UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 1, 2015 at 3:00 p.m.

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1. 15-25102-E-13 LARRY/ROSEMARY CALKINS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Peter Macaluso — 8-5-15 [30]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on August 5, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the

Plan on the basis that:

1. The Debtor failed to appear at the First Meeting of Creditors held on July 30, 2015. The Meeting of Creditors has been continued to August 27, 2015.

2. Debtor's plan may not be their best efforts. Debtor's Schedule I indicates a gross income for Debtor Larry Calkins of $3,831.71 per month. A review of Debtor's pay advices indicates that Debtor receives annual and quarterly bonus income, overtime income, and incentive income, which is not disclosed on Schedule I.

   Debtor's pay advice dated December 31, 2014 indicates total year to date income of $59,174.41, which amounts to $4,931.20 per month. The pay advice lists "incentive" of $911.75, "overtime" $1,246.33, "sales contest" $131.77, "Valshare annual" $400.00, and "Valshare quarterly" $8,048.28.

   Debtor's pay advice dated June 18, 2015 indicates total year to date income of $27,107.79, which amounts to approximately $4,928.00 per month. The pay advice lists "overtime" $1,425.53, and "Valshare quarterly" $3,664.17.

The Trustee's objections are well-taken.

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

The Trustee's second objection deals with whether the plan, as proposed, is the Debtor's best efforts. Reviewing the Debtor's Schedule I, Debtor Larry Calkins states that he makes a gross income of $3,831.71. However, like the Trustee, the court's review of the pay advices indicate that this may be a gross underestimation of Debtor Larry Calkins' actual gross income. From the review of just the two advices discussed by the Trustee, there appears to be additional income in the form of overtime, bonuses, and others that all boost the Debtor's income. With such discrepancies in gross income, the court concurs with the Trustee that it does not appear that the plan is the Debtor's best efforts, when it appears that the Debtor is under-reporting their gross income by $1,096.29. Therefore, the objection is sustained

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.

2. 13-29907-E-13 SS-4 SYAMPHAI LIEMTHONGSAMOUT Scott Shumaker MOTION TO MODIFY PLAN 7-21-15 [90]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 court's decision is to grant the Motion to Confirm the Modified Plan.

Syamphai Liemthongsamout ("Debtor") filed the instant Motion to Confirm the Modified Plan on July 21, 2015. Dckt. 90.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 18, 2015. Dckt. 97. The Trustee objects on the following grounds:

1. The Debtor is delinquent in the amount of $1,451.00 under the terms of the proposed modified plan. According to the proposed

plan, the Debtor should have paid $35,074.00 through June 2015 into the plan. However, the Debtor has only paid $33,553.00.

2. The Debtor's plan fails the chapter 7 liquidation analysis. The Debtor's non-exempt equity totals $13,245.00 and the Debtor is proposing a 7% dividend to unsecured creditors, which will pay only $7,448.06 to unsecured claims. The Trustee argues that in order to past the analysis, the Debtor would need to propose a 13% dividend.

   The Trustee states that he acknowledges Debtor deposited non-exempt funds with the Trustee in the amount of $12,945.00 pursuant to court order (Dckt. 61). The funds were placed in a blocked account pursuant to that order.

3. The Debtor proposes to pay secured creditor Nationstar Company a monthly dividend of $7.43 per month in Class 1 of the plan. Monthly disbursement payments must normally be no less than $15.00 per month, under Fed. R. Bankr. P. 3010(b). Debtor also proposes to reduce the monthly dividend to JPMorgan Chase Bank, N.A. in Class 2 from $15.00 to $12.84. Section 6.03 states the debt is partially paid and the dividend is reduced accordingly. The Trustee notes this claim in the amount of $475.00 has bene paid in full.

DEBTOR'S REPLY

The Debtor filed a reply on August 25, 2015. Dckt. 100. The Debtor addresses the Trustee's objections in order as follows:

1. Debtor is now current on all plan payments. The Debtor further requests that in the order confirming that it is corrected to state that $25,074.00 has been paid through July 2015 rather than through June 2015.

2. The liquidation issues have been resolved by prior court orders. The Debtor requests that in the order confirming, the dividend to general unsecured creditors be corrected to 13%.

3. The Debtor concedes on this administrative issue. The Debtor agrees to a minimum monthly dividend of $15.00 to these creditors until paid in full and that it be corrected in the order confirming.

TRUSTEE'S WITHDRAWAL

The Trustee filed a Notice of Withdrawal on August 27, 2015. Dckt. 104. The Trustee states that the Debtor has provided a proposed order which resolves the Trustee's objections.

DISCUSSION

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

In light of the Debtor's response and the Trustee's withdrawal, the

plan complies with all relevant Bankruptcy Code sections. The Debtor proposes that the order confirming correct the following: (1) $25,074.00 has been paid through July 2015; (2) the dividend to general unsecured creditors be corrected to 13%; and (3) Nationstar Company and JPMorgan Chase Bank, N.A. claims shall receive a dividend of $15.00 until paid in full.

After the corrections stated supra, the modified Plan complies does comply 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 21, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the following: (1) $25,074.00 has been paid through July 2015; (2) the dividend to general unsecured creditors be corrected to 13%; and (3) Nationstar Company and JPMorgan Chase Bank, N.A. claims shall receive a dividend of $15.00 until paid in full. Counsel for Debtor shall 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.

3. 15-22811-E-13 DENNIS/KIM CAMPBELL
TJW-3 Timothy Walsh

MOTION TO VACATE DISMISSAL OF CASE
8-10-15 [65]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Order to Vacate Dismissal is continued to 10:00 a.m. on September 9, 2015.

Continuance of Hearing

Due to scheduling conflicts, the judge to whom this case is assigned continues the hearing to September 9, 2015. The court has posted a tentative ruling for the September 1, 2015 hearing to afford counsel and Debtors the opportunity to consider the issues presented to the court. In continuing the hearing, the court orders that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion

REVIEW OF MOTION

Dennis and Kim Campbell ("Debtor") filed the instant Motion for Order to Vacate Dismissal on August 10, 2015. Dckt. 65.

The instant case was filed on April 7, 2015 as a Chapter 13. Dckt. 1. On June 25, 2015, the court issued an order dismissing the case for the Debtor's failure to make plan payments. Dckt. 53.

The Debtor asserts that they attempted to make the plan payments by setting up the automated plan payment program. According to the Debtor, the Debtor created an account with "TFS" on May 28, 2015. The Debtor asserts that they followed the instructions and activated the account. The Debtor states that on July 23, 2015, the Debtor received an email which indicated that the account was suspended because the "bank support the count [sic] was being closed." Dckt. 68, Exhibit B.

The Debtor argues that the bank account at Patelco Credit union was never closed and that there was sufficient funds in the bank to fund the

payments for the months of May, June, and July 2015.

The Debtor asserts cause exists to vacate the dismissal because:

1. The Debtor did in fact attempt to make the payments, thought the payments were being made through the automated system provided by the trustee, and it is not the Debtor's fault that the payments did not go through as they had arranged.

