that it fails to state with particularity the grounds upon which the requested relief is based. The court has addressed this above.

The Trustee also states that the Debtor's modified plan proposes a plan payment of $146.24 for 60 months. Debtor's plan payments under the confirmed plan are $116.91 for 28 months, then $216.91 for 32 months. The increase of $100.00 in the 29th month is due to payoff of a retirement loan. Debtor's modified plan no longer includes the $100.00 increase in the 29th month and is not Debtor's best effort.

Lastly, the Trustee states that it does not appear the Internal Revenue Service was served properly with the notice, motion, declaration or proposed modified 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.

10. 10-42317-E-13 MET-5 EDWARD HENSCHEL AND DENISE MARGLON

MOTION TO APPROVE LOAN MODIFICATION
7-2-14 [93]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to xxxx.

The Motion to Approve Loan Modification filed by Edward Henschel and Denise Marglon ("Debtor") seeks court approval for Debtor to enter into a Loan Modification Agreement. Wells Fargo Bank, N.A., serviced by America's Servicing Company ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $2,858.11 a month. The modification will provide for a fixed interest rate of 6.125% over the next 264 months.

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

TRUSTEE'S OPPOSITION

Trustee opposes the motion on the basis that the Debtors have stated the incorrect party in the loan modification. Debtors state in their motion that "Wells Fargo Bank, N.A. (Lender), serviced by America's Servicing Company" is the creditor but the copy of the loan modification provided by Wells Fargo Bank, N.A. Trustee states that Proof of Claim No. 5 was filed asserting a claim for money loaned in the amount of $372,466.10 with the creditor identified as U.S. Bank, N.A., as Trustee for SG Mortgage Securities Asset Backed Certificates, Series 2006-FRE2, with payments to be sent to America's Servicing Company. The last Notice of Mortgage Payment Change filed on June 5, 2014 also identifies the creditor as U.S. Bank, N.A. but refers to wellsfargo.com for a guide to escrow questions. No assignment or transfer of claim appears on the docket transferring the debt to Wells Fargo Bank, N.A. The Trustee questions how Wells Fargo Bank, N.A. can offer a loan modification when it appears the obligation is owed to another entity.

DEBTOR'S RESPONSE

Debtor's Counsel has been in contact with Brian Fairman, an attorney with Pite Duncan regarding the authority of Wells Fargo Bank, N.A. to make the loan modification with the Debtors. Mr. Fairman is seeking the appropriate documentation from his client so that it can be reviewed by the Trustee and the court. The Debtors request a continuance of the hearing on their motion to allow for the review of the anticipated documentation from Wells Fargo Bank, N.A.'s counsel.

DISCUSSION

Based on the representations of Debtor's counsel that documentation explaining the authority of Wells Fargo Bank, N.A. to offer a loan modification for an obligation that is owed to another legal entity, the court continues the hearing.

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 Edward Henschel and Denise Marglon having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the motion is continued to xxxx.

11. 10-42317-E-13 MET-6 EDWARD HENSCHEL AND DENISE MARGLON Mary Ellen Terranella

MOTION TO MODIFY PLAN 7-2-14 [98]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion based on the pending loan modification, which capitalizes mortgage arrears. Trustee also filed an objection to the pending Motion to Approve Loan Modification on the basis that it fails to name the proper creditor.

Additionally, Trustee states Debtors current schedules I and J filed as exhibits were not the proper form effective December 2013.

The court having continued the hearing on the Motion to Approve Loan Modification, the Motion to Confirm the Modified Plan is continued to be heard concurrently therewith.

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

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

12. 14-26217-E-13 ALP-1 — JEFFERY/MANDY PATTERSON — Michael David Croddy — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. — 7-29-14 [40]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2014. By the court's calculation, 21 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). Consequently, the Debtor, 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 has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on _July 22, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled 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 Objection to Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

13. 14-26217-E-13 DL-1 — JEFFERY/MANDY PATTERSON — Michael David Croddy — OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO MUNICIPAL UTILITY DISTRICT — 7-24-14 [30]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, 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 has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on _July 22, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled 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 Objection to Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

14. 14-26217-E-13 DPC-1 JEFFERY/MANDY PATTERSON Michael David Croddy OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-23-14 [26]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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). Consequently, the Debtor, 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 has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on _July 22, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled 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 Objection to Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

15. 12-26118-E-13 GORDON/JULIE PLATT — MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab — 6-26-14 [21]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 54 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. The Trustee is uncertain if Debtor's plan has been proposed in good faith, 11 U.S.C. § 1325(a)(3) or is the Debtor's best effort, 11 U.S.C. § 1325(b). Trustee states that the debtors have failed to adequately address changes in their income and expense in their declaration. Trustee states that the debtors' daughter, son-in-law and two grandchildren reside with the debtors and that in their declaration they state that the adult children have been unsuccessful in seeking employment and presently receive approximately $500.00 per month in welfare assistance which goes toward

their personal expenses. "In essence, it merely subsidizes our household budget, as we are still supporting them in most aspects of their household needs." The $500.00 is not included in income total of $7,544.00 on Schedule I as amended. It appears the $6,596.00 monthly expenses reported on the amended Schedule J is net of $500.00.

Trustee also states the debtors have not explained changes in expenses from the Schedule J filed with the petition. Specifically the Trustee notes rent expense has increased $250.00 and the debtors have added an expense item of $1,350.00 on line 8.- Childcare and children's education costs. The Trustee questions this expense as neither the daughter or son-in-law is employed. The Trustee does note some categories have decreased possibly due to netting the $500.00 assistance to expenses.

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

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

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

16. 14-27118-E-13 MELVYN/RITA LIBMAN
SJS-1 Scott J. Sagaria

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
7-10-14 [10]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 10, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Melvyn Libman and Rita Libman, "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 5921 Pikes Peak Way, Citrus Height, California, "Property." Debtor seeks to value the Property at a fair market value of $180,000.00 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 $182,686.78. Creditor's second deed of trust secures a claim with a balance of approximately $79,087.72. 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 Melvyn Libman and Rita Libman, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5921 Pikes Peak Way, Citrus Height, 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 $180,000.00 and is encumbered by senior liens securing claims in the amount of $182,686.78, which exceed the value of the Property which is subject to Creditor's lien.

17. 13-34223-E-13 NAOMI LEBUS — MOTION TO CONFIRM PLAN
WFA-1 William F. Abbott — 6-24-14 [62]
CASE DISMISSED 7/14/14

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

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

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

18. 13-26330-E-13 BARRY HENNING **MOTION TO MODIFY PLAN**
PGM-3 Peter G. Macaluso **7-7-14 [52]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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. The Trustee opposes confirmation offering evidence that the Debtor is $350.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Counsel for Debtor responds, stating that Debtor will be current on or before the hearing.

However, no evidence of the Debtor having become current on plan payments has been presented to the court to date. Additionally, no evidence is provided as to why and how the Debtor has defaulted in the plan payments,

why it is not likely to reoccur, and how the Debtor has the extra money to make up the defaulted payments in one month (in light of the projected disposable income). Therefore, the plan cannot be confirmed.

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.

19. 09-29934-E-13 NLE-2 — PATRICK/JUSTINE SANGER — Edward A. Smith — OBJECTION TO CLAIM OF LOOMIS BASIN EQUINE MED CENTER, CLAIM NUMBER 14 — 6-27-14 [72]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

The Chapter 13 Trustee, David Cusick ("Objector"), requests that the court disallow the claim of Loomis Basin Equine Medical Center, Inc. ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority claim in the amount of $1,804.15. Objector asserts that there is no basis under 11 U.S.C. § 507 for a priority status on the claim and that it should be allowed as a general unsecured claim. Objector states that the Claim does not assert which part of 11 U.S.C. § 507 or any other statute, which entitles it to priority under the Bankruptcy Code.

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

A review of the Claim shows that Section 5 is marked as priority, without identifying the subsection of 11 U.S.C. § 507 or any other statute in which priority status is claimed. Therefore, the court cannot determine if the Claim is entitled to priority status.

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim but allowed as an unsecured claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Loomis Basin Equine Medical Center, Inc., Creditor filed in this case by David Cusick, The Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 14-1 of Loomis Basin Equine Medical Center, Inc. is sustained and the claim is allowed as an unsecured claim.

20. 14-22134-E-13 CHERYLE MCNEAL **MOTION TO CONFIRM PLAN**
WSS-1 W. Steven Shumway **6-26-14 [37]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 54 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 Trustee opposes confirmation offering evidence that the Debtor is $148.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. § 1325(a)(6).

The Trustee also states the Debtor may not be able to make the plan payments required under 11 U.S.C. §1325(a)(6). Debtors Declaration in Support of the Motion indicates that Debtor changed jobs between the filing

date and the First Meeting of Creditors. Debtors Exhibit in support of the Motion includes an updated Schedule I listing the Debtors employer as State of California and indicates she has been employed there for one month. On or about July 10, 2014, the Trustee requested updated pay advices from the Debtor. To date, no updated pay advices have been received by the Trustee.

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.

21. 14-22734-E-13 GERALD/VIRGINIA MARTINEZ — MOTION TO CONFIRM PLAN
MOH-1 — 7-3-14 [46]
CASE DISMISSED 7/14/14

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

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

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

22. 14-26737-E-13 GEORGE ISERI
JME-1

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
7-2-14 [12]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Golden 1 Credit Union, "Creditor," is denied without prejudice.

SERVICE ISSUES

The only address served for Golden 1 Credit Union was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

The court notes that a search of the National Credit Union Administration directory yields 8945 Cal Center Drive, Sacramento, California as the correct physical address for Golden 1 Credit Union.

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 George Kerby Iseri, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

23. 11-41038-E-13 WW-1 — DANIEL/CHRISTINA GREENAWALT — Mark A. Wolff — MOTION TO APPROVE LOAN MODIFICATION — 7-18-14 [39]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service is missing from the docket and not attached to the Motion.

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.

SERVICE ISSUES & TRUSTEE'S OPPOSITION

Trustee points out, and a review of the docket shows that Debtors failed to attach a proof of service along with their filed Motion to Approve Loan Modification, Notice of Hearing, Declaration and Exhibits. The Court is therefore unable to verify if the appropriate Creditor and other affected parties were served and have sufficient notice of this Motion. Thus service is considered deficient and the Motion is denied without prejudice.

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

ALTERNATIVE RULING

The Motion to Approve Loan Modification filed by Daniel and Christina Greenawalt("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A.("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from $1,719.31 to $1,164.90 a month including escrow. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2.00% to 4.50% over the next 264 months.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Daniel and Christina Greenawalt having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Daniel and Christina Greenawalt ("Debtor") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 8293 Primoak Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion, Dckt. 42.

24. 09-35543-E-13 ROBERT/ASHLEY PLACE
NLE-2 Justin K. Kuney

OBJECTION TO CLAIM OF CITIFINANCIAL, CLAIM NUMBER 4
6-27-14 [90]

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Citifinancial is overruled without prejudice.

The Chapter 13 Trustee, David Cusick ("Objector"), requests that the court disallow the claim of "Citifinancial" Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case.

However, it appears Objector has failed to name the proper entity in the Objection. The Claim lists Citifinancial Services, Inc., while Trustee has named "Citifinancial" in the motion. Furthermore, the court is unable to determine if service is proper. Objector served two P.O. boxes for "Citifinancial." Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or

other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.")

Objector also served "Citifinancial Services, Inc." A review of the Delaware Department of State database shows the address for the agent for Citifinancial Services, Inc., The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware. It does not appear that Citifinancial Services, Inc. was properly served. The court will not issue orders purporting to be effective against generically named entities.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Citifinancial, Creditor filed in this case by David Cusick, The Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim overruled without prejudice.

25. 14-25546-E-13 MARY GONSALVES
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-23-14 [25]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*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. At the hearing ----------.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors held on July 17, 2014. The Meeting has been continued to September 11, 2014 at 10:30 a.m.

Additionally, Trustee states the Debtor has failed to propose a plan term. The monthly Plan payment is insufficient to fund the plan. Debtor lists mortgage payments to Western Progressive of $500.00, but proposes a Plan payment of only $100.00 per month. The Plan does not comply with 11 U.S.C. § 1322(a)(3), because it does not include dividends to unsecured creditors.

Furthermore, Trustee states the Debtor is still $100.00 delinquent, with another $100.00 becoming due on July 25, 2014. The Debtor has paid nothing into the Plan to date.

Additionally, the Debtor has failed to provide the Trustee with proof of income for the 60 days preceding filing of their bankruptcy as required by 11 U.S.C. § 521(e)(2)(A) and FRBP 4002(b)(3). Additionally, the Debtor has failed to provide the Trustee with a tax transcript or a copy of its Federal Income Tax Return for 2013.

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.

26. 14-20250-E-13 JAYMESON MITCHELL AND ELIZABETH — MOTION TO DISGORGE FEES
DPC-2 — 7-11-14 [40]
CASE DISMISSED 7/14/14

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Disgorge 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 and other parties in interest are entered.