2. Debtor have had and do have sufficient funds to pay the Trustee to date.

3. It would be a "gross miscarriage" to dismiss this case, when the fault was not that of the Debtor but of the automated system.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on August 25, 2015. Dckt. 74. The Trustee states that he does not oppose the Motion provided that the delinquent payments are made. The Trustee states it is unclear why Debtor's counsel did not appear at the Motion to Dismiss when both the Debtor and Debtor's counsel were served. Additionally, the Trustee state he is unsure when the Debtor made Debtor's counsel aware of the concerns the Debtor was encountering with the automated system.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of

equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

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

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

DISCUSSION

The crux of the Debtor's argument is that the Debtor's did not know that the automated system was not deducting plan payments from their account for the months of May, June, and July, and therefore, the dismissal should be vacated.

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

However, the Debtor neglects to discuss other factual circumstances that are necessary in determining whether vacating the dismissal is proper. First, the Chapter 13 Trustee filed his Motion to Dismiss on June 3, 2015 on a Local Bankr. R. 9014-1(f)(2), which does not require written opposition. Dckt. 34. The Debtor and Debtor's counsel were served the Motion. Dckt. 37. The sole ground for the Motion to Dismiss was the Debtor's delinquency. As a Local Bankr. R. 9014-1(f)(2) motion, the Debtor and Debtor's counsel were permitted to appear at the June 24, 2015 hearing to oppose the Motion, arguing that the automated system did not properly withdraw the plan payments. However, the Debtor nor Debtor's counsel appeared at the hearing, as evidenced by the court's civil minutes on the Motion. Dckt. 51. The court, the day prior to the hearing, the court posted its pre-hearing tentative decisions, in which the Debtor and Debtor's counsel had the opportunity to review. Even in light of all the notice provided concerning the Motion to Dismiss, the Debtor did not respond nor did the Debtor or Debtor's counsel appear at the hearing.

The court has made it abundantly clear in the past that it is imperative for parties to respond to motions, especially motions to dismiss, either through written opposition if an Local Bankr. R. 9014-1(f)(1) motion or

in person if an Local Bankr. R. 9014-1(f)(2) motion.

Second, the Motion to Vacate does not provide a single, legal ground to justify vacating the dismissal. The sole ground argued by the Debtor in the motion is that it would be a "gross miscarriage to dismiss this case." the Debtor does not provide a points and authorities cite Fed. R. Civ. P. 60(b) as the legal grounds nor presents any allegations that would fit into any of the subsections of Fed. R. Civ. P. 60(b). The Motion, on its face, does not comply with Fed. R. Bankr. P. 9013, requiring that the motion state with particularity the grounds for relief. The Debtor, instead, merely "passes the buck" to the automated system as being the culprit.

The proposed amended plan filed on June 3, 2014 (the same day the Motion to Dismiss was filed) provides for plan payments of $2,865.00 for the first month then $3,450.00 beginning June 2015 for 59 months. Dckt. 39. Prior to the dismissal, the May plan payment of $2,865.00 came due which was the basis of the Trustee's Motion to Dismiss. While professing the non-payment not being Debtor's "fault," neither in the Motion nor Debtor's declaration is any explanation given for why and how Debtor did not notice that there was an "extra" $3,000.00 in the bank accounts.

Third, Debtor does not state why two months after the dismissal, the Debtor is now just bringing the Motion to Dismiss. The court has no idea of what has transpired in the two months which have passed since the this bankruptcy case was dismissed. If a new case was filed, such transactions and other dealings would have to be disclosed. If the court were to merely vacate the dismissal after Debtor has operated outside the strictures of bankruptcy and the fiduciary duties to the estate of a Chapter 13 debtor, then there is no established procedure for such transactions and dealings to be disclosed.

Fourth, Debtor faces no shown prejudice by filing a new bankruptcy case. At the time of dismissal, only one plan payment had come due and only two months had passed since the filing of that bankruptcy case. Upon learning of the dismissal by the end of June 2015 (the notice of dismissal having been served on June 26, 2015, Dckt. 26), Debtor could have immediately filed a new bankruptcy case and obtain a continuation of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). By the middle of July Debtor would be prosecuting the second bankruptcy case in good faith, safe in the knowledge that the automatic stay would continue in effect. But Debtor chose not to so act, waiting until August 10, 2015, to file the present Motion, which would not be heard until September 1, 2015.

On whole, this neglect is minimal justification at best, and minimized by the lack of opposition to the initial Motion to Dismiss which was within Movant's control to cure. *Sobhani v. United States*, 2015 U.S. Dist. LEXIS 68631, *7-8 (Cal. C.D., May 27, 2015) (citing *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000)). Thus, this factor weighs heavily against granting relief.

Though Debtor has chosen to delay, a new bankruptcy case may be filed with little, if any, prejudice to Debtor. Any delay has been caused by Debtor choosing not to respond to the motion to dismiss or take action to avoid a two month hiatus in this case. It is significant that no evidence of any temporary impairment for either Debtor or counsel, or both, which rendered an inability to respond to the motion to dismiss or take immediate action to have the

dismissal vacated. This creates the appearance that the delay of two months is part of a preconceived strategy by Debtor. *See Sobhani*, 2015 U.S. Dist. LEXIS 68631, *6-7 (Cal. C.D. 2015) (citing *Bateman*, 231 F.3d 1220, 1225 (9th Cir. 2000)).

Even generously reviewing this Motion, a party may find relief under the "catch-all" provision of 60(b)(6), incorporated through Fed. R. Bankr. P. 9024, if there are "extraordinary circumstances. It should be applied "sparingly as an equitable remedy to prevent manifest injustice." *Stan Lee Media, Inc. v. Conan Sales Co. LLC*, 546 Fed. Appx. 725, 728 (9th Cir. 2013). It should be invoked where "extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. *Crawford v. Franklin Credit Mgmt.*, 08 Civ. 6293 (JFK), 2013 U.S. Dist. LEXIS 84477, *6-7 (N.Y.S.D. 2013). Here, Movant's allegation that denial would be a "gross miscarriage" is not convincing as Debtor and Debtor's attorney failed to take the minimal effort and oppose the Motion to Dismiss at the June 3 hearing. Dckt. 51. Therefore, this court will not grant relief for faultless delay.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 10:00 a.m. on September 1, 2015. No additional, supplemental, or other pleadings, evidence, or other documents shall be filed in connection with this Motion without prior leave of the court, for cause shown.

4. 15-26213-E-13 LEILANI NOVAL — MOTION TO EXTEND AUTOMATIC STAY
RWH-1 Ronald Holland — 8-7-15 [8]

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.

Adequate Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2015. By the court's calculation, 25 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.

Leilani Clavino Noval ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-25431) was dismissed on July 27, 2015, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 15-25431, Dckt. 13, July 9, 2015. 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.

WAIVER OF INSUFFICIENT SERVICE ON THE IRS

Local Bankruptcy Rule 2002-1 provides that notices and process in

adversary proceedings and contested matters to be 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 Fed. R. Bankr. P. 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:

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

The proof of service states that the address used for service is 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. However, due to the unusual circumstances of this case, this defect will be waived by the court.

Therefore, due to the failure to properly notice the Internal Revenue Service, the Motion could be denied without prejudice.

Notwithstanding the defect in service on the Internal Revenue Service, the court notes that a significant number of other creditors have received notice. Cert. of Service, Dckt. 12. In addition to providing for payment of the priority unsecured claim of the Internal Revenue Service, Debtor seeks to cure a substantial arrearage on her home. Proposed Plan, Dckt. 14. It appears that *bona fide* reasons for the Chapter 13 case, other than merely deterring the Internal Revenue Service exist, for the prosecution of the case.

The court waives the defect in service.

REVIEW OF MOTION

Leilani Clavino Noval ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-25431) was dismissed on July 27, 2015, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 15-25431, Dckt. 13, July 9, 2015. 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. The initial plan was filed to keep Debtor's family home. Dckt. 10, ¶ 6. Debtor asserts the prior case was dismissed because Debtor was not represented by counsel and filed her prior petition *pro se.* Dckt. 8, ¶ 7. Debtor was not able to formulate a plan that would meet the confirmation standards of chapter 13. *Id.* at ¶ 8. Debtor asserts she has met and fulfilled all of her duties and obligations and fully intends to complete her responsibilities with her counsel's assistance. Dckt. 10, ¶ 4.

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.
>
> No other or additional relief is granted.

5. 11-31314-E-13 EDWARD/TIFFANY LOVERIDGE MOTION TO MODIFY PLAN
SJS-2 Scott Johnson 7-23-15 [52]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 40 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 creditors. The Trustee withdrew his objection to confirmation in light of the Debtor curing their delinquency. Dckt. 61. 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 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

6. 14-21319-E-13 MARK/SARAH ANN HANSEN — MOTION TO CONFIRM PLAN
BB-7 Bonnie Baker — 7-10-15 [138]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

Mark and Sarah Ann Hansen filed the instant Motion to Confirm the Amended Plan on July 10, 2015. Dckt. 138.

TRUSTEE'S OPPOSITION TO MOTION (MISSTATED AS "OBJECTION TO CONFIRMATION")

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on August 14, 2015. Dckt. 152. The Trustee opposes on the following grounds:

1. The Additional Provisions of the proposed plan has incorrect

payment dates. The Additional Provisions state the following:

a. "The Debtors have paid the Trustee a total of $66,510.00 through June 2015."

b. "Commencing January 2014, the Debtors shall continue making payments to the Trustee in the amount of $3,909.00 through February 2015"

   i. The Trustee assumes the Debtor is proposing payments of $3,909.00 for months 17 through 24 (July 2015 through February 2016).

c. "Commencing March 2015, the Debtors shall continue making payments to the Trustee in the amount of $4,815.00 through February 2017,"

   i. The Trustee assumes that the Debtor is proposing payments of $4,815.00 for months 25 through 36 (March 2016 through February 2017).

d. "Commencing March 2017 for the remaining 24 months of the plan term, the Debtor's shall pay the Trustee $6,410.00."

2. The proposed plan fails the Chapter 7 liquidation analysis. Debtor Mark Hansen states that he is no longer working with Terry Hansen and is suing him for withheld money due M&M Communications for in excess of $350,000.00. The Debtor has failed to list this asset on Schedule B and exempt any on Schedule C. The Debtor is proposing a 0% dividend to general unsecured. Additionally, the Debtor's amended Schedules B and C (Dckt. 124) added a personal injury suit in anticipation of cross complaint by defendant in the Lance Hansen personal injury case. The Debtor lists the value of the asset as "unknown" and exempted 100% of the asset on Schedule C pursuant to California Code of Civil Procedure § 703.140(b)(11)(D) and (E). The Trustee objected to this exemption, which was sustained.

3. The Debtor as failed to provide the Trustee any with written consent from the Internal Revenue Service of the installment agreement concerning THE POST=PETITION PAYROLL DEBT. The Debtor lists an expense on amended Schedule J for $3,000.00 to pay the Internal Revenue Service for payroll taxes for 2014 and 2015. The Debtor also lists an expense of $400.00 and $600.00 for personal income taxes for 2014 and 2015. The Trustee is uncertain if these amounts are sufficient.

4. The Debtor's plan is not the Debtor's best efforts. The Debtor is over the median income and proposes plan payments of $66,510 current through June 2015 (16 months); then $3,909.00 for 8 months; then $4,815.00 for 12 months, then $6,410.00 for 24 months, with a 0% dividend to unsecured creditors.

The Debtor's Profit and Loss Statement of M&M Hansen

Communications reflects an expense of $5,636.78 for bank service charges. This expense does not appear to be reasonable and necessary for the maintenance and support of the Debtor or the Debtor's dependents.

The Debtor filed an amended Scheudle J and made the following changes without detailed information explaining the reason for the changes:

Expense	Original Amount	Supplemental Amount	Difference
Home maintenance, repair, upkeep	$50.00	$833.00	$738.00
Electricity, heat, natural gas	$69.00	$348.00	$279.00
Telephone, Internet, cable, etc	$89.00	$215.00	$126.00
Food and Housekeeping supplies	$500.00	$1,200.00	$700.00
Clothing	$25.00	$142.00	$117.00
Personal Care Products and Services	$50.00	$150.00	$100.00
Medical and Dental Expenses	$50.00	$300.00	$250.00
Transportation Expense	$150.00	$753.00	$603.00
Entertainment Expense	$50.00	$150.00	$100.00
Charity Expense	$35.00	$235.00	$200.00
Internal Revenue Service Expense	$0.00	$4,000.00	$4,000.00
Un-Reimbursed Rental for Son's Medical Services	$1,530.00	$2,590.00	$1,060.00

The Debtor's Declaration states that they have increased their expenses for the son's assistance which required help from the Debtor's other son and daughter, causing the need for financial reimbursement.

The Debtor's monthly net income on amended Schedule J reflects $4,815.00, which is what the Debtor is proposing to pay beginning March 2016 through February 2017. The Debtor is currently making plan payments of $3,909.00, which is $906.00 less than the Debtor's monthly net income. The debtor is not proposing to pay all his monthly net disposable income into the plan. The Debtor is proposing a 0% to unsecured creditors. The

total amount of filed unsecured claims total $14,466.75. The bar date passed on August 12, 2014.

5. The Debtor cannot make the payments required. The Debtor is proposing to increase the plan payment from $4,815.00 to $6,410.00 (increase of $1,595.00) beginning March 2017, the Debtor fails to indicate how the Debtor will have the ability to increase the plan payment at this time. The Debtor's motion does indicate that the Debtor's son is expected to get an award from his personal injury lawsuit in 2016 or 2017 and based on this, their expenses will decrease, however this does not indicate how the Debtor came up with the plan payment amount of $6,410.00.

ALTEC INDUSTRIES, INC.'S OPPOSITION

Altec Industries, Inc. ("Creditor")_ filed a "joinder" to the Trustee's Opposition on August 26, 2015. Dckt. 162. The Creditor states:

> The legal ground set forth by the Trustee in his moving papers apply equally to [Creditor]. This joinder is further based upon the pleadings and files of this action and upon such further oral and documentary evidence as may be presented at the time of the hearing. [Creditor] intends to proceed with its objection to Debtors' motion to confirm fifth amended plan even if Trustee or any other joining party withdraws their objection for any reason.

DISCUSSION

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

Beginning with the Trustee's second objection, the Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has supplied insufficient information relating to the personal injury law suit, to assist the Trustee in determining the value of the asset. Debtor fails to report the amount of the suit and attempted to fully exempt the amount. However, the court sustained the Trustee's Objection to Exemptions as to this lawsuit. With an unknown value of the lawsuit asset and with no exemptions being claimed, the Debtor does not appear to pass the liquidation analysis.