The Motion to Disgorge Fees is granted.

The Chapter 13 Trustee moves for an order disgorging attorney fees in this case pursuant to 11 U.S.C. § 329. Trustee states on March 3, 2014, the Trustee filed his Objection to Confirmation due to the plan no proposing to increase upon payoff of a 401K loan and for delinquency, as the Trustee had not received the debtors first plan payment. The court sustained the objection on April 1, 2014, in which counsel for Debtors did not appear. Civil Minutes, Dckt. 28. No amended plan has been filed to date. The Trustee filed a motion to Dismiss, which was heard and granted on July 9, 2014. Dckt. 46.

Trustee asserts that Debtors made a total of 5 plan payments of $3,100.00 where 5 payments had come due since filing of the case for a total of $15,500 into the plan to date. Trustee states it appeared as if the Debtors were attempting to prosecute the case.

The Statement of Financial Affairs #9 indicates that Debtors paid Lanphier & Associates $1,500.00 prior to filing. The plan, 2016(b) and Rights and Responsibilities indicate that additional fees of $2,500.00 are to be paid to counsel through the plan. The Trustee is unable to determine whether the Debtors have received any benefit from the filing of this case and request that the Court order that no fees be approved through the "no look" procedure where the case was dismissed pre-confirmation, and order that Debtor's Counsel refund the Debtors the entire pre-petition payment of $1,500.00 unless Debtor's Counsel provides a sufficient explanation and evidence in response.

No response has been filed to date.

DISCUSSION

Though dismissing the case, the court has continuing jurisdiction to address the conduct of counsel and creditor parties appearing in this case. The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy

of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.'); *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See Szabo Food Service, Inc. v. Canteen Corp., No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

Congress addressed the pre and post-petition fees of counsel for a debtor for services relating to a bankruptcy case.

> § 329. Debtor's transactions with attorneys
>
> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to–
>
> (1) the estate, if the property transferred--
>
> (A) would have been property of the estate; or
>
> (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

11 U.S.C. § 329. This court has the authority, and responsibility, to consider attorneys' fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. § 329, 330, 331. Fees in excess of the reasonable value of such services may be ordered repaid. The application of 11 U.S.C. § 329 may seem harsh, but are necessary to not only protect vulnerable consumers and business owners, but to protect the integrity of the federal judicial process. The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

In this case, a plan was not confirmed in the seven months the case was pending. The Trustee's Objection to Confirmation was sustained due to the plan not proposing to increase upon payoff of a 401K loan and for delinquency, without opposition or appearance by counsel. No amended plan was filed thereafter. The Trustee's Motion to Dismiss was heard and granted on July 9, 2014, for failure to file an amended plan, without appearance or opposition from Counsel. According to the testimony of the Trustee, Debtors made a total of 5 plan payments of $3,100.00 where 5 payments had come due since filing of the case for a total of $15,500 into the plan to date. As Debtors made their plan payments and were current at the time of dismissal, and with no explanation or appearance by counsel, the court is left wondering what the $1,500.00 in fees provided the Debtors. The court is unable to determine whether the Debtors have received any benefit from the filing of this case and cannot approve the fees paid to counsel when the case was dismissed pre-confirmation and no appearance or explanation has been provided to the court.

The court orders Debtor's Counsel to refund the Debtors the entire pre-petition payment of $1,500.00.

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 Disgorge Fees filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Lanphier & Associates is ordered to refund Jaymeson Mitchell and Elizabeth Glassmaker-Mitchell, Debtors, and filed with the court a Statement under penalty of perjury stating that the payment was made or that the payment was not made, on or before September 15, 2014.

27. 14-25751-E-13 JODI ZACHARY
DPC-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-23-14 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on 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. At the hearing ----------.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6) as the income stated by Debtors appears less than reported. The Debtor's monthly disposable income listed on Schedule J is only $70.00 (after payroll deductions and expenses from monthly gross income), but proposes a Plan payment of $100.00. While the Debtor has monthly gross income of $8,082.53, the Debtor states payroll deductions of$2,618.44 and expenses of$5,849.02, leaving only $70.00. Debtor has failed to report all her payroll deductions on Schedule I. A review of Debtor's paystubs shows that Debtor's net income is less than reported on Schedule I.

The difference appears to be caused by some deductions from payroll that are not shown on Schedule I. See paystubs, Exhibit A. Debtor has a deduction of $200 per pay period for TSP Roth contribution which averages approximately $433.34 per month. This deduction is not reported on Schedule I. Debtor has a deduction of $200.00 per pay period for TSP Tax Deferred which averages approximately $433.34 per month. Tltis deduction is not reported on Schedule I. Debtor has a deduction of $29.84 per pay period for FERS Retirement -deduction, which averages approximately $64.66 per month. This deduction is not reported on Schedule I. Debtor's net payroll check averages $2,048.65 (based on 9 paystubs- Exhibit A) where debtor is paid bi-weekly, this averages $4,438.75 net per month and debtor is rep01iing a net income of $5,464.09 on Schedule I.

Additionally, Trustee argues the Debtor's Plan is not the debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income. Debtor is proposing to pay $100.00 per month for 60 months with a guaranteed dividend of no less than 6% to general unsecured claims. Form 22C shows monthly disposable income of negative $84.05, but this figure should be adjusted:

Trustee states Debtors' income should be higher on Form 22C. Debtor received a 2013 tax refund of$3,376.00, which would be $311.33 additional income per month. The income figure in Schedule I for employment is $8,082.53 per month rather than the $7,750.00 on Form 22C, so it appears that the Debtor has accounted for the tax refund on Schedule I. Paystubs of the Debtor provided to the Trustee also show an increase in annual salary from $96,344.00 on pay date 1/21/2014 to $97,308.00 on pay date 2/4/14, a $964.00 increase, or $80.33 per month. Paystubs of the Debtor also show a change in tax information from pay date 1/7/14 to 1/21/14 to 3/4/14; while the Debtor always claims Single for Federal and Head of Household for State, the Debtor first claimed exemptions of 2-0 (for federal and state), then 4-2, then 5-3.

On Schedule J, Debtor deducts $80 for home warranty on line #6d and $80 on line 15d for property warranty; these appear to be duplicate expenses. On Schedule J, Debtor deducts $1,100.00 for food and housekeeping supplies for her household of 4, $80.00 for a warranty on lines 6d & 15d which may be a duplicate expense, $185.00 for clothing and laundry, $250.00 for personal care, $51.02 for entertainment, and $75.00 for pet expenses. These expenses total $1,821.02, which far exceeds the $1,482.00 normally allowed under the national standards.

Furthermore, Trustee states that the Debtor has claimed a series of exemptions, but the Debtor is not allowed to claim all exemptions and he has filed an objection to exemptions. The Trustee does not believe Debtor will be able to make the payments called for by the plan in any event, because of taxes owed, spending of retirement funds, and spending money from a refinance of their vehicle in 2014.

Also, according to Trustee's calculations, the Plan will complete in 65 months as opposed to the 60 months proposed, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Lastly, Trustee states that the Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt totals $0 and the Debtors plan proposes to pay 6% which is approximately $3,180.00. However, Debtor lists the value of her 2010 Toyota Tundra at $23,175 on Schedule B. Travis Credit Union filed Claim #1, which valued the vehicle at $29,447, a difference of $6,272.00.

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.

28. 14-27451-E-13 IVAN BRENT — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 7-31-14 [12]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 31, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Debtor Ivan K. Brent seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 14-21064-B-13J) was dismissed on July 10, 2014, after Debtor failed to pay his filing fees. *See* Order, Bankr. E.D. Cal. No. 14-21064-B-13J, Dckt. 49, July 8, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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 that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as he filed the prior case in pro per and was not able to comply with the requests. Debtor states after the dismissal of his prior case, his truck

was repossessed and he retained an attorney to represent him. Debtor now believes his case will be successful.

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

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

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

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

29. 13-35754-E-13 DPC-1 — MATTHEW/ARIANA VICKERS — W. Steven Shumway — OBJECTION TO CLAIM OF ALLIED TRUST SERVICES/LAKE WILDWOOD ASSOCIATION, CLAIM NUMBER 16 — 6-19-14 [17]

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Allied Trust Services/Lake Wildwood Association is overruled without prejudice.

The Chapter 13 Trustee, David Cusick ("Objector"), requests that the court disallow the claim of "Allied Trust Services/Lake Wildwood Association" Proof of Claim No. 16 ("Claim"), Official Registry of Claims in this case.

However, the court cannot identify which legal entity to which the Objector is referring. First, Allied Trust Services/Lake Wildwood Association appears to be a made up name, combining two legal entities into one creditor. A review of the Claim shows that the actual creditor is Lake Wildwood Association. The California Secretary of State lists Lake Wildwood Assication with an address in Penn Valley, California. http://kepler.sos.ca.gov/ Not only did Objector not name the appropriate party, but the Creditor was not properly served at the address with the California Secretary of State. It appears that only the servicing entity was provided notice. The court will not issue orders purporting to be effective against generically named entities or parties that have not been properly noticed or served.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of "Allied Trust Services/Lake Wildwood Association filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim overruled without prejudice.

30. 14-24154-E-13 MICHAEL/SARAH CHANDLER
SDH-2 Scott D. Hughes

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
6-26-14 [33]

Final Ruling: No appearance at the August 19, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Postpetition Mortgage Fees, Expenses and Charges 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 Objection to Notice of Postpetition Mortgage Fees, Expenses and Charges is sustained.

Debtors Michael and Sarah Chandler ("Debtor") objects to the Notice of Postpetition Mortgage Fees, Expenses and Charges filed by HSBC Bank, USA on May 23, 2014 in the amount of $650.00. The notices alleges that Debtor owes $650.00 to HSBC Bank, USA for "Bankruptcy/proof of claim fees."

Debtor argues that she is not in default and was current to Creditor at the time the case was filed. Further, Debtor states that M&T Bank did not object to the plan and has done no work in this case to justify $650.00 in additional fees.

The only evidence before the court is the Declaration from the Debtor stating that she was in fact current on the loan at the time the case

was filed and is still current. Debtor states that there was not work to be done to justify the $650.00 in additional fees, as they did not object to her plan. Debtor argues that since she has never been in default, she should not have to pay the alleged attorney's fees.

No evidence has been presented by Creditor HSBC Bank, USA to substantiate its claim for $650.00 in attorney fees, such as a Declaration from the attorney regarding the legal work done, the rate charged or the hours spent.

Based on the evidence presented by the Debtor, the court sustains the objection and disallows the $650.00 in fees.

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 Postpetition Mortgage Fees, Expenses and Charges filed by 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 Objection is sustained and the amounts set out in the Notice of Postpetition Mortgage Fees, Expenses and Charges filed by Creditor HSBC Bank, USA on May 23, 2014 are disallowed in their entirety.

31. 14-27755-E-13 RJ-1 — ANTHONY FURR, Richard L. Jare — MOTION TO VALUE COLLATERAL OF PENNYMAC HOLDING, LLC, 8-5-14 [12]

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition

presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The hearing on the Motion to Value is continued to 3:00 p.m. on October 28, 2014. On or before October 14, 2014, Debtor and Creditor, respectively, shall file and serve properly authenticated appraisals or other evidence upon which they base their respected assertions of value for the Property.

Debtor Anthony Furr ("Debtor") moves to value the secured claim of PennyMac Holdings, LLC ("Creditor"), the purported holder of the first deed of trust on the properly commonly known as 2822 H Street, Sacramento, California, a single family residence that is not Debtor's personal residence. Debtor states that he disputes the $808,465.44 purportedly owed to Creditor but nevertheless, seeks to value the secured claim at $32,000.00.

Debtor makes several allegations in his Declaration;

1. That his opinion of the value of the collateral is no more than $32,000 (as defined and limited by section 506(a)(2));

2. The entire fee simple legal title to the property is in his name, but at the inception of the loan, the property was community property with legal title in Sara Stratton's name;

3. Via two interspousal deeds, the latest recorded July 25, 2014, legal title invested entirely in Debtor

4. The court may not value the first deed of trust at $0, as the professional appraisal from Scott Jura indicates, so his opinion of the value is $32,000.00.

Debtor also provided an unauthenticated appraisal report prepared by R. Scott Jura, SRA, dated August 24, 2012. Dckt. 15. The court cannot consider evidence presented that has not been properly authenticated. Fed. R. Evid. 901.

Additionally, the court does not find the evidence provided by Debtor to be credible. Debtor mostly provides conclusions of law for the court to consider, rather than actual testimony from his personal knowledge. Debtor states the unauthenticated appraisal provides that the property is worthless, but since the court is may not be inclined to believe that, he believes the property is worth $32,000.00. No factual contentions have been provided to support a valuation of $32,000.00.

OPPOSITION

PennyMac Holding, LLC has filed an Opposition to the Motion. A portion of the Opposition discusses the prior bankruptcy cases and that the Debtor is not prosecuting this case in good faith. Additionally, this Creditor disputes the Debtor's $32,000.00 opinion as to value and requests that the court allow it time to obtain an appraisal (conduct discovery in this Contested Matter).

At this point, the only evidence presented to the court is the Debtor's conclusion that the property has a value of $32,000.00. While the owner of the property may express an opinion as to the value, much in the same manner as an expert witness, such opinion does not dictate that result to the finder of fact.

Given that Debtor's opinion is that this Property has a nominal value to secure an asserted claim of $840,465.44 (which Debtor states that he disputes in its entirety) and Creditor asserts a substantially higher value, providing time for discovery is proper.

Therefore, the court sets this Motion for a Evidentiary Hearing Setting Conference on October 28, 2014.

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 Value 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 to Value is continued to 3:00 p.m. on October 28, 2014. On or before October 14, 2014, Debtor and Creditor, respectively, shall file and serve properly authenticated appraisals or other evidence upon which they base their respected assertions of value for the Property. At the October 28, 2014 Setting Conference the court will determine whether there is a dispute which must be set for an evidentiary hearing. The parties may proceed with discovery in this Contested Matter.
>
> The parties may proceed with discovery as provided by Federal Rule of Bankruptcy Procedure 9014.

32. 11-46456-E-13 SCOTT/MELISSA CUNNINGHAM MOTION TO MODIFY PLAN
ADR-2 Justin K. Kuney 7-15-14 [54]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The court's decision is to 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 objects to confirmation of the proposed plan on multiple grounds.

First, the Trustee objects to the treatment proposed for creditor Christiana Trust. The creditor is in Class I of the confirmed plan for the property at 6544 Creekmont Way. The Debtors are proposing now to treat that creditor as a Class 4 claim holder. Debtors' supporting declaration, Dckt. No. 57, states in part that "we began to pay the trial loan modification amount of $1415.00 per month, directly to our mortgage servicer beginning in May of 2014." Trustee has no record of a loan modification being requested

by Debtors or being granted by the court. Debtors have provided no proof that they have been paying mortgage payments directly to the creditor. The Debtors' attorney filed Proof of Claim No. 20, which reflects $28,000 in arrears at the time of filing.

Second, the Motion to Confirm Plan may not comply with Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. These grounds, stated with particularity, are:

A. Debtors' Plan was confirmed on December 30, 2011.

B. After "Careful Review" it has been determined that Debtors are in need of a modification to the confirmed plan.

C. The Motion is supported by Debtors' Declaration, Notice of Hearing, and Exhibits.

D. Wherefore, Debtors pray the plan be amended.

Motion, Dckt. 54.

As this court has stated on many previous occasions, all pleadings in matters before this court and all bankruptcy courts, for that matter, must comply with the requirements of Federal Rule of Bankruptcy Procedure 9013, which incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b) (which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007). In adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.*

In this case, Trustee indicates that important information has been omitted from the Motion to Confirm, and that the Motion may not pass muster under the court's plausibility test in *Ashcroft*, determining that a complaint must contain sufficient factual matter that states a claim to relief that is "plausible on its face," in order to survive a motion to dismiss. Here, the Debtors have not provided, for instance, a description of additional provisions of the plan that differ from the form plan, whether the filing fees have been paid and the total plan payments to date; the goal of the plan (such as a payment toward a house, car, or taxes); the amount of non-exempt equity, if any; the nature and history of debtors' income; what happened to debtor prior to the filing that led to the bankruptcy; whether there are domestic support obligations owed and if it is current and post-

petition; and whether the debtor has filed all tax returns for the last four years. 11 U.S.C. § 1325.

Third, Debtors have paid ahead $300.00 under the proposed plan. Debtors' modified plan proposes payments of $64,119.00 for months 1 through 31, and $113.00 for months 32 through 60. The Trustee's records reflect that June 2014 was month 31. Under the modified plan, Debtors would have need to have paid to the Trustee a total of $64,232.00 through July 2014. Trustee's records reflect that Debtors have actually paid a total of $64,532.00, a difference of $300.

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

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

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

33. 14-25159-E-13 DPC-1 — TERRI MEYER, Douglas B. Jacobs — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-15-14 [15]

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition

presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on 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. At the hearing ----------.

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 the Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6), or that the Debtor can actually afford more and the plan may not be the Debtor's effort, 11 U.S.C. § 1325(b).

   a. Income: Debtor's Schedule I (Dckt. No. 1, pages 28-29) lists Debtor's gross income as $7,050.0 and her take-home income as $4,862.12. Debtor lists $2,132.00 in withholding for income taxes and Social Security. (30% of gross income.) Debtor's Statement of Earnings (Current Income, Exhibit A) shows that her gross income is actually $7,233 and her net income is $4,291.36. According to the Trustee's calculations, it appears that Terri's net income should have been listed as $4,291.36, not the $4,862.12 a difference of $570.77.

   b. Expenses: Schedule J (Dckt. No. 1, page 31) appears to list the monthly contribution to Debtor's mom is listed twice in the amount of $800.00 (lines 19 and 21), which totals $1,600.00 instead of the $800.00 listed in the Declaration filed on May 15, 2014, Dckt. No. 1. The Debtor shows no gifts on the Statement of Financial Affairs, Dckt. No. 1.

2. The Declaration accompanying the Motion states that Terry Lee Meyer is the mother of the debtor, Terri Lynn Meyer, yet the declaration is signed by Peggy Lee Meyer. It is in this declaration that the Declarant states that the Debtor provides her mother with $800.00 in financial assistance monthly. FN.1.

FN.1. While such a declaration may be passed off and mere "inadvertence," it calls into question the credibility of Peggy Lee Meyer. There can be little good, bona fide reason why Peggy Lee Meyer, upon having been told of the significance of providing testimony under penalty of perjury, and carefully reading the declaration, would sign a declaration saying that Terry Lee Meyer is the mother of Terry Meyer. In such situations the most obviously conclusion is that the declarant will sign whatever papers are put in front of her, irrespective of their accuracy – so long as it let her win (in this case keep getting $800.00 a month, rather than have that money go to the Debtor's creditors.)

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3. While the plan proposes to pay the attorney $2,000 through the plan under Local Bankruptcy Rule, 2016(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. No. 1, Page 42) appears to list in Item 6 that the attorney services do not include some services required under Local Bankruptcy Rule 2016-1(c), such as judicial lien avoidances and relief from stay actions. The 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 responds by first, acknowledging that there was an inconsistency between the Debtor's filed Schedule I, and the Debtor's statement of earnings. Debtor states that this was caused by a typographical error on the schedules and has been corrected by an amendment filed by the Debtor on August 4, 2014. Debtor states that a further error occurred on Schedule J, where the monthly contribution to the Debtor's mother was inadvertently listed twice. The schedule has been amended to correct this issue.

Second, Debtor asserts that the declaration of the Debtor's mother has been corrected as well, and a copy will be filed with the court and sent to the Trustee before this hearing date.

Third, the Trustee notes an inconsistency between the Disclosure of Compensation of Attorney Form, 2016, and the Rights and Responsibilities statement filed by Debtors. Debtor states that this inconsistency was caused by the software used to prepare the Debtor's petition and schedules, was noted at the Meeting of Creditors hearing, and the Debtor has filed an amendment to the Form 2016 on August 4, 2014. Debtor states that all of the Trustee's concerns have been fixed by amendment to the schedules.

REPLY TO DEBTOR BY TRUSTEE

Trustee responds by stating that the Debtor filed Amended Schedules B, C, I, J and 2016(b) on August 4, 2014. Dckt. No. 21. The Debtor's Reply, filed on August 4, 2014, Dckt. No. 22, claims to have addressed all of the Chapter 13 Trustee's concerns by amendments to the schedules.

Trustee states that his Objection has been satisfied as to the issues regarding the Debtor's Income, Expenses, and Attorney Fees. Dckt. No. 15, pages 1 and 2.

The Trustee notes, however, that the corrected Declaration of the Debtors' Mother as stated in the Debtors' reply has not to date, been filed with the court. (The Amended Declaration was filed minutes after the Trustee's response was filed.)

Additionally, the Debtors' Amended Schedule J increases Line No. 4 "Rental or home ownership expenses" from $875.00 per month to $1,200 without an explanation, proof of rental expense, or copy of a rental agreement. It is not clear why this expense increased by $325.00 per month.

The Trustee's objection based on the Debtor's "flexible" expenses is well taken. The Debtor has, when facing the Trustee "finding" additional disposable income just jacks up her expenses to keep from paying the additional disposable income to creditors. No explanation is provided how or why the Debtor's prior statement under penalty of perjury that her housing expense of $875.00 was truthful, but when there is show to be additional projected disposable income the "real" housing expense is $1,200.

What the Debtor states in her most recent declaration is that she had to move and the rent has increased. No reason for the move is given or why a $1,200.00 rental property is reasonable and necessary. Rather, it appears to be an effort to exhaust moneys for a post-bankruptcy lifestyle change to preclude creditors being paid.

In reviewing the Amended Schedule J, the court notes that the Debtor lists a $675 monthly car payment. No explanation is given as to why it is necessary for this Debtor to have a $675 a month car payment. On Schedule B the Debtor lists owning one car, a 2012 Mini Cooper S, with a value of $22,000.00. On Schedule D Debtor lists the creditor being paid on this claim being owed $39,500.00. The Plan provides for the Debtor to keep the car and pay this one creditor on its grossly undersecured claim the full amount of the claim. (While the Debtor, having made a poor choice in purchasing a 2012 vehicle, may not be able to have the claim valued pursuant to 11 U.S.C. § 506(a), that does not automatically mean the Debtor should just keep the car and blindly pay amount well in excess in value of the vehicle. When coupled with the "flexible" expenses which just happen to exhaust the "additional" projected disposable income, the Debtor is building a compelling case that she is not prosecuting this case in good faith.)

While listing an $800.00 payment to her Mother, the Debtor does not provide any income and expense information for her Mother. In her Amended Declaration, the Mother carefully avoids providing any information other than that she is being paid $800.00 a month by the Debtor. Quite possibly Debtor has provided the Trustee with information as to the Mother's income and expenses. It may be that the Trustee missed this issue (no affirmative statement made by the Trustee). However, the court will not blindly assume that diverting $800.00 a month to a family member is reasonable and in good faith.

It is also very disconcerting that in Original Schedule J the Debtor had enough income and expenses sufficient to provide for two $800.00 a month payment to her Mother (in addition to the understated income). That "error" having been discovered, expenses can be "flexibly" increased (without explanation) by the Debtor to exhaust the "extra" $800.00 a month listed for the Mother. (The court also notes that the Debtor double deducted a $10.00 a month "renters insurance expense.) The Debtor signed the Original Schedule J under penalty of perjury. Either the Debtor (1) intentionally misstated the expense to improperly divert money from creditors, (2) didn't bother to read Original Schedule J and just blindly sign, or (3) didn't bother to read Original Schedule J because it gave her what she wanted, a month payment of only $383.12 and keep from paying her creditors. Neither is a good conclusion for the court to draw and does not bode well for the Debtor in this (or possibly future) bankruptcy cases.

After paying for the grossly undersecured Cooper, the increased housing expense, and providing an $800.00 payment to her mother, Debtor is only able to eek out a $373.70 month payment for sixty months. Debtor provides for only a 7% dividend to creditors holding general unsecured claims. The plan makes no provision to pay any other claims (no taxes, secured claims, or other obligations are provided for in the plan).

The evidence presented by Debtor clearly demonstrates that the Plan has not been proposed in good faith and does not comply with the requirement of 11 U.S.C. § 1325(a) and (b). The Debtor's statements under penalty of perjury are constructed to justify the final number (a minimal projected disposable income) pre-determined to prevent the proper payment to creditors. It is not unreasonable to expect, and require, a debtor who makes gross expense changes to cover additional projected disposable income, to provide credible testimony as to why the expenses have changed. The Debtor had a fair opportunity to so state this in her reply declaration. Instead, she merely says my rent is higher and ignores providing any explanation as to why and how her prior statements under penalty of perjury were inaccurate (false statements).

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.

34. 14-25561-E-13 MARCELO/HAZEL LOPEZ — MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria — 7-3-14 [30]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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). 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. Here, the Chapter 13 Trustee opposes confirmation of the plan for two reasons.

First, the Debtors are $4,260.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $4,260.00 is due on July 25, 2014. The case was filed on May 27, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtors have paid $0.00 into the plan to date.

Second, the Plan relies on a pending motion. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value the Secured Claim of Capital One Auto Finance, MRG-1, which is set for this hearing date. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full. FN.1.

FN.1. As has been disclosed in connection with other cases, there is no such entity as Capital One Auto Finance. Rather, the entity is Capital One, National Association. The court denied without prejudice Debtors' motion to value, as well as ordering Capital One, National Association to file an amended proof of claim and notice of appearance, to correct the inaccurate statement by its counsel that there is a creditor named Capital One Auto Finance in this case.