As to the Trustee's third objection, the failure of the Debtor to file any consent of the Internal Revenue Service as to the installment payments raises concerns over whether the plan is feasible when the Additional Provisions explicitly relies on such agreement. Without there being evidence of this installment agreement, the plan cannot be confirmed.

The Trustee's fourth objection concerns the failure of the Debtor to explain the dramatic increase in expenses coupled with the failure of the Debtor to provide the full amount of their disposable income. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan proposes to pay a 0% dividend to unsecured claims, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $4,815.00. Thus, the court may not approve the plan.

The Trustee's fifth objection is over the fact that the Debtor fails to provide evidence that they will be able to afford the step up plan payment beginning March 2017 from $4,815.00 to $6,410.00. While the Debtor notes that they expect an award in the personal injury law suit and that their expenses will decrease, there is no explanation or evidence that the $1,595.00 increase is actually feasible. Therefore, the objection is sustained.

As to the Trustee's first objection, while the incorrect dates listed in the Additional Provisions may just be a scrivener's error, the remaining objections by the Trustee are all concerning to the court and independent grounds to deny confirmation.

As an aside, the Creditor's "joinder" is not a procedure authorized by the Federal Rules of Civil Procedure, Federal Rule of Bankruptcy Procedure, or the Local Rules of Bankruptcy Procedure. If the Creditor wishes to oppose the motion to confirm the plan, then Creditor can file an opposition to the motion. For purposes of the present hearing, the court interprets this Creditor's Opposition as merely a statement that the Creditor supports the Trustee, but has not stated an Opposition of its own.

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.

7. 15-26319-E-13 VIRGINIA PAYTON — MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella — 8-15-15 [10]

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, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2015. By the court's calculation, 17 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.

Virginia Payton ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 11-42715) was dismissed on June 10, 2015, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 11-42715, Dckt. 92, June 10, 2015. 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 her long-term boarder who pays rent to Debtor lost his job and could not pay rent for several months. Dckt. 10, ¶ 4. Debtor's boarder now has a new job. *Id.* Debtor filed the previous plan to save her family home, where she lives with her elderly mother. *Id.*

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.

No other or additional relief is granted.

8. 15-23622-E-13 DANIEL/ADRIANA NEVES MOTION TO CONFIRM PLAN
ADR-1 Justin Kuney 7-16-15 [20]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. 10-34827-E-13 DEWAIN/BARBARA CALLAWAY
PLG-2 Frank Ruggier

MOTION FOR WAIVER OF DEBTOR'S REQUIREMENT TO COMPLETE SECTION 1328 CERTIFICATE AND CERTIFICATE OF CHAPTER 13 DEBTOR REGARDING SECTION 522 EXEMPTIONS AND/OR MOTION FOR ENTRY OF DEBTORS' DISCHARGE
7-27-15 [54]

Tentative Ruling: The Motion to Obtain Discharge and Waiver of Debtor's Requirement to Complete Debtor's 11 U.S.C. § 1328 Certificate and Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Obtain Discharge and Waiver of Debtor's Requirement to Complete Debtor's 11 U.S.C. § 1328 Certificate and Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

Motion to Obtain Discharge and Waiver of Debtor's Requirement to Complete Debtor's 11 U.S.C. § 1328 Certificate and Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions is denied without prejudice.

Joint Debtor, Barbara Jean Callaway, seeks an order for the following: (1) waiving Debtor's requirement to complete Debtor's 11 U.S.C. § 1328 Certificate and certificate of Chapter 13 Debtor regarding 11 U.S.C. § 522(q) exemptions and (2) directing the Clerk of the court to enter a discharge in the case. FN.1.

FN.1. The Motion requests that the court issue an order granting a discharge. However, this is improper under Local Bankr. R. 1016-1 as it is not one of the reliefs permitted to be requested in a single Motion. The granting of the Discharge is governed by the procedure in Local Bankruptcy Rule 5009-1. The requirements of that Rule are not bypassed by Local Bankruptcy Rule 9016-1 and Federal Rule of Civil Procedure 18 has not been incorporated into allowing the joinder of discharge relief into the relief which may be combined in one motion pursuant to Local Bankruptcy Rule 1061-1(b). Therefore, the Debtor's request for the entry of discharge is denied without prejudice.

The Debtor filed for relief under Chapter 13 on June 4, 2010. On August 17, 2010, the Debtor's Chapter 13 Plan was confirmed. Dckt. 30. On December 12, 2014, Debtor Dewain Henry Callaway passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Unfortunately, before the court can rule on the waiver of the 11 U.S.C. § 1328 Certificate and 11 U.S.C. § 522(q) Certificate, Debtor Barbara Jean Callaway needs to have been authorized and substituted in for the deceased debtor. Here, Debtor Debtor Barbara Jean Callaway does not request such pursuant to Fed. R. Bankr. P. 1004.1. Before the court can determine the relief requested in the instant Motion, the Debtor must be substituted in as the personal representative of the Debtor. A review of the docket reveals that no such order has been entered. Without such an order, the court cannot determine if, pursuant to Fed. R. Bankr. P. 1016, further administration is possible. FN.2.

FN.2. The court notes that Debtor's counsel should review the Local Bankruptcy Rules, namely Local Bankr. R. 1016-1, for the proper motion practice for substituting in a personal representative of a deceased representative and the proper pleading practice for waiver of the 11 U.S.C. § 1328 Certificate.

Though the court is denying the Motion without prejudice, in any future motion the personal representative must show grounds for the court to waive the required certifications under 11 U.S.C. §§ 1328 and 522(q). The court does not see why the personal representative cannot, and should not, provide certification that:(1) all payments required under a domestic support order have been made or payments were not required, and (2) that the exemptions claimed by the deceased Debtor are not in excess of the amount permitted.

Therefore, this Motion is denied without prejudice.

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

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

> The Motion to Obtain Discharge and Waiver of Debtor's Requirement to Complete Debtor's 11 U.S.C. § 1328 Certificate and Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

10. 15-22433-E-13 INVINCE/ELIZABETH BAYLON MOTION TO CONFIRM PLAN
SNM-1 Stephen Murphy 7-9-15 [25]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

11. 09-44339-E-13 GLEN PADAYACHEE
PLC-16 Peter Cianchetta
MOTION FOR CONTEMPT
7-28-15 [213]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

The court has by order continued the matter to September 22, 2015 at 3:00 p.m. (Dckt. 220).

12. 12-23340-E-13 DERRICK RISKE
DPC-1 Mark Briden
MOTION TO MODIFY PLAN
7-17-15 [44]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 trustee to modify a plan after confirmation. David Cusick, the Chapter 13 Trustee, filed the instant Motion to Modify the Plan. Dckt. 44. The Trustee states that the Debtor has received an inheritance that has nether been scheduled nor exempted, and that the Chapter 13 Trustee

seeks to modify the plan to call for a portion of these proceeds to be paid into the plan to pay creditors with allowed claims in full.

The Trustee proposes to change the terms of the plan to reflect that the plan payments shall be: $100.00 per month for the first 41 months then a lump sum payment of approximately $49,7000.00 in month 42. Additionally the Trustee seeks to raise the 7% to unsecured to not less than 100%.