Based on the foregoing, 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

35. 14-21465-E-13 PGM-2 | **THOMAS/DEBORAH LUPTON** | **Peter G. Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** | **6-27-14 [30]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 53 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 Thomas B. Lupton and Deborah A. Lupton ("Debtors") seek court approval for Debtors to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a trial loan modification in which Debtors are to make three payments in the amount of $1,268.61 beginning on July 1, 2014, with the last payment under the trial loan modification to be made by September 1, 2014. Once the loan is modified, the interest rate and monthly principal and interest will be fixed for the life of the mortgage, unless the initial, modified interest rate falls below current market interest rates.

The Motion is supported by the Declaration of Thomas Lupton and Deborah A. Lupton. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. The Declaration states that Debtors have been offered a loan modification by their lender, "Wells Fargo," under HAMP. Dckt. No. 32.

OBJECTION TO MOTION

The Chapter 13 Trustee objects to the Motion to Approve the Loan Modification on two grounds. First, although Debtors have filed a Motion for an Order Approving a Trial Loan Modification, Wells Fargo Home Mortgage has actually offered a streamlined modification with a trial period requesting payments of $1,268.61, beginning on July 1, 2014. Debtors' Amended Plan filed July 1, 2014, Dckt. No. 47, provides for Wells Fargo Home Mortgage as a Class 4 Creditor with payments of $1,268.61 paid directly by Debtors.

A Proof of Claim was filed on June 13, 2014, Court Claim No. 4, naming Wells Fargo Bank, N.A., as the creditor and asserting a claim for money loaned in the amount of $305,679.69, with an arrearage of $16,639.52. The claim is signed by an attorney from Pite Duncan, LLP.

The Escrow Account Disclosure Statements attached to the proof of claim identify Wells Fargo Home Mortgage as a division of Wells Fargo Bank,

N.A. The Trustee states that he does not oppose the terms of the trial loan modification provided by Debtors, and the Motion to Approve the Permanent Loan Modification, once the Debtors successfully complete the trial period and are offered a permanent loan modification.

Second, the language in the Motion and Declaration may not be accurate in this matter. Debtors are requesting court approval of a trial loan modification. Debtor's Motion, Dckt. No. 30, Lines 8-14, state:

> 7. Any difference between the amount of the trial period payment and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts.
>
> 8. Once the loan is modified, the interest rate and monthly P&I will be fixed for the life of the mortgage unless the initial modified interest rate is below current market interest rates.

The Trustee states that he is unable to locate these terms within the documentation filed as Exhibit "A," Wells Fargo Home Mortgage Loan Modification.

Debtors' Declaration, Dckt. No. 32, states "That we have been offered a loan modification by our lender, Wells Fargo, under HAMP." The Loan Modification documentation submitted by Debtors as Exhibit A indicates that Debtors are being offered a Streamlined Modification by making three trial payments of $1,268.61, and that after the trial period starts, that Debtors may be offered a loan modification with a lower monthly principal and interest payment under a different program, including HAMP.

DISCUSSION

Unidentifiable Creditor

A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment. . . ."

Federal Rules of Bankruptcy Procedure Rule 3001(e)(2) provides, "If a claim . . . has been transferred . . . after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee." Fed. R. Bankr. Proc. Rule 3001(e)(2).

Debtors allege in their Motion that Wells Fargo Home Mortgage is the holder of the deed of trust securing the loan. However, Wells Fargo Bank, N.A. appears filed the Proof of Claim No. 4 on the claims registry, dated June 13, 2014.

The Fixed Rate Note and Deed of Trust were entered into by and between Debtors and Wells Fargo Bank, N.A. Wells Fargo Bank Home Mortgage filed nothing evidencing that the claim has been transferred from Wells Fargo Bank, N.A. to it. Attachment to Proof of Claim No. 4. Absent evidence of transfer of

claim, the court cannot decide who is the real creditor pursuant to 11 U.S.C. §§ 101(1)(A) & 105(1)(A), Fed. R. Bankr. Proc. Rule 3001(e)(2). FN.1.

FN.1. This is not a mere "academic exercise" in insuring that Article III, Section 2 of the United States Constitution is satisfied. The California Secretary of State lists an entity by the name Wells Fargo Home Mortgage, LLC as an entity authorized to do business in California.

Trial Loan Modification

The document labeled as "Wells Fargo Home Loan Modification" and filed as Exhibit "A" in support of the Motion, Dckt. No. 33, appears to be a proposal for a loan modification with Wells Fargo Home Mortgage. The offer states that the Debtors' mortgage is "seriously delinquent," and that the streamlined modification being offered in the offer will allow Debtors to make three trial payments and then continue to make timely payments (assuming other eligibility requirements are met), and then the offeror will send Debtors their final modification documents to sign. The letter then advises Debtors that based on their home's value, the offeror has already approved Debtors for a Streamlined Modification, in which they will be required to make monthly payments in the amount of $1,268.61. The property value used to make this decision of the amount of payment required for the trial loan payments was based on a valuation of $185,000.00.

> The letter can be further summarized as stating:
>
> A. To accept this offer please call the company at the phone number listed below, or send in your first monthly trial period payment instead of your normal monthly mortgage payment.
>
> B. Please note that your trial period may extend beyond the dates provided. For that reason, continue making your trial period payments in the same amount by the same day of each month you currently make your trial period payments until your home preservation specialist advises that you may move forward with a final modification or that you are no longer eligible for HAMP.
>
> C. After all trial period payments are timely made and you have submitted all the required documents, <u>your mortgage may be permanently modified</u>. However, if you are in active bankruptcy any conversion to a permanent modification is conditioned on obtaining the bankruptcy court's approval to modify the mortgage or release of the mortgage from inclusion in the bankruptcy.
>
> D. If payment is not received by the end of the month in which it is due, <u>this offer will end and your loan may not be modified under the Streamlined Modification.</u>

Exhibit A, Dckt. No. 33 (Emphasis added).

This letter is merely an offer, contingent on Debtors' ability to make the three trial period payments and to meet some other, unstated conditions. This modification is not guaranteed, and the lender may or may not modify the Debtors' loan.

In this situation, other debtors have requested and obtained court authorization to make the trial modification payments directly to the creditor rather than through the trustee while their loan modification application is being processed. This is requested and authorized because often times the payment must be received by the creditor by the first day of the calendar month, which deliver cannot be assured by the Chapter 13 Trustee (since the monthly distributions are subject to holidays and weekends at the end of the month). Further, having the debtor make the trial payments directly enhances the debtor's *bona fides* as a consumer who can make the payments.

ANALYSIS

The court notes that Debtors do in fact, request an approval of a trial loan modification, and not a permanent modification of the subject loan. The Debtors acknowledge that the Lender, identified as "Wells Fargo Home Mortgage," has offered the Debtors a trial modification that states that the mortgage will be permanently modified after Debtors have made the trial loan payments in a timely manner, and that Debtors continue to meet all of the eligibility requirements of the modification program. These assertions align with the conditions of the trial loan modification offer as documented in Exhibit "A" in support of the Motion. Dckt. No. 33.

However, the Debtors have failed to provide evidence showing that the actual lender and holder of the note in this case is in fact, Wells Fargo Home Mortgage, and not Claimant Wells Fargo Bank, N.A. 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 court cannot speculate and hope that it has named a real creditor and that it's order will have any legal effect, or approve a trial loan modification that will not be effective against the actual owner of the obligation.

Additionally, Debtors present supposed terms of the trial modification offer that do not appear on the offer filed on the docket in support of the Motion. Debtors state in their Motion that,

> 7. Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts.
>
> 8. Once the loan is modified, the interest rate and monthly P&I will be fixed for the life of the mortgage unless the initial modified interest rate is below current market interest rates.

No such terms are included in the trial modification proposal filed as Exhibit A on Dckt. No. 33. As Trustee points out, Debtors' Declaration also appears to erroneously state that Debtors are being offered a loan modification under the Home Affordable Modification Program, whereas the letter filed

indicates that Debtors are being offered a Streamlined Modification, which requires that Debtors make three timely payments of $1,268.81 between July 1, 2014 to September 1, 2014. Dckt. No. 33.

The purported lender not being identified with certainty "as creditors" as that term is defined by 11 U.S.C. § 101(10), and the Debtors having mischaracterized the terms of the trial loan modification in their Motion requesting approval of the modification, the Motion to Approve the Trial 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 Thomas Lupton and Deborah Lupton ("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 Approve the Loan Modification is denied without prejudice.

36. 14-21465-E-13 PGM-3 — THOMAS/DEBORAH LUPTON — Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF CHASE HOME FINANCE/JPMORGAN CHASE BANK, N.A. — 6-27-14 [35]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chase Home Finance, LLC and

JPMorgan Chase Bank, N.A., Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Creditor is denied without prejudice.

Debtors, Thomas B. Lupton and Deborah A. Lupton ("Debtors") move to value the secured claim of an entity identified in the Motion as "Chase Home Finance/JPMorgan Chase Bank, N.A."

Both Debtors' Motion and Declaration assert that the creditor holding the second deed of trust against their property, commonly known as 19965 W. Mitchell Mine Road, Pine Grove, California, as "Chase Home Finance/JPMorgan Chase Bank, N.A." Dckt. Nos. 35 and 37. No Proof of Claim has been filed by a "Chase Home Finance/JPMorgan Chase Bank, N.A."

The court reviewed the California Secretary's of State website and could not identify any entity named "Chase Home Finance/JPMorgan Chase Bank, N.A." registered to do business in California. http://kepler.sos.ca.gov/. Additionally, the court cannot identify any such entity after searching the FDIC website for federal insured financial institutions, the Comptroller of the Currency website for national banks, or the California Secretary of State website for corporations, limited liability companies, and limited partnerships. FN.1.

FN.1. Given the months, and years, that this court has required both creditors and debtors to accurate identify the creditor, there is no excuse for failing to identify the creditor. Further, for an experienced attorney who regularly appears in Departments C and E of this court, to make up the name of a "creditor" such as "Chase Home Finance/JPMorgan Chase Bank, N.A. can only show that there is no intention to properly identify the creditor and meet the minimum constitutional real party in interest case or controversy requirement so Article III, Section 2 of the United States Constitution. This court will not issue orders purportedly against "generic name creditors" and hope that nobody will ever question whether the orders are effective.

The Court cannot determine from Debtor's pleadings the correct owner of the deed of trust. The Proof of Service accompanying the Motion shows Debtor served JPMorgan Chase Bank, N.A., and Chase Home Finance, LLC, indicating that Debtor is not sure which entity actually owns the deed of trust on the Property. Debtors fail to identify the lender on the subject

loan, rendering the court unable to issue an order affecting the rights of a specified party.

A motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a). The court will not issue an order purporting to have an binding effect on a person or entity that the court does not have a good faith belief exists.

Misidentification of creditors for purposes of § 506(a) motions is automatically fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of an unidentified creditor is not effective. In most cases where Debtors have filed a Motion to Value naming an incorrectly identified party 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 secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The Motion is therefore denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas Lupton and Deborah Lupton, "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 denied without prejudice.

37. 14-21465-E-13 PGM-4 **THOMAS/DEBORAH LUPTON** **Peter G. Macaluso** **OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 3** **6-27-14 [40]**

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14

days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtors, the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Claim of Wells Fargo Bank, N.A., is sustained.

Thomas B. Lupton and Deborah A. Lupton, the Chapter 13 Debtors ("Objector") request that the court disallow the claim of Wells Fargo Bank, N.A., ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims as a secured status claim in this case. The Claim is asserted to be secured in the amount of $528.25. Objector asserts that Claim No. 3 should be allowed as a general unsecured claim, and not be accorded priority status as the Claimant has not made a showing that the claim is secured.

The Debtors state that Proof of Claim No. 3 does not include a copy of the security agreement substantiating the secured status of the claim. Debtors argue that Wells Fargo Bank, N.A. has made no showing, nor has presented any evidence, to validate this claim as being secured. The attached document is not authenticated, nor is there a copy of the security agreement or supporting documents to validate their claim.

Debtors assert that under the plain language of Rule 3002.1(d), this type of Notice does not constitute prima facie evidence of validity under Rule 3001(f), and the creditor has not presented sufficient evidence to support it's claim. Because the claimant cannot rely on this presumption of validity, the claimant "has the burden of proving the reasonableness of its fee claim..." *Atwood v. Chase Manhattan Mortgage, Co.* (*In re Atwood*), 293 B.R. 227, 233

(B.A.P. 9th Cir. 2003). The requirement of reasonableness requires some evidence on that question once debtors objected, pointing out the missing essential element. The claimant, Wells Fargo Bank, N.A., has the affirmative burden of showing reasonableness as a matter of law. The objection, as here, need only note the absence of any such showing, and does not require evidence of support. In effect, the omission of the proof of claim to address an essential element of the substantive claim deprives the claimant of the favorable Rule 3001(f) evidentiary presumption regarding validity and amount.

DISCUSSION

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

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (B.A.P. 9th Cir. 2005).

Wells Fargo, N.A. filed Claim No. 3, in which Wells Fargo N.A. claims an amount owed of $582.24 for items purchased from Niello VW (not real estate or a motor vehicle), with a sales contract being listed as the basis for perfection of the Creditor's secured claim. The only documentation attached to the Proof of Claim is a "Proof of Claim Account Summary Statement" showing that the Debtors had an open-end revolving creditor type of account, and the date of the last transaction between Debtors and Creditors as November 7, 2013 and the date of February 21, 2014, as the date of the charge-off. The collateral description indicates that the claim is based on a purchase money security interest for items purchased from Niello VW.

The rest of the statement details the amount of interest, rewards fees, late fees, over limit fees, and other fees due in addition to the amount of the claim ($0.00 in the itemization of the interest, fees, and costs), leaving a total amount of $582.25 as the amount due on the Creditor's Claim. Claim No. 3 on the Claims Registry, April 19, 2014.

The Proof of Claim was not filed, however, with the actual sales contract that serves as the basis of perfection of the secured status of the Creditor's claim attached to the Claim. The Creditor does attach a copy of the purchase money security interest agreement or supporting documents constituting the basis of the secured claim, and that creditor's interest in the unspecified goods sold is secured by the Debtor's property. Wells Fargo, N.A., not having

made a showing indicating that the claim is secured, and the creditor not having responded to the duly noticed Objection to Proof of Claim No. 3, the creditor's claim is disallowed as a secured claim. The Objection to the Proof of Claim is sustained, and Proof of Claim No. 3 will be allowed as a general unsecured claim in the amount of $582.25.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Bank, N.A., Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 3 of Wells Fargo Bank, N.A., is sustained, and the claim is disallowed as a secured claim, and allowed instead as a general unsecured claim in the amount of $582.25.

38. 14-21465-E-13 THOMAS/DEBORAH LUPTON — MOTION TO CONFIRM PLAN
PGM-5 Peter G. Macaluso — 7-1-14 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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. 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 basis that the Plan relies on two pending motions. Trustee states that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

The Trustee states that Debtors' plan relies on the Motion to Value the Secured Claim of "Chase Home Finance/JPMorgan Chase Bank, N.A.," and the Motion for Order Approving Trial Loan Modification. Both are set for hearing on August 19, 2014, the same day as this motion. If the motions approving the valuation and trial loan modification are not granted, Debtors' plan does not have sufficient monies to pay the claims in full.

The court is denying both the Motion to Value the Secured Claim of Chase Home Finance/JPMorgan Chase Bank, N.A., PGM-3, the Motion for Order Approving the Loan Modification, PGM-2, on this hearing date. Thus, Debtors' plan does not have sufficient monies to satisfy the claims.

OPPOSITION BY CREDITOR

Wells Fargo Bank, N.A., which identifies itself as the creditor of Thomas B Lupton and Deborah A Lupton ("Debtors"), objects to the Chapter 13 Plan filed by Debtors on the basis that it fails to properly provide for Creditor's claim pending the finalization of a loan modification. FN.1.

FN.1. It appears that Wells Fargo Bank, N.A. has assisted the Debtors in the denial of the present Motion. The Bank has not provided the Debtors with an actual loan modification agreement which could be presented to the court. Second, in the loan modification proposal letter, Wells Fargo Bank, N.A. did not identify itself as the creditor, but used the nom de plume "Wells Fargo Home Mortgage," a generic name which is not readily identifiable, except possibly to a limited liability company which is not the Bank.

Creditor's claim is evidenced by a promissory note executed by Debtors Deborah A. Lupton and Thomas B. Lupton, and dated October 19, 2005, in the original principal sum of $350,000.00. The Note is secured by a Deed of Trust encumbering the real property commonly known as 19965 West Mitchell Mine Road, Pine Grove, California 95665.

The Creditor argues that the Debtors' Plan fails to provide for the cure of Creditor's pre-petition arrears and reduces the ongoing

post-petition payment pursuant to the terms of a trial loan modification to begin on July 1, 2014. While the Creditor does not oppose the inclusion of the trial loan modification's terms in Debtors' Plan, Creditor states that the Plan does not include any provisions should the Debtors fail to make the payments under the terms of the loan modification and modification be denied.

Creditor states that the Debtors' Plan does not indicate if the Debtors will amend their Plan to provide Creditor's pre-petition arrears and full post-petition payments, or surrender the property should the modification be denied. Thus, Creditor believes that the Debtors' Plan should not be confirmed as proposed because it fails to properly provide for the cure Creditor's pre-petition arrears and full ongoing post-petition payment should the Debtors default under the terms of the trial loan modification, failing to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii).

DISCUSSION

A simple fix to address Creditor's and the Trustee's concerns regarding the proposed plan would be to incorporate the commonly termed "Ensminger [for the consumer attorney who had the laboring oar] Additional Plan Modification Negotiation Provisions" into the Additional Provisions of the Plan. These provisions relate to prospective modification agreements, and make it clear that the court is not modifying a claim secured only by the Debtors' residence and states that if the loan modification is not approved, that this denial be communicated to all interested parties.

The Provisions also cover the contingencies of modifications that do does not provide for any pre-petition arrearage cure payments to be made during the life of the Plan, and for loan modification which require arrearage cure payments to be made during the plan term. The provisions address events of default, a failure to modify the plan upon rejection of a modification, and a failure to prosecute the loan modification application. These provisions supply a mechanism for addressing the granting or denial of a loan modification.

Debtor should consider using such terms in order to properly provide for the secured claim of Wells Fargo Bank, N.A. The current plan does not provide for the possible rejection of the modification, or the possibly inability of Debtors to make all of the trial loan payments. While one judge in the Sacramento Division will not confirm a plan which incorporates loan modifications, at least two of the other four, and most likely all four, would include such a provision which clearly provides that the plan does not modify the loan secured only by the debtor's residence. This judge has confirmed many such plan, with the provisions having been refined through the combined efforts of debtor and creditor attorneys. This language has been repeated by the court in tentative rulings, as well as consumer attorneys advised of its existence in open court.

Currently, 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.

39. 13-32066-E-13 ALVINA WESTERN — MOTION TO MODIFY PLAN
LBG-1 Stephen J. Johnson — 7-2-14 [22]

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 all creditors, 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 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 Trustee has filed opposition to the Motion to Confirm the Modified Plan, on two grounds.

First, it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $3,390.00 under the proposed plan. Payments of $16,950.00 ($1,695.00 times 10) have become due under the proposed plan. Debtor has paid a total of $13,560.00 to the Trustee, with the last payment posted on May 23, 2014.

Second, while Debtor has filed a Declaration in support of the motion to confirm, the Declaration does not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). The declaration does not address the following issues:

- The plan complies with applicable law
- Any fees are charges required by the court have been paid
- The plan is proposed in good faith and not by any means forbidden by the law
- Unsecured creditors will receive at least what they would have received in the event of a Chapter 7 liquidation
- All secured creditors provided for have either accepted the plan, or the debtor surrenders the property securing their claims, or the plan provides to pay the creditors pursuant to section 1325(a)(5)(B)
- The Debtor will be able to make the payments under the plan and comply with the plan.

The Declaration of Alvina Jane Western the Debtor, merely states that the original Plan was filed on September 13, 2013, and that the original plan was confirmed on November 22, 2013. Dckt. No. 24. The Declaration makes vague references to "certain legal and/or financial events have occurred" that require the modification of Debtor's Plan, including a creditor that was originally listed as unsecured now being deemed as secured. The Declaration does not address all the requirements of 11 U.S.C. § 1325(a).

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

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

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

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

40. 14-26368-E-13 JAMES HAYES
JMA-6

COLFIN AH-CALIFORNIA 7, LLC
VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-11-14 [18]

Final Ruling: The Motion for Relief from Automatic Stay, JMA-6, was also set to be heard by this court at 1:30 pm on this hearing date. This item is a duplicate entry of Item No. 1 on the 1:30 pm, August 19, 2014 calendar of this court. The court's ruling on this matter is included therein. No appearance is required at the 3:00 pm hearing.

41. 11-36470-E-13 WASIF/IRUM ASGHAR
WW-3 Mark A. Wolff

CONTINUED OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 29 AND/OR MOTION TO CONDITIONALLY DETERMINE THE VALUE OF THE CLAIM PENDING RESOLUTION OF THE APPEAL
7-15-13 [73]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the

court's calculation, 57 days' notice was provided. 44 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The respondent Creditor having filed an opposition, the court will address the merits of the motion. 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).

An Evidentiary Hearing for the Objection to Claim of the California State Board of Equalization shall be conducted at -------- on -------, 2014.

PROCEDURAL HISTORY

At the September 10, 2013 hearing on the Objection to Claim, the court continued the hearing so that the Objection could be heard after the State Board of Equalization's review of Debtor's appeal. Dckt. No. 85. The court further stated that if the review had not been completed in a timely manner, this court would have to determine the issue as a necessary proceeding for the administration of federal law.

At the March 4, 2014 hearing, the parties reported that an offer for settlement in being reviewed by the State Board of Equalization and requested an additional 60 day continuance. The court continued the hearing.

A review of the case docket at the May 6, 2014 hearing showed that nothing was filed by either the Debtors or the Board of Equalization, to show whether the determination on the appeal has been made. The court continued the Objection to Proof of Claim No. 29 of the State Board of Equalization to this hearing date to bring the objection to conclusion pursuant to 11 U.S.C. § 505.

REVIEW OF OBJECTION

The Proof of Claim at issue, listed as claim number 29 on the court's official claims registry, asserts a $37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773.

The Debtor objects to the Proof of Claim on the basis that he was not the responsible party during the time period for which the tax claim is asserted. Debtor Wasif Asghar asserts that he was involved in an accident

and due to the illness relating thereto was not involved in the operation of the business during that period.

Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

CREDITOR'S OPPOSITION

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount of $1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of $37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

DISCUSSION

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

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

AUGUST 8, 2014 STATUS REPORT BY THE STATE BOARD OF EQUALIZATION

Tax creditor, the California State Board of Equalization (identified as the "SBE") submits a Status Report on the Debtors' Objection to Claim of State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal.

On July 15, 2013, the Debtors filed their Claim Objection against the SBE. This was because Chapter 13 Trustee, in compiling a list of timely

filed claims, indicated that the plan may not be feasible, and that case dismissal may be warranted. Dckt. No. 51. The Court continued the original September 10, 2013 hearing on the Claim Objection to March 4, 2014. Dckt. No. 87, then to May 6, 2014, Dckt No. 90, then to August 19, 2014, Dckt. No. 93, so that the Debtors may engage in out of court settlement discussions with the SBE, and pursue their administrative appeals rights with the SBE's Appeals Division for a re-determination of tax.

On April 13, 2012, the contested tax was billed to Debtor, Wasif Asghar, in his capacity as a "responsible person" for the now-ceased QS Ventures, Inc., because its tax debts to the SBE remain outstanding. Cal. Rev. & Tax. Code § 6829; Cal. Code Regs., tit. 18 § 1702. The federal counterpart "responsible person" tax statute is at 26 U.S.C. § 6672, and is frequently litigated in bankruptcy courts. 11 COLLIER ON BANKRUPTCY TAXATION §TX15.02 (2014).

SBE states that on or about April 2, 2014, the SBE informed the Debtors' counsel that the SBE rejected the Debtors' written tax settlement proposal under the guidelines of Cal. Rev. & Tax. Code § 7093.5(c).

The Debtors currently have a scheduled conference with a hearing officer with the SBE's Appeals Division on September 4, 2014, designated as Case Id. 611390. See Cal. Code Regs., tit. 18 § 5264. Because this multi-level appeals process has not yet concluded, this contested "responsible person" tax remains contingent for bankruptcy purposes. Notwithstanding this upcoming conference, the SBE states that it concurs with the Court's discussion in its previous minute orders that the Court has permissive jurisdiction under 11 U.S.C. § 505(a) for a determination of a contingent state tax liability, as a necessary proceeding for the administration of federal law.

Creditor again asserts that the Debtors have not met their burden of proof in objecting to the state tax claim. As briefed in the SBE's August 22, 2013 Opposition to the Debtors' Objection to the Claim of the California State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal ("Opposition"), Dckt. No. 82, in the context of a claim objection to a state tax, the burden of proof is determined by state tax law. *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000).

Under California law, a tax assessment billing by a revenue agency is presumed to be correct, and the burden of proof to show otherwise stays with the taxpayer. Flying Tiger Line v. State Bd. of Equalization, 157 Cal. App. 2d 85, 99 (1958); 67B AM. JUR. 2D Sales and Use Taxes § 214 (2013). A taxpayer who objects to his or her "responsible person" tax liability bears the burden of proof. *Latin v. State Bd. of Equalization* (*In re Latin*), 2009 Bankr. LEXIS 4523 *23-24 (B.A.P. 9th Cir. 2009) (explaining that Sales and Use Tax Regulation 1702.5 requires that a taxpayer provide evidence that he or she lacked responsibility or willfulness).