The Chapter 13 Trustee has filed evidence in support of confirmation. No opposition to the Motion was filed by the Debtor 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 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, Debtor's Chapter 13 Plan filed on July 17, 2015 is confirmed. Counsel for the Trustee shall prepare and lodge with the court the proposed order confirming the Modified Chapter 13 Plan.

13. 15-25142-E-13 VICTOR IBARRA **OBJECTION TO CONFIRMATION OF**
DPC-1 Matthew Eason **PLAN BY DAVID P. CUSICK**
7-31-15 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on July 31, 2015. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan is not the Debtor's best efforts because it does not provide for all of the Debtor's disposable income. The Debtor is a below median income debtor and proposes a 60 month plan paying $1,585.35 per month with no guaranteed dividend to unsecured claims. Debtor's monthly net income on Schedule J totals $2,687.80. Debtor's proposed monthly plan payments are $1,585.35.

2. Debtor's plan relies on the Motion to Value Collateral of

"Chase". (Which motion has been denied without prejudice.)

3. The Debtor is $1,585.35 delinquent in plan payments. Debtor has paid $0.00 into the plan to date.

4. The Trustee is unable to determine whether the Debtor proposes to pay attorney fees in accordance with Local Bankr. R. 2016-1(c) or whether counsel will be filing separate motion for attorney fees. The Debtor failed to select a box on the plan form.

The Trustee's objections are well-taken.

As to the Trustee's first objection, it appears that the Debtor is not providing for all of his disposable income into the plan as required by 11 U.S.C. § 1325(b). The Debtor is proposing a 0% dividend to unsecured creditors when the Debtor is only providing for $1,585.35 per month in plan payments. According to the Debtor's Schedule J, the Debtor has disposable income of $2,687.00. If the Debtor committed his full disposable income as required by the Code, unsecured creditors would be paid 100% of their claim. The Debtor has not explained how or why the Debtor is not committing his full disposable income. Therefore, the objection is sustained.

As to the Trustee's second objection, a review of the Debtor's plan shows that it relies on the court valuing the secured claim of "Chase". However, the court denied the Motion to Value the Collateral of "Chase" because it was an unidentifiable creditor. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

The basis for the Trustee's third objection is that the Debtor is $1,585.35 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). Therefore, the objection is sustained.

Lastly, the Trustee objects that the Debtor's plan fails to indicate how attorney's fees should be paid. While this appears to be a mere scrivener's error which could be corrected in the order confirming, in light of the court sustaining the Trustee's first and third objection, this objection is also sustained.

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

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

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

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

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

14. 15-25142-E-13 VICTOR IBARRA — **MOTION TO VALUE COLLATERAL OF CHASE**
ET-1 Matthew Eason — **7-23-15 [19]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Creditors on July 23, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of "Chase", ("Creditor") is denied without prejudice.

The Motion filed by Victor Manuel Alvarez Ibarra, ("Debtor,") to value the secured claim of "Chase", ("Creditor,") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Nissan Murano SL, ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,950.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). FN.1.

FN.1. The court emphasizes that an owner's valuation of his/her property is presumptively valid, which allows this motion to survive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Counsel may introduce outside sources to corroborate that valuation, such as Kelley Blue Book, but those admissions must be authenticated and fall under a relevant hearsay exception for it to be admissible. *See* Fed. R. Evid. 901, 902 (authentication); *see* Fed. R. Evid. 802, 803 (hearsay). Here, the Debtor references the Kelly Blue Book Valuation without properly authenticating the valuation. The court, therefore, uses the value provided by the Debtor in his schedules.

Debtor seeks to value the collateral of "Chase." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

The court notes that in reviewing the following web sites maintained by governmental entities which are commonly used to identify creditors, their addresses, and agents for service of process, the following entities have the words "[name of creditor in motion]" in their names:

A. FDIC:
https://research.fdic.gov/bankfind/results.html?name=Chase&fdic=&address=&city=&state=&zip=

1. A total of 61 entries when searching "Chase"

B. California Secretary of State: http://kepler.sos.ca.gov/

1. A total of 772 entries when searching "Chase" for Corporation Name

2. A total of 402 entries when searching "Chase" for Limited Liability Company/Limited Partnership Name

If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

Therefore, the Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Victor Manuel Alvarez Ibarra, ("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.

15. 10-33944-E-13 ALAN/JILL MORI — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
DPC-2 Scott Coben — 7-16-15 [141]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

Local Rule 3007-1 Objection to Notice of Mortgage Payment Change - Hearing Required.

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, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 47 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 Notice of Mortgage Payment Change 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 Mortgage Payment Change is continued to 3:00 p.m. on October 6, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Mortgage Payment Changes on July 16, 2015. Dckt. 141. The Trustee objects to Wells Fargo Bank, N.A. ("Creditor") Notice of Mortgage Payment Changes filed on April 9, 2015 and June 8, 2015.

Alan and Jill Mori ("Debtor") are in the 53rd month of their 60 month plan. The plan was filed on October 5, 2011 and the only creditor provided to receive further disbursements is the Creditor for the mortgage. Under the confirmed plan, Wells Fargo Home Mortgage is classified as a Class 1 claim with monthly contract installment payments of $1,900.00. The plan provides that if the loan modification is declined, the claim including any arrearages of Wells Fargo Home Mortgage shall be satisfied by the way of surrender of the property

(which is Class 3 treatment under the confirmed Plan), with the qualification that entry of the order confirming the plan shall not modify the automatic stay (as it would normally for Class 3 claims).

The Trustee states that he has disbursed $85,500.00 in mortgage payments. The Trustee states that it is unclear if the Creditor has declined the loan modification. No Motion to Approve Loan Modification pursuant to the additional provisions of the plan has been filed. The Trustee objects to the Notice of Mortgage payment Change to determine if the loan modification has been declined and the property is now surrendered.

The Trustee states that the Sacramento County Property Tax claim had been paid in full, as evidenced by the letter from the County of Sacramento and the returned disbursement of $3,513.99 sent by the Trustee. Dckt. 144, Exhibit 3.

The Trustee asserts, that in the alternative, that if the Creditor orr Debtor assert that the first objection is not valid to the notice of Mortgage Payment change, the Trustee objects to the changes beause they appear to be based on an unexplained entry in the first Notice of Change, filed on April 9, 2015 where the actual physical payments posted in one month to the escrow total $54,200.75 for October 2014. The Trustee's payments to the Creditor totaled $66,500.00 through the end of October and $64,600.00 through the beginning of October 2014.

Creditor's Claim

Creditor filed a Proof of Claim No. 8 asserting a secured claim of $550,000.00 and claimed no arrears. The attached papers to the Proof of Claim reflect an initial interest rate of 5.250% and interest only payments of $2,406.25 until August 1, 2012 when the first principal and interest payment were due.

Debtor filed Current Income and Expenditures (Dckt. 126) where the Debtor's expenses do not indicate whether taxes and insurance are included in their mortgage payment but budget $25.00 monthly for insurance and $0.00 for taxes.

Creditor filed a notice of Mortgage Payment change on April 9, 2015 reflecting a mortgage payment effective May 1, 2015 of $2,552.14 ($2,726.00 principal and/or interest, $74.53 escrow, and $51.61 escrow shortage). The Escrow Account Disclosure Statement attached to the Notice of Mortgage Payment Change reflects a $619.27 escrow shortage and states Debtor's current principal and/or interest payment is $2,406.25 and the escrow payment is $0.02.