SBE argues that Debtor Wasif Asghar has was not sufficiently controverted the contention that he was the responsible person for taxes of the QS Ventures, Inc, during the relevant time period. As explained in SBE's Opposition to the Objection, Debtors' proof consisted only of a single Kaiser

Permanente doctor's visit on or about July 31, 2007. SBE asserts that his in and of itself does not demonstrate that Debtor, Wasif Asghar, at all relevant times, was not a person responsible for payment of California sales taxes on behalf of QS Ventures, Inc. The Debtors have not met their burden of proof. Thus, SBE requests that the Objection be overruled.

SCHEDULING OF AN EVIDENTIARY HEARING

This bankruptcy case was filed on July 1, 2011 (three years ago). Creditor filed its proof of claim on November 30, 2011 (two years and eight months ago). Proof of Claim No. 29. This Objection to Creditor's Claim was filed on July 15 2013 (now more than one year ago).

The parties, now more than three years into this case, have been unable to resolve this dispute. The court has continued and re-continued the hearing to afford good faith, bona fide settlement discussions to be conducted. After such good faith efforts, there is no resolution.

Therefore, the court determines that it is necessary for the claims objection process to proceed and this court determine what claim, if any, is allowed in this case.

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

A. This Objection to Claim is a core matter pursuant to 28 U.S.C. § 157, for which jurisdiction in this bankruptcy exists pursuant to 28 U.S.C. § 1334 and the reference to this bankruptcy court by the United States District Court for the Eastern District of California.

B. On or before xxxxxx, 2014, Wasif Asghar and Irum Asghar, the Objecting Debtors, ("Debtor") shall file with the court and serve on the California Franchise Tax Board, Creditor, ("Creditor") a list of witnesses and exhibits (excluding possible rebuttal witnesses and exhibits) to be presented at the evidentiary hearing for Debtor's case in chief.

C. On or before xxxxxx, 2014, Creditor shall file and serve on Debtor a list of witnesses and exhibits (excluding possible rebuttal witnesses and exhibits) to be presented at the Evidentiary Hearing for Creditor's case in chief.

D. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

E. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before xxxxxx, 2014.

F. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before xxxxxx, 2014.

G. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before xxxxxx, 2014.

H. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before xxxxxx, 2014

I. The Evidentiary Hearing shall be conducted at xxxxxx.m. on xxxxxx, 2014.

42. 14-23271-E-13 HLG-8 | ROBERT/CINDY LANDINGHAM | Kristy A. Hernandez | MOTION TO CONFIRM PLAN | 6-26-14 [79]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 54 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 plan on two grounds.

DEFECTIVE DECLARATION

First, the Trustee states that Debtors' verification fails to provide any qualification on stating that the information is true and correct pursuant to 28 U.S.C. § 1746, but rather states that the information is true and correct to the best of their knowledge and belief.

The declaration offered by the Debtors states that Debtors "certify under the penalty of perjury" that they have read the Declaration, and further declare that the contents thereof are "true and correct to the best of our knowledge and belief." This could be read two ways. The first is that "whatever I have said is true, **to t**he extent that I have any knowledge about what I am talking about." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Counsel is advised that his firm should update its declaration forms to be in unqualified compliance with § 1746 as the next time this court, or other judges sitting in this District may well find the declaration to be insufficient and deny the motion without prejudice and without a hearing.

UNSECURED CLAIM HOLDERS

Second, Debtors' Motion, Dckt. No. 78, states that the unsecured claim holders will receive a dividend of $101,578.42 through the modified plan. Where $102,653.69 in unsecured claims have been filed and Debtors are proposing 68% to unsecured creditors, the Trustee calculates the unsecured claim holders will receive approximately $72,486.51, including Trustee fees.

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.

43. 13-35973-E-13 RANDY WILLIAMS — **MOTION TO INCUR DEBT**
MET-1 — 7-18-14 [27]

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

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied.

The motion seeks permission to purchase a 2014 Hyundai Sonata, which the total purchase price is $27,300.00, with monthly payments of $556.14. The Motion states that the Debtor, Randy Williams ("Debtor") has been approved for the loan to purchase the vehicle, and that the total purchase price, including the service contract, sales tax, gap insurance, and estimated licensing and registration fees, is $33,343.78.

The Debtor is putting down approximately $5,000.00, plus a manufacturer's rebate of $2,000. The loan amount is $26,343.78, and the monthly payments will approximately be $556.14. The loan term is 72 months, and the interest rate is 14.70%. A copy of the Retail Installment Contract is attached as Exhibit "A" in support of this Motion. Dckt. No. 30.

The Debtor surrendered a 2006 Lincoln Navigator, as called for in the confirmed plan. Debtor previously used a 1970 GTO owned by a friend, but the car was no longer in reliable condition to provide transportation for the debtor. The Motion states that Debtor had worked for AT&T for 13 years, and recently transferred to another department, which offers more overtime opportunities. Debtor asserts that he has the financial capability to make the payments for the replacement vehicle.

OPPOSITION BY THE TRUSTEE

The Chapter 13 Trustee objects to Debtor's Motion for three reasons. First, the Debtor is $3,444.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,142.00 is due on August 25, 2014. The Debtor has paid $6,910.00 into the plan to date. If Debtor is unable to maintain proposed plan payments, this is an indication that Debtor cannot afford to incur more debt and additional monthly payments.

Second, Trustee argues that Debtor has not filed documents supporting the ability to make car payments. Debtor has not filed updated Schedules I and J to support his ability to make proposed payments due under the plan, and the new car payment of $556.14. Debtor's declaration states:

> I have worked for AT&T for 13 years. Several months ago, I transferred to the U-verse department, which is very busy right now. I was able to request and obtain extra overtime to save up for the down payment.

Declaration of Debtor, Dckt. No. 29, page 2, lines 20-22.

Third, the Trustee expresses uncertainty as to whether the financing of the new vehicle is in the best interest of the Debtor. The Debtor wishes the court to authorize the financing of a brand new 2014 Hyundai Sonata, with a purchase price of $33,343.78. Debtor has not explained why this is reasonably necessary. Debtor has not provided evidence of due diligence in shopping around, or that this car was the best option based on the price and financing available. Trustee is not certain that the financing of the new vehicle is in the best interest of the Debtor.

DISCUSSION

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

The Debtor does not address the reasonableness of incurring debt to lease a new, 2014 brand vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor had previously owned or leased 2006 Lincoln Navigator, but now proposes to purchase a 2014 Hyundai Sonata, with a total purchase price is $27,300.00. No explanation is provided as to why Debtor has to acquire a new, 2014 model year vehicle for his transit needs. Debtor surrendered his prior car, a 2006 Lincoln Navigator, possibly because he could no longer afford payments on that vehicle. When the owner of the loan on the previous vehicle sells Debtor's car at auction, Debtor may be slapped with hefty fees, and left on the hook for the deficiency on the amount owed on the loan at the time the car was surrendered, plus fees, subtracting the amount for which the vehicle was sold at auction. This may be a significant amount of money that Debtor still must pay.

The interest rate listed on the Retail Installment Sale Contract, filed in support of the Motion as Exhibit "A," Dckt. No. 30, shows that the interest rate on the loan for the "new" 2014 Hyundai Sonata, is a staggering 14.70% percent. The projected amount that Debtor will have paid after all payments are made as scheduled is $40,042.08.

The total sale price, including the down payment of $7,000, will be $42,042.08 under the sale contract. Regular, monthly payments of $556.14 are called for by the contract, with final payment becoming due on July 4, 2020. With monthly payments of $556.14 to pay for this vehicle, Debtor will be significantly increasing his monthly plan payments, where he is $3,444.00

delinquent in plan payments to the Trustee to date and has not demonstrated that he can even timely make payments of $1,442.00 under his plan. Dckt, No. 34.

Additionally, the Debtor is proposing to make monthly payments of $556.14 to purchase a new vehicle, while he is delinquent in his payments under his confirmed plan, and is paying a 0 % dividend to Class 7 Claim holders. These claims, including the under-collateralized portion of secured claims not entitled to priority, amount to $ 211,921.00. The Debtor has not filed documents supporting the ability to make car payments, and updated Schedules I and J to support his ability to make proposed payments due under the plan along with the new car payment of $556.14. Debtor's Declaration makes vague references to a job transfer at AT&T, his employer for 13 years, and how this job into the U-verse department has generated more overtime in order for the Debtor to save up and cover the down payment on the vehicle. Declaration of Debtor, Dckt. No. 29, page 2, lines 20-22. This declaration is not convincing nor sufficient in establishing the Debtor's ability to make the increased plan and car payments.

The Debtor has also not explained why purchasing a 2014 model year vehicle is reasonably necessary, and Debtor has not expressed whether he shopped for less expensive vehicles, given his strained financial circumstances, leading the Trustee to contemplate whether the financing of the new vehicle is indeed in the best interest of the Debtor. Unfortunately, Debtor has provided no evidence that this current vehicle was his only option for a mode of transportation and that Debtor shopped around for more inexpensive cars that are still functional and can serve the Debtor well. The Debtor cannot just point to a luxury and/or new vehicle, and argue that the vehicle, and only that vehicle, are suitable for his transportation purposes, and are necessary when Debtor proposes to pay a 0% dividend to his unsecured creditors. Dckt. No. 24.

A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a 2014 car and attempt to borrow money at a 14.70%% interest rate.

The depreciation rate on a 2014 model year car will be high, and this car will have lost a substantial chunk of its value once Debtor acquires this fairly recent model year vehicle. Debtor does not provide information as to alternatives to buying a 2015 model year vehicle. It is commonly known that during the first three years a car suffers the greatest depreciation. If the Debtor were to purchase a 2011 vehicle, instead fo a new or almost new 2014, it is likely that the payments would be significantly less.

The court lacks sufficient evidence of increased income to show that Debtor will be able to afford the increased payments on an apparent loan to purchase a 2014 Hyundai Sonata. Furthermore, the court is not sure that this transaction, given the high interest rate at which Debtor is being charged to finance a 2014 model year vehicle, is in Debtor's best interests. It also is unclear to the court how in good faith the Debtor could propose to purchase a luxury car when paying holders of unsecured claims nothing.

Based on the foregoing, the Motion to Incur Debt is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debtor filed by the Debtor, Randy Williams, 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 Incur Debt is denied.

44. 14-27173-E-13 MRL-1 — DANIEL/ANNETTE ADAM — Mikalah R. Liviakis — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. — 7-23-14 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 24, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Daniel Adam and Annette Adam, "Debtors" 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 19851 Meadowood Court, Jackson, California, "Property." Debtor seeks to value the Property at a fair market value of $277,000.00 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 $288,206.00. Creditor's second deed of trust secures a claim with a balance of approximately $168,484.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Daniel and Annette Adam, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 19851 Meadowood Court, Jackson, 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 $277,000.00 and is encumbered by senior liens securing claims in the amount of $288,206.00, which exceed the value of the Property which is subject to Creditor's lien.

45. 14-25474-E-13 LEE SCIOCCHETTI
DPC-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-3-14 [25]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 3, 2014. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan for three reasons.

First, the Plan relies on the Motion to Value Collateral of Redwood Credit Union on a 2008 Cabover Camper set for hearing on July 22, 2014. The Debtor's Motion to Value Collateral was granted by the court and the Debtor's 2008 Cabover Camper valued at $5,370.00 (Dckt. No. 32), thereby resolving this part of the Trustee's Objection.

Second, the Trustee asserts that the Debtor's Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total $12,014.95 and Debtor proposes to pay 19% to unsecured creditors, which amounts to $9,029.52. Debtors' Schedule B and C, Dckt. No. 1, also shows the following non-exempt property, which are not listed with particularity and sufficiently described as to inform the Trustee and other parties in interest the condition, make, model, features, and types of vehicles in the possession of the Debtor: a 2005 Ford F-250, two utility trailers, and 2008 Can Am ATV.

Third, the Disclosure of Compensation of Attorney for Debtors also appears to list in item 6 that the attorney services do not include some items required under Local Bankruptcy Rule 2016-1(c), such as judicial lien avoidances and relief from stay actions.

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION

The Debtor's Motion to Value was granted on July 22, 2014. Additionally, Debtor believes that in Trustee's Chapter 7 liquidation analysis Trustee fails to account for the cost of sale and Trustee's percentage of the fees, as well as using gross numbers leading to deviating results. Debtor's attorney also filed an Amended Attorney Compensation document on June 30, 2014 (Dckt. No. 21).

TRUSTEE'S REPLY TO DEBTOR'S RESPONSE

The Trustee agrees that the Debtor's Motion to Value the Secured Claim of Redwood Credit Union was granted at the hearing held on July 22, 2014.

On the issue of the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4), however, the Trustee still stands by the original objection. Debtor does not offer any explanation of what the correct liquidation analysis might be, but instead states that the Trustee is failing to account for the costs of sale and Trustee's fees, and using the wrong numbers. The Trustee requests that Debtor provide an accurate and complete analysis of what he believes to be the correct numbers. The Debtor has not provided a sufficient explanation of why Debtor believes that the Chapter 7 Liquidation calculation has been performed using incorrect figures by the Trustee, and how a deduction of Trustee's percentage of fees and the costs of sale would affect the liquidation analysis.

In addition, Debtor has overlooked the portion of Trustee's Objection regarding the adequate description of the Debtor's personal property on Schedule B, Dckt. No. 25, page 2. The Trustee requests that the Debtor resolve this issue.

With respect to the Trustee's objection regarding attorney fees, Debtor indicates that he has filed an "Amended Attorney Compensation" document on June 30, 2014, to address the Trustee's Objection as to the required attorney services under Local Bankruptcy Rule 2016-1(c). Dckt. No. 21. The Disclosure of Compensation of Attorney for Debtors-Amended, however, appears to be the same exact document, except for the signature date, as the original Disclosure of Compensation of Attorney for Debtors. Dckt. No. 1. This objection was not adequately addressed and the Trustee opposes the granting of attorney fees under Local Bankruptcy Rule 2016-1(c).

The Plan still 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.

46. 14-25275-E-13 DCP-1 — DEDRA RUSSELL, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-23-14 [28]

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition

presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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. At the hearing ----------.

The court's decision is to sustain the Objection.

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

1. Debtor is $125.00 delinquent in Plan payments to date, the next scheduled payment of $125.00 being due on July 25, 2014. The Debtor has paid nothing into the Plan to date.

2. Additionally, the Plan does not pay for any claims in Class 1, 2, 3, 4, 5, 6 or 7.

3. Debtor also failed to use the new official form B6I (Schedule I), which became available on December 1, 2013.

4. Debtor cannot make the payments under the Plan, and admitted at her 341 Meeting that she has additional undisclosed debts. She owes an auto lender and has tax debts owed to the IRS and Franchise Tax Board, which are not listed on her Schedules D and E, and not accounted for in the Plan.

5. Debtor's Plain fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $10,100.00 and the Debtor has failed to propose a dividend to general unsecured claims. Debtor has also failed to disclose all assets. At the 341 Meeting on July 17, 2014, she admitted that she has a 2000 Mercedes, which is not disclosed on Schedule B.

6. Debtor cannot make the payments required under her Plan. The Debtor's projected disposable monthly income listed on Schedule J is negative $1,130.00, but the Debtor proposes a plan payment of $125.00.

7. Furthermore, the Debtor has failed to provide proof of her Social Security Numbers to the Trustee to establish the Debtor's identity pursuant to the Trustees' request.

8. Debtor has failed to provide the Trustee with proof of income for the 60 days preceding filing of their bankruptcy. This is required 7 days before the date set for the first meeting. 11 U.S.C. § 512(e)(2)(A); Federal Rule of Bankruptcy Procedure 4002(b)(3).

9. 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).

10. Debtor has not filed tax returns during the 4-year period preceding the filing of the Petition. 11 U.S.C. §§ 1308 and 1325(a)(9).

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

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

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

47. 14-25376-E-13 AJP-1 — KEVIN/BREE SEARS — Douglas B. Jacobs — OBJECTION TO CONFIRMATION OF PLAN BY CORY ADAMS — 7-15-14 [37]

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

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

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

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

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

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

The court's decision is to sustain the Objection and deny confirmation of the proposed Chapter 13 Plan.

Creditor Cory Adams opposes confirmation of the Plan on the basis that Creditor finds the Debtor's budget for annual income tax payments of $1,600.00 per month not credible, given that Debtors have allegedly underestimated their tax payments in the Plan of their previous bankruptcy case.

Creditor argues that Debtors' debt profile has changed very little from the prior Chapter 13 case, except for an increase in the tax debt. A comparison of two of the Debtors' proposed plan in the prior Chapter 13 case, and this Plan, in this case is explored as follows: Class 1 Arrearage Dividend Class 2- BMW Class 5- FTB Class 5- IRS Class 7 - Unsecured Claims Monthly Plan Payment Total Plan Payments Description 1st Amended Plan 2nd Amended Plan 14-25376 Plan

The also Creditor appears to suggest that the plan payments of $6,087.00 a month is not sufficient to pay the priority tax claims to the Internal Revenue Service and Franchise Tax Board, and the 10% dividend for the general unsecured claims, but offers no analysis as to how the plan is not feasible. The Creditor then points out that Debtors' combined income, based on Debtors' scheduled combined gross income, less business expenses and the addition of Debtor-spouse's income as an independent contractor, is not believable.

Creditor points out that the Debtor-Husband's estimated gross income reported on the date of the first Chapter 13 case, May 23, 2013, was $10,948 less business expenses of $2,163. Later this was amended on October 21, 2013 to report gross revenues of $11,527 less the same business expenses. In the prior Chapter 13 case, the Creditor received the following answers to the Interrogatories propounded on Debtors:

> Interrogatory No. 1: Please state the gross revenues from the operation of the law practice during calendar year 2013.
>
> Answer: $210,933.32.
>
> Interrogatory No. 3: Please state the total amount of your business expenses, whether tax deductible or not tax deductible for calendar year 2013.
>
> Answer: $83,683.52.

In this case, the Debtor-Husband claims gross revenues of $15,362 which is $184,344 per year. Creditor states that this is a large discrepancy. In the prior case, Creditor sought a copy of the Debtors' 2013 Federal and State income tax returns but they were never produced. Creditor will be requesting copies of such returns as they may clear up this confusion.

The Debtors attach to their Schedule I filed on May 21, 2014, a schedule of business expenses totaling $6,575. In the prior Chapter 13 case, the Debtors attached a schedule of business expenses to their Schedule I, in the amount of $2,163. Creditor claims that there has been a significant increase in business expenses for items such as secretarial services, legal and referral fees, legal services, office equipment, and other items. Creditor states that he will be seeking production of the Debtor-Husband’s business records for the calendar years of 2013 and 2014.

Creditor also questions whether Debtor’s budgeting of $399 per month for estimated tax payments is adequate to cover income tax liabilities. In the previous case, Debtors produced their 2011 and 2012 income tax returns, which showed that annual income tax was significantly more than the Debtors had budgeted in their proposed Chapter 13 Plans in the prior case. Creditor claims that his concerns regarding the ability to pay these taxes were correct, because in this second Chapter 13 case, the Internal Revenue Service filed a Proof of Claim in the amount of $41,919, a component of which were income taxes for 2013 and in the amount of $27,810. Creditor now questions whether the current budgeting in Schedule I for income tax payments of $1,600 per month is adequate to cover anticipated taxes.

Creditor further suggests that Debtors surrender their BMW automobile, which it claims has no equity. The court in the previous case had made a suggestion that Debtors dispose of the BMW automobile and Debtors in their second Amended plan filed on April 28, 2014, indicate that they intended to turn in the BMW. The Debtors have two additional unencumbered vehicles, which Creditor argues should be sufficient for personal and business needs. An additional $213.00 per month to the Class 7 unsecured

creditors would yield about $12,780.00, which is an additional 17% return to Debtors.

DEBTOR'S RESPONSE TO CREDITOR'S OBJECTION

Debtor points out that Creditor's objections do not suggest any grounds why this Plan should not be confirmed, and that nothing in the Plan suggests that the Plan is not filed in good faith, isn't feasible or the Debtor's best efforts. Debtor has sent the requested 2013 tax return to Creditor. Dckt. No. 42.

SUPPLEMENTAL OBJECTION TO CONFIRMATION OF PLAN BY CORY ADAMS

Creditor, Cory Adams, supplements his objections filed July 15, 2014, to confirmation of the Debtors' Chapter 13 Plan ("Plan") filed May 21, 2014.

After filing the initial objection, the Creditor states that he obtained a copy of the Debtors' 2013 IRS Form 1040 income tax return and received a copy of bank statements for three accounts at Wells Fargo Bank titled in the name of the Debtor-Spouse, Bree Spears. A review of these documents requires the following supplemental objections:

I. DEBTOR-HUSBAND'S INCOME

The Debtor-Husband's Schedule C for his law office reports gross income of $198,547, expenses of $68,174 for a total profit of $130,373. The Schedule C gross income figure exceeds the Debtor's estimate of his gross revenues as of the petition date (May 21, 2014) by about $14,000, but is less than his report of gross revenues for calendar year 2013 in his unverified discovery, dated March 25, 2014, by about $12,000 (he reported, in those discovery responses, that his gross income for the year 2013 was $210,933.32).

Creditor wishes to remind the court that the Debtor-Husband's reporting of income on his Schedule I filed in the prior case on May 23, 2013 failed to correctly report the fact he had undertaken a contract to provide public defender services to the County of Butte as of February 1, 2013, four months prior to the first bankruptcy filing. Creditor states that his report of this income was not corrected until the amendment filed October 21, 2013 in the prior Chapter 13 case, some nine months after the commencement of his 7 employment with the County corrected the figure.

II. INCOME OF DEBTOR-SPOUSE

In the prior Chapter 13 case, the Debtor-Spouse reported income from wages or salaries in the gross amount of $1,800 per month less payroll tax deductions of $111 for the net monthly pay of $1,689. This reporting did not change throughout the prior Chapter 13 case.

Debtors' Schedule I indicated the Debtor-Spouse had begun working in January 2013. The Debtor's 2013 Form 1040 income tax return reports, on Line 7, total wages 14 and salaries of the Debtor-Spouse of $197. The Debtors' return included a Schedule C for the 15 Debtor-Spouse reporting

gross income of $24,603, expenses of $9,000 (of which $8,850 is vehicle expenses) and profit of $14,103.

The Creditor has reviewed the following bank statements at Wells Fargo Bank:

Account No.	**Title Holder**	**Statement Dates**
Ending 5975	Bree Sears Previously Bree Wise	10/18/2013 - 04/16/2014
Ending 9335	Bree Sears dba Fire Note Design	11/01/2013 - 04/30/2014 21
Ending 4356	Bree Sears dba Fire Note Design	11/01/2013 - 04/30/2014

It appears that Debtor-Spouse conducted business under a dba of "Fire Note Design". The Debtor-Spouse reports income on her Schedule I filed May 21, 2014 in the amount of $2,846 for wages, salaries or commissions. It now appears she is self-employed; however, there is no disclosure of a business for the Debtor-Spouse as required by Question 10 of the Statement of Financial Affairs.

The bank statements do reveal deposits in the range of $2,500 to $3,500 per month in the months immediately prior to the Chapter 13 filing on May 21, 2014. As noted in the Trustee's objections, the two Wells Fargo Bank dba bank accounts are not disclosed on the Debtors' Schedule B.

III. BUSINESS EXPENSES

As noted in Creditor’s objections, the Debtor-Husband reports business expenses 7 three times higher than reported in the prior Chapter 13 ($2,000.00 approximately, in 2013, B verses $6,000.00 approximately in 2014). Creditor states that Debtor-Husband's expenses reported on Schedule C of the 2013 tax return are difficult to reconcile with the expenses reported in this Chapter 13. Debtors’ Schedule C includes "commissions and fees" of $15,000; rent of "other business property" of $27,000 and "legal and professional services" of $8,185. Creditor has requested, but has not received, business records for the Debtor-Husband's business for the six months prior to the 13 petition in this Chapter 13 case.

IV. ESTIMATED INCOME TAX PAYMENTS

The Debtors' 2013 Form 1040 calculated tax of $27,981, none of which was paid during 2013. The IRS now has a priority claim for 2013 taxes in the amount of $27,810 in addition to priority claims for 2011 of $5,822 in 2012 18 of $7,286 for total priority debt of $41,918. Creditor points out that this priority debt must be satisfied before general unsecured claim holders receive any payment. Creditor asserts that Debtors’ failure to pay estimated tax during 2013 and continuing into 2014 created this bubble of priority claims.

V. GOOD FAITH

22 11 U.S.C. 1325(a)(7) requires that, in order to confirm a Chapter 13 Plan, the action of the debtor in filing the petition must be in good faith. Creditor questions the good faith of the Debtors in the following respects:

1. The income and expense reporting by both of the Debtors for their respective businesses remains confusing and unclear. Between this case and the prior case, there have been many different reports of gross income for the Debtor-Husband. For the Debtor-Spouse, she apparently was operating as an independent contractor for much of 2013 but never reported this fact in the prior Chapter 13 case.

Regarding the Debtor-Husband's business expenses, Debtors increased substantially from the prior Chapter 13 case reporting but Creditors have not received the 3 business financials to support the expense figures.

2. Creditor states that the Debtors have failed to make any estimated tax payments during all of 2013, and there is no evidence they have made any payments during 2014. This has created a significant priority tax claim that must be paid before general unsecured creditors will receive a dividend in the proposed Chapter 13 Plan.