The Trustee states that the account history from April 2014 to December 2014 indicates there was an escrow balance as of April 2014 in the amount of -<$48,148.08> and an actual payment to escrow in October 2014 in the amount of $54,200.75. The actual escrow balance as of December 2014 is depicted as $2,702.90.

Based on the April 2015 Notice, the Creditor either entered in a loan modification with the Debtor about October 2014 or failed to properly credit payments received from the Trustee prior to that date.

The Trustee objects to the Notice in an attempt to resolve the amount of the mortgage payment, where filed unsecured claims have been paid the minimum percentage called for by the plan and before the Trustee pays a higher dividend to general unsecured claims as allowed under the plan.

DEBTOR'S RESPONSE

The Debtor filed a response on August 18, 2015. Dckt. 147. The Debtor responds by stating that Debtor's counsel requires additional time to meet with the Debtor and determine the status of the mortgage and determine what is needed to ensure that the case can proceed to discharge.

CREDITOR'S OPPOSITION

The Creditor filed on opposition to the instant Objection on August 18, 2015. Dckt. 149. FN.1. First, the Creditor states that the Debtor's loan modification application was denied on June 3, 2013. The Creditor asserts that its reading of the Additional Provisions is that if the loan modification is denied, the Debtor will amend their plan to provide for a surrender of the property.

FN.1. The court notes that the Opposition states that the Creditor's attorneys are from the firm of Pite Duncan, LLP in the upper right hand corner of the pleading. However, Pite Duncan, LLP has merged with another firm to become "Aldridge Pite, LLP." While the correct firm name is listed at the signature page, pursuant to Local Bankr. R. 2017-1(b)(2)(B), the correct name must be present in the upper left hand corner. The court waives this defect for the instant objection in light of the recent merger but counsel shall be more cognizant in the future, as such simple mistakes diminish the credibility of the substance of the pleading.

Additionally, the Creditor states that the Trustee has disbursed a total of $85,500.00 to the Creditor. The Creditor states that the first post-petition payment was received on November 30, 2011. The Creditor argues that the payment was held in suspense as it was not sufficient to complete a full payment. Once sufficient funds were received by the Trustee, those funds were applied to first post-petition payment date of June 1, 2010. The Creditor asserts that the post petition payments due are as follows:

Number of Payments	From	To	Monthly Payment	Total Payments
59	6/1/2010	4/1/2015	$2,406.25	$141,968.75
3	5/1/2015	7/1/2015	$3,552.14	$10,656.42
1	8/1/2015	8/1/2015	$3,583.14	$3,583.14
			TOTAL	$152,208.31

The Creditor states that, after the Trustee's disbursement, the Debtor remains $70,708.31 in post-petition defaults.

The Creditor states that upon initial review of the escrow statement, it appears that Creditor has been maintaining post-petition payments on taxes and insurance. The Creditor asserts that its counsel is looking into this matter and plans to supplement its opposition to address what escrow payments were made and when they were made. The Creditor states that it plans to work with the Trustee to address the concerns.

The Creditor requests either that the Objection is overruled or continued to address the issues raised by the Trustee.

DISCUSSION

A review of the confirmed plan states in the additional provisions:

> "The claim including any arrearages of WELLS FARGO HOME MORTGAGE shall be satisfied by way of a loan modification. **Should the loan modification be declined**, **the claim** including any arrearages of WELLS FARGO HOME MORTGAGE **shall be satisfied by way of surrender of the property**. Entry of the order confirming the plan shall not modify the automatic stay."

Dckt. 127 [emphasis added]. The term "surrender" is a term of art defined by the confirmed Chapter 13 Plan itself – the Class 3 treatment. This additional provision recognizes that treatment, and adds the modification of that to the Class 3 treatment deleting the termination of the automatic stay.

Under the terms of the confirmed plan, the Debtor was making a plan payment of $2,200.00 per month, with $1,900.00 going to Wells Fargo Home Mortgage as the "monthly contract installment" even though the amount was less than the actual contractual payment amount.

The court's reading of the Additional Provision concerning the Creditor's lien is that when the loan modification is denied, the claim shall automatically become a Class 3 claim and Creditor limited to obtaining payment from foreclosing on its collateral. The required Class 3 surrender treatment does not provide for any further payments to be made by the Trustee to Creditor.

The court can understand the Trustee's uncertainty as to the Creditor's treatment under the plan, given the fact that, according to the Creditor, the loan modification application was denied on June 3, 2013, over two years ago. Since June 3, 2015, the Chapter 13 Plan requires that Creditor receive only Class 3 claim treatment. The Trustee was unaware of this change in the treatment because of Creditor's denial of the loan modification.

In light of the requests of the Debtor and Creditor's request for a continuance to address the Trustee's concerns, the court continues the hearing to 3:00 p.m. on October 6, 2015. Supplemental responses shall be served and filed on or before September 22, 2015.

The Parties shall specifically address the mandatory, "shall," surrender treatment of Creditor's claim upon the denial of loan modification. The Creditor, in its response, shall address the escrow analysis, as well as an accounting of the payments received by the Trustee in this case. Any replies shall be filed and served on or before September 29, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is continued the hearing to 3:00 p.m. on October 6, 2015. Supplemental responses shall be served and filed on or before September 22, 2015. The Parties shall specifically address the mandatory, "shall," surrender treatment of Creditor's claim upon the denial of loan modification. The Creditor, in its response, shall address the escrow analysis, as well as an accounting of the payments received by the Trustee in this case. Any replies shall be filed and served on or before September 29, 2015.

16. 11-22044-E-13 ELDON/AYSE WATTLES MOTION FOR SUBSTITUTION
RAC-4 Richard Chan 7-24-15 [83]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2015. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Ayse Nimet Wattles, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Eldon Mason Wattles, Sr. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on January 27, 2011. On May 14, 2011, the Debtor's Chapter 13 Plan was confirmed. Dckt. 53. On January 21, 2015, Debtor Eldon Mason Wattles, Sr. passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on August 14, 2015 to the instant Motion. Dckt. 91.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on July 24, 2015. Dckt. 83. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which

> is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

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

Here, Ayse Nimet Wattles has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 83. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Ayse Nimet Wattles, as the wife of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Eldon Mason Wattles, Sr.. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Ayse Nimet Wattles is substituted as the successor-in-interest to Eldon Mason Wattles, Sr. and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

17. 15-25745-E-13 CJY-2 ROBERTO/ROSAEMMA CARRAZCO Christian Younger MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A. 8-5-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim 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 U.S. Bank, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $0.00.

The Motion to Value filed by Roberto Garibay and Rosaemma Carrazco ("Debtor") to value the secured claim of U.S. Bank, N.A., ("Creditors") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4535 Breckenridge Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $234,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir.

2004).

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

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

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

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

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust, which secures a claim with a balance of approximately $270,335.79. Creditor holds the second deed of trust, which secures a claim with a balance of approximately $74,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of US. Bank, N.A. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 4535 Breckenridge Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $234,000.00 and is encumbered by a lien securing claims in the amount of $270,335.79, which exceeds the value of the Property which is subject to Creditor's lien.

No other or additional relief is granted.

18. 15-24950-E-13 DPC-1 IAIN/DINEEN FRASER Ted Greene OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-5-15 [23]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation in light of the Debtor filing a new amended plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was sustained, and the matter is removed from the calendar.**

Debtor has filed an amended plan and is not prosecuting the Chapter 13 Plan which was the subject of the Trustee's Objection.

19. 15-24656-E-13 SDB-2 CASANDRA HALVORSON Scott de Bie

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 7-22-15 [20]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Creditor on July 22, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Capital One Auto Finance ("Creditor") is granted and Creditor's secured claim is determined to have a value of $9,896.00.

The Motion filed by Casandra C. Halvorson, ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Ford Fusion, VIN No. XXXX9390 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,896.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,413.79. Dckt. 22, ¶ 6. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $9,896.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

The Motion for Valuation of Collateral filed by Cassandra C. Halvorson (“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 Capital One Auto Finance (“Creditor”) secured by an asset described as 2011 Ford Fusion, VIN No. XXXX9390, (“Vehicle”) is determined to be a secured claim in the amount of $9,896.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,896.00 and is encumbered by liens securing claims which exceed the value of the asset.

No other or additional relief is granted.

20. 15-25257-E-13 MEGAN CARR **OBJECTION TO CONFIRMATION OF**
DPC-1 Jeremy Heebner **PLAN BY DAVID P. CUSICK**
8-5-15 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on August 5, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the Meeting of Creditors on July 30, 2015. The Meeting has been continued to September 24, 2015.

2. The Debtor is delinquent in the amount of $440.00 in plan payments. The Debtor has paid $0.00 into the plan to date.

3. Debtor may not be able to make the plan payments. The Debtor's Schedule I lists gross income of $2,700.00 per month. Schedule J indicates that the Debtor has two dependents. The Schedule

> lists living expenses totaling $1,740.00 per month, including rent of $286.00, utilities and phone of $150.00, and transportation of $90.00 . The Trustee is concerned that, after comparing with the IRS National Standards for Allowable Living Expenses, the Debtor's budget is insufficient for the care and maintenance of the Debtor and her dependent.

The Trustee's objections are well-taken.

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

The Trustee's second objection is that the Debtor is $440.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). The Trustee's objection is sustained.

As to the Trustee's third objection, the Debtor's Schedule J expenses are notably less than that provided for in the IRS National Standards for Allowable Living Expenses. Just as an instance, the Debtor states that she pays a total of $1,740.00 in living expenses. The IRS National Standards for Allowable Living Expenses allows for $3,786.00 for living expenses for a household of three, which is approximately $2,000.00 less than what the Debtor is currently spending. Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

21. 14-29961-E-13 JEANNE MCCULLOUGH
SJS-1 Scott Johnson

OBJECTION TO CLAIM OF RANCHO BELLA VISTA SOUTH HOMEOWNERS ASSOCIATION, CLAIM NUMBER 3
7-9-15 [19]

Final Ruling: No appearance at the September 1, 2015 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2015. By the court's calculation, 54 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). 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 Proof of Claim Number 3 of Rancho Bella Vista South HOA is continued to 3:00 p.m. on September 15, 2015.

Jeanne Marie McCullough, the Chapter 13 Debtor, requests that the court disallow the claim of Rancho Bella Vista South HOA ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $4,782.45.

The objection drafted by Debtor's counsel is a check-box form which eschews conventional pleading form. All of the apparent grounds are squeezed into the check box for lines 9-16.

Recognizing that additional time will required by the court to unpack this check-box pleading before it can be discussed constructively with counsel, the hearing on the Objection is continued to 3:00 p.m. on September 15, 2015. No additional or supplemental pleadings, evidence, or other documents shall be filed in connection with this Objection by any party. FN.1.

FN.1. When the court noted this check-box pleading, the first thought was that counsel was representing the Debtor pro bono or for a significant discount and that it would be unfair to expect counsel to prepare "regular" federal court pleadings. However, the court notes from the proposed Chapter 13 Plan Debtor's counsel seeks to be allowed $4,000.00 in fees for this representation. Such fees are inconsistent with a "check the box" legal services practice.

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 Rancho Bella Vista South HOA, Creditor filed in this case by Jeanne Marie McCullough, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 3 of Rancho Bella Vista South HOA is continued to 3:00 p.m. on September 15, 2015. No additional or supplemental pleadings, evidence, or other documents shall be filed in connection with this Objection by any party.

22. 14-29961-E-13 JEANNE MCCULLOUGH — MOTION TO MODIFY PLAN
SJS-2 Scott Johnson — 7-21-15 [25]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on September 15, 2015.

Jeanne McCullough ("Debtor") filed the instant Motion to Confirm the Modified Plan on July 21, 2015. Dckt. 25.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 18, 2015. Dckt. 31. The Trustee objects on the ground that the Debtor is delinquent in plan payments in the amount of $40.00. To date, the Debtor has paid a total of $2,025.00.

DISCUSSION

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

The basis for the Trustee's objection is that the Debtor is $40.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The court has continued the hearing on the "check the box" objection to claim filed by Debtor to 3:00 p.m. on September 15, 2015. The court continues the hearing on this Motion to the same date and time.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on September 15, 2015.

23. 15-24763-E-13 TITO AMARO
DPC-1 Scott Johnson

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-23-15 [23]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Debtor's Claim of Exemptions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Debtor's Claim of Exemptions is dismissed without prejudice, and the matter is removed from the calendar.**

24. 10-25364-E-13 DEF-3 ROBERT/MARGARETTE WARNICK David Foyil MOTION FOR SUBSTITUTION OF DECEASED PARTY 7-30-15 [61]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is denied without prejudice.

Joint Debtor, Margarette Warnick, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Robert Warnick. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection on August 11, 2015. Dckt. 70. The Trustee states that the Debtor, like previously, has failed to provide information as to how she has been able to pay the expenses and fund the plan after losing the late Debtor's income. See Order, Dckt. 68. The Trustee is uncertain if any life insurance was received. The Trustee notes that none is listed on Debtor's Schedule B, C, I, of J. The Trustee states that he was informed by Debtor's counsel that Debtor Margarette Warnick was temporarily staying with her daughter for emotional support but there is no evidence the daughter provided financial support as well for the four months between the death of Debtor Rober Warnick and the completion of the plan.

The Trustee filed a status report on August 25, 2015. Dckt. 73. The Trustee states that the surviving Debtor has failed to file supplemental declaration to resolve these concerns, therefore the Trustee has not withdrawn his opposition.

DISCUSSION

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

> A. At the time this case was file, Co-Debtor, MARGARETTE WARNICK, and Debtor, ROBERT WARNICK, were lawfully married to each other.
>
> B. On December 9, 2014, Debtor, ROBERT WARNICK, died.
>
> C. No probate proceeding has been commenced in any other court or jurisdiction to administer the estate of ROBERT WARNICK. No proceeding is anticipated for the administration of the decedent's estate
>
> D. WHEREFORE, MARGARETTE WARNICK, respectfully request that an order of substitution be entered substituting her as party in lieu of ROBERT WARNICK in this proceeding.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that Debtor Robert Warnick passed away and that there is no likely probate proceedings.

Debtor's failure to address the basic economic issues raises the issue of whether Debtor can fulfill the fiduciary duties of serving as a personal representative. The current declaration is blinding in what is not said - there were, or were not, insurance proceeds received by Debtor or payable to the estate of the recently deceased Co-Debtor.

As highlighted by the Trustee, there is no evidence provided concerning how the Debtor Margarette Warnick could have funded the plan. Again, this lack of candor is pregnant with the implication that Debtor has significantly more in assets and income than has been disclosed. The court in good conscious cannot appoint as a personal representative an individual (the Debtor) whose conduct appears to show a lack of disclosure and honesty.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

25.	10-25364-E-13 DEF-4	ROBERT/MARGARETTE WARNICK David Foyil	MOTION FOR WAIVER OF REQUIREMENT TO COMPLETE AND FILE THE DEBTOR'S 1328 CERTIFICATE AND THE CERTIFICATE OF THE CHAPTER 13 DEBTOR REGARDING 522 EXEMPTIONS 7-30-15 [65]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions is denied.

Margarette Warnick filed the instant Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions on May 15, 2015. Dckt. 49.

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

However, there has been no order granting Debtor Margarette Warnick to be substituted in as the personal representation pursuant to Fed. R. Bankr. P. 1015 and 7025. The court denied the Debtor's Motion to Substitute on September 1, 2015 due to the Debtor's failure to state with particularity the grounds for relief required by Fed. R. Bankr. P. 9013.

Furthermore, this is the Debtor's second attempt at the instant Motion. In fact, the instant Motion is a verbatim copy of the original Motion filed on May 15, 2015. Dckt. 49. The Debtor did not address any of the concerns or issues that the court addressed in the civil minutes for the first attempt at the motion. Dckt. 54.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate.

Furthermore, Debtor Margarette Warnick does not discuss why, if she is ever successfully appointed as the personal representative of Debtor Robert Warnick, she would not be able to complete the 11 U.S.C. § 1328 Certificate on behalf of Debtor Robert Warnick. In the personal representative capacity, Debtor Margarette Warnick would be able to complete the certificate, as required by Local Bankr. R. 5009-1(b), on behalf of the deceased debtor since she would be "stepping in the shoes" of Debtor Robert Warnick if and when Debtor Margarette Warnick is substituted in as his personal representative. The proposed representative cannot obtain the information necessary to provide such certifications, that is an indication that the proposed representative does not have the ability to fulfill those duties.

As such, because the personal representative of Debtor Robert Warnick would be able to complete the 11 U.S.C. § 1328 Certificate on his behalf in the representative capacity, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Waiver of Requirement to Complete and File 1328 Certificate and the Certificate of the Chapter 13 Debtor Regarding 522 Exemptions filed by Debtor having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

26. 15-25266-E-13 DPC-1 | **FRANK VALENZUELA** Michael David Croddy | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 8-5-15 [13]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

27. 15-23668-E-13 JUAN/GENEVA GOMEZ
DPC-1 Mary Ellen Terranella

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-10-15 [21]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 10, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on October 6, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan exceeds the maximum 60 months allowed. According to the Trustee's calculations, the Plan will complete in 69 months. The Trustee argues that the cause is Proof of Claim No. 4, filed by the Internal Revenue Service, in the amount of $134,565.45. The secured portion of the claim is $15,630.00 and the unsecured priority portion of the claim is $90,702.19. The Debtor scheduled the Internal Revenue Service in Class 3A in the amount of $1.00 and scheduled the creditor in Class 5 in the amount of $88,154.00. The secured portion of the claim is $15,629.00 higher than the amount scheduled. The priority portion of the claim is $2,548.19 higher than the amount scheduled by the Debtor.

JULY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 1, 2015 to be heard in conjunction with the Debtor's Objection to Claim of Internal Revenue Service, Proof of Claim No. 4. Dckt. 35.

DISCUSSION

The court having further continued Debtor's Objection to Claim of Internal Revenue Service, Proof of Claim No. 4, the court continues the instant Objection to 3:00 p.m. on October 6, 2015 to be heard in conjunction with the Objection to Claim of Internal Revenue Service.

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to 3:00 p.m. on October 6, 2015.

28. 15-23668-E-13 JUAN/GENEVA GOMEZ — OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 4
MET-1 Mary Ellen Terranella — 7-6-15 [25]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 6, 2015. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 4 of Internal Revenue Service is continued to 3:00 p.m. on October 6, 2015.

Juan and Geneva Gomez, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be: (1) secured claim in the amount of $15,630.00; (2) a priority claim in the amount of $90,702.19; and (3) unsecured general claim in the amount of $28,233.26. The Objector states that the secured portion of the claim is based on a liability for tax year 2008, and assessed on June 22, 2009, and that a tax lien was filed in Solano county on June 8, 2010.

The Objector objects to the secured portion of the claim on the basis that it was paid in full in Objector's previous chapter 13 case, Case No. 12-41638. The Objector states that the Creditor filed a proof of claim in that case with a secured claim amount for tax year 2008 in th amount of $20,584.00. Case No. 12-31638, Proof of Claim No. 3.

The Objector states that the Trustee's Final Report and Account in the previous case indicated that the Creditor was paid the full amount in that case. Case No. 12-41638, Dckt. 71.

CREDITOR'S RESPONSE

The Creditor filed a response on August 18, 2015. Dckt. 37. The Creditor argues that since the previous bankruptcy case was dismissed, no discharge was entered for the Objector. Based on this, the Creditor argues that the lien rights of the Creditor's secured claim is retained until the earlier of the payment of the underlying debt, in this case $113,985.21, or discharge under § 1328. 11 U.S.C. § 1325(a)(5)(B)(I). The Creditor also cites that the lien is retained to the extent recognized by applicable nonbankruptcy law when the case is dismissed. 11 U.S.C. § 1325(a)(5)(B)(II).

The Creditor argues that when the previous case was dismissed, the Objector's property was re-vested with the Objector.

The Creditor states that the Objector does not allege that they paid their debtor to the Creditor of $113,985.21 and without discharge their partial payment is not sufficient to require release of the tax lien. The Creditor asserts that the Creditor's claim is allowed under 11 U.S.C. § 502 and that the status of a claim as "secured" or "unsecured" depend on the valuation of the secured property as of the date of the petition date. 11 U.S.C. § 506(a).

APPLICABLE LAW

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).

DISCUSSION

A review of the Objection and the Creditor's reply highlights the fact that it appears that the parties are both focusing on different aspects of the disputes, but not providing the court with the relevant legal authorities for the issue upon which the decision turns. While the Objector is asserting that the secured portion was paid in full, regardless of the subsequent dismissal of the previous bankruptcy case, the Creditor is arguing that, due to the dismissal, the Creditor's nonbankruptcy rights "re-vested" and filing the Proof of Claim No. 4 was proper.

What the parties neglect to discuss is the foundational question of what happens when a person designates to what tax obligation, of multiple obligations, payments to Internal Revenue Service are to be applied. How the payments as directed by Debtor un the Chapter 13 Plan in the prior case are properly applied must be determined in allowing or disallowing pursuant to 11 U.S.C. § 502(a) all or some portion of the secured debt asserted in Proof of Claim No. 4 by the Creditor.

An initial search by the court reveal Revenue Procedure 2002-26, which states in relevant part:

> If additional taxes, penalty, and interest for one or more taxable periods have been assessed against a taxpayer (or have been mutually agreed to as to the amount and liability but are unassessed) at the time the taxpayer voluntarily tender a partial payment that is accepted by the Service and the taxpayer provides specific written directions as to the application of the payment, the Service will apply the payment