Creditor argues that this course of conduct lacks good faith as the Debtors are required by law to make estimated quarterly tax payments on their self-employment 10 income.

3. Additionally, the court in its last tentative ruling of the previous Chapter 13 filing, suggested that the Debtors dispose of the BMW. The Debtors, in their last amended filing, in the 13 previously Chapter 13 case, informed the Court that they were turning in the BMW. However, the Debtors have now elected to retain their BMW automobile, despite the Creditor’s claim that the vehicle has no equity and they have two other vehicles that appear adequate for their transportation needs. Eliminating the monthly payment on this vehicle will substantially increase the return to unsecured creditors in the case.

In summary, the Creditor argues that the true level of income for both Debtor-Husband and Debtor-Spouse remains unclear, for multiple reasons. The Creditor asserts that the expenses claimed by the Debtor-Husband have risen sharply from the prior Chapter 13 reporting. Creditor also argues that the Debtor-Husband continues to be “unrealistic” in regards to the amount of estimated tax payments which must be made to keep priority tax debt from accruing. For these reasons, the Creditor requests that the court deny confirmation of the Debtors' proposed Chapter 13 Plan.

DISCUSSION

First, the court notes that the Debtors’ replies to both this creditor and to the Trustee’s Objection to Confirmation are two page arguments by Debtor's counsel – no declarations or other evidence has been presented by Debtors.

Second, a review of the docket shows that Debtors filed amended Schedules I and J on August 8, 2014. Dckt. 48. No explanation has been provided as to why these amendments have been made so soon after the filing of the original schedules, especially in light of the fact that Debtors are repeat filers (E.D. Cal. Bankr. Case No. 13-27044 filed May 23, 2013 and dismissed May 18, 2014 for failure to confirm a plan) and that Debtor Kevin Sears is a highly educated professional (lawyer).

Third, a review of Schedule I, as amended, states that both debtors receive wages and salary. Kevin Sears lists monthly gross wages, salary and commissions from Kevin Sears Attorney at Law in the amount of $11,527.00 per month and Bree Sears lists $2,846.00 per month from IT Support/Web Design (self employed). See Dckt. 48. Debtors have not disclosed a business for Debtor Bree Spears as required by Question 10 of the Statement of Financial Affairs. Furthermore, it does not appear either debtor has provided for withholdings.

Furthermore, it appears that both debtors are self-employed, and therefore not receiving "wages or salary." See Dckt. 48, Part 1. The court notes that on the amended Schedule I, income from real property or operation of business for Debtor Kevin Sears jumps to $3,835 from the original Schedule I amount of -$2,740. See Original Schedule I, Dckt. 1; Amended Schedule I, Dckt. 48. No explanation has been provided as to the nature of this drastic change. The court cannot reconcile the changes in expenses reported on the prior Schedule J and the amended Schedule J without an explanation from the Debtors.

Fourth, the court has computed a rough tax estimate as to Debtors, based on the figures provided in their schedules, starting with the Debtor's net income (subtracting business expenses) of $149,524. Without deducting for interest payments, property taxes or exemptions, the federal income tax would be approximately $29,000.00 and state income tax would be approximately $11,000.00. As Debtors are both self-employed, self-employment taxes (Social Security) and other applicable programs (such as disability) would also have to be accounted for. The court estimates that approximately $18,000 would be appropriate for self-employment tax. Debtors have only set aside $1,600 a month for taxes for a total of $19,200 per year. See Dckt. 48. The court computes that the Debtors would have to reduce their taxable income roughly by $50,000 for income taxes to total approximately $20,000 (the amount Debtors have accounted for). Furthermore, even if Debtors have $50,000 in deductions and exemptions, they are still short approximately $20,000 for the estimated self-employment tax.

The IRS priority claims for 2011 taxes in the amount of $5,822, for 2012 taxes in the amount of $7,286, and for 2013 taxes in the amount of $27,810 for a total priority debt of $41,918. Thus, it appears that just the federal taxes for the Debtors are running approximately $27,000.00 a year (which is higher than the court's snapshot) based on the 2013 taxes. There is no basis shown that a $1,600.00 set aside per month for taxes is credible.

Lastly, good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren,*

89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))). Here, Creditor has shown that Debtor has not proposed the plan in good faith, based on the failure to accurately report their income and expense for their respective businesses or provide an explanation of the drastic changes made, failure to provide sufficient tax withholdings or explain the figure provided for in the schedules, or provide any evidence in support of their responses.

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

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

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

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

IT IS ORDERED that the Objection is sustained and the proposed Chapter 13 plan is not confirmed.

48. 14-25376-E-13 KEVIN/BREE SEARS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Douglas B. Jacobs — 7-15-14 [33]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 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. At the hearing ----------.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that The Disclosure of Compensation of Attorney for Debtors appears to list in item 6 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 Attorney is effectively opting out of 2016(c)(1) and has objected to allowance of fees under that section, requiring the attorney to file a separate motion for attorney fees.

Furthermore, the Business Expenses document filed by the debtors only lists various business expenses without gross receipts as required on Schedule I line 81. Schedule J lists a $1,600.00 expense for income taxes, which Trustee believes is not a sufficient expense. Reviewing Debtors 2013 Tax Return and the proof of claim filed by the Internal Revenue Service, Trustee concludes that a more appropriate average monthly tax expense for 2013 appears to be $2,317.50. FN.1.

FN.1. Interestingly, on Schedule I Debtors list their business as losing ($2,740.00) a month. The court cannot identify any explanation as to why or how the Debtors should divert almost $3,000 a month to subsidize a money losing business, rather than having that additional disposable income paid to creditors. Schedule I, Dckt. 1. Without explanation, on Amended Schedule I the business flips to generating $3,835.00 a month profit. If Original Schedule contained such a gross error, no explanation is provided as to how the Debtors signed the Schedules stating under penalty of perjury that the information was true.

The Trustee has also requested separate profit and loss statements for each of the 6 months prior to filing the petition, as well as 6 months of copies of bank statements for all accounts, which Debtors have failed to provide.

Debtors may also fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors propose to pay unsecured creditors a 10% dividend. Debtors have additional bank accounts not listed on Schedule B. The Debtor's Business Case Questionnaires includes an additional US Bank account (#7542), and Mrs. Sears' questionnaire lists two Wells Fargo accounts not recorded on Schedule B. Debtor's refund of $15,427.88 from their prior bankruptcy case is also not listed on Schedule B.

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION

Debtors state they will file an amendment to the form 2016 before the hearing date to resolve the inconsistency between that form and the Rights and Responsibilities statement filed by Debtors.

Debtors also state that they have sent their profit and loss statements to the Trustee, as well as an explanation of their tax expense. Debtors contend they inadvertently failed to list all of their bank accounts on Schedule B and will amend the schedule before the hearing. FN.2.

FN.2. With sophisticated, repeat debtors such as these, there is little excuse that there are inaccurate schedules and assets are not disclosed. Schedules are filed under penalty of perjury. Bankruptcy is not a process in which there is a "hide and seek" game of assets with the Trustee, and the Debtors only having to be truthful and honest when they are caught in not disclosing assets.

Debtors believe that these amendments will cure all of the deficiencies pointed out by Trustee. It remains to be seen at the hearing whether the necessary amendments have been made.

Although Debtors' state that they have sent profit and loss statements to the Trustee, accompanied by an explanation of the tax provided, the Debtors have still not amended their schedules to include a tax refund that was listed in a previous case. Neither the Chapter 13 Trustee nor Debtor's counsel have filed anything on the docket, indicating that a breakdown of the tax refund was provided to the Trustee, or that an amendment to the district's Form 2016 was completed and filed before the date of this hearing.

The Debtors have not addressed corrected all of the Chapter 13 Trustee's areas of concern regarding the Debtors' proposed plan. The Debtors have not provided credible testimony as to why or how the substantial changes in statements under penalty of perjury occurred and occurred in good faith. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

49. 14-27179-E-13 MARK HECKERT **MOTION TO VALUE COLLATERAL OF**
CA-1 Michael David Croddy **BANK OF AMERICA, N.A.**
8-5-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Mark Heckert, "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 1544 Crystal Air Drive, South Lake Tahoe, California, "Property." Debtor seeks to value the Property at a fair market value of $445,825.00 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 $476,501.00. Creditor's second deed of trust secures a claim with a balance of approximately $153,324.23. 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 Mark Heckert, "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 1544 Crystal Air Drive, South Lake Tahoe, 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 $445,825.00 and is encumbered by senior liens securing claims in the amount of $476,501.00, which exceed the value of the Property which is subject to Creditor's lien.

50. 11-40390-E-13 GERARDO RAMOS **MOTION TO MODIFY PLAN**
BLG-4 Chad M. Johnson **7-2-14 [56]**

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 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 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 Debtor has added as a Class 1 claim that of Select Portfolio Servicing for an arrearage in the amount of $10,000. The proposed modified plan does not provide for the Class 1 current mortgage payment. Instead, it attempts to improperly bifurcate the payment into Class 4. FN.1.

FN.1. Given that counsel for Debtor regularly practices in the Eastern District of California and knows that under the required plan and Local Bankruptcy Rules a secured claim which is in default cannot be bifurcated between Classes 1 and 4, the proposed plan manifests an intention by the Debtor to try and fool the court, creditors, and the Trustee. This does not

manifest good faith in the prosecution of the case and this plan by the Debtor.

If such arrearage has arisen post-petition, it demonstrates that Debtor cannot perform the plan.

Finally, Specialized Loan Servicing, LLC is not a creditor in this case. Proof of Claim No. 10-1, while filed by Specialized Loan Servicing, LLC, specifically names U.S. Bank, N.A. as the creditor. (This appears to be a duplicate of Proof of Claim no. 9, which also states that U.S. Bank, N.A. is the creditor.

The alleged creditor has not filed a claim for post-petition arrears, and only a creditor has the ability to do so under 11 U.S.C. § 1305. Additionally, the Trustee is uncertain that the claim would qualify under 11 U.S.C. § 1305(a)(2). Per Proof of Claim No. 10-1, part 3, page 18 of 21, the mortgage note was dated on March 24, 2005, prior to the filing of the petition.

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.

51. 09-30096-E-13 CAROL DOYLE **MOTION TO SELL O.S.T.**
EJS-9 Eric John Schwab **8-5-14 [143]**

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 14 days' notice was provided.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property," real property commonly known as 7642 North Avenue, Tahoe Vista, California. The Debtor, Carol Doyle, is the Sole Trustee of the Doyle Family Trust, which owns the subject property.

The proposed purchasers of the Property are Ron Elvidge and/or Brian Mitchell, who have agreed upon a purchase price of $510,00.00. Upon completion of the sale, BSI Financial Services, Inc (holder of the first mortgage), and Wells Fargo Card Services (holder of the second mortgage) will release their

liens on the property. As stated in the Declaration of the Debtor (Dckt. No. 147), Carol Doyle, the breakdown of the sales contract is as follows:

A. Sales Price: $517,500.00

B. Settlement Charges to Seller: $36,703.97

C. Payoff of First Mortgage: $468,988.39

D. Payoff of First Mortgage: $468,988.39

E. Payoff of Second Mortgage: $10,000

F. Payoff to Placer County Tax Collector: $1,784.73

G. Estimated Settlement Charges: $37,551.81

H. Cash to Seller: $0.00

The real estate company handling this transaction for the buyer and the seller is Coldwell Banker Residential Brokerage. The point of contact for the buyer is Wade Holiday, BRE License No. 01331042. The point of contact for the seller is Tom Mills, BRE License No. 00756102. A copy of the proposed Residential Purchase Agreement and Joint Escrow Instructions. Exhibit A, Dckt. No. 146.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Carol Doyle the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Carol Doyle, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ron Elvidge and/or Brian Mitchell ("Buyer"), the Property commonly known as 7642 North Avenue, Tahoe Vista, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $510,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Purchase Agreement and Joint

Escrow Instructions, Dckt. No. 146, and as further provided in this Order.

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

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

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

5. The Chapter 13 Debtor is authorized to receive the $3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

52.	**14-26199-E-13 DPC-1**	**CHENG YENG AND LAURA SAEPHAN VANG Kristy A. Hernandez**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-23-14 [14]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney 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. At the hearing ----------.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan on the basis that Debtor's Plan does not provide for all of Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). The Debtor is below median income, Form 22C, Dckt. No. 1, Page 42.

On July 16, the Trustee received Debtor's state and federal tax returns for 2013, which total $5,600.00 in refunds. On Schedule I, Debtors report their average net income of $4,116.96 per month. If Debtors

contributed their tax refund into their household income at 1/12 per month, they would have an additional $466.67 of disposable income per month ($5,600/12=$466.67).

Additionally, Debtors deduct $179.44 each month for a Nordstrom's Employee Stock Purchase Plan on their Schedule I. The Trustee has not been able to confirm that this is an ERISA qualified retirement plan.

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

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

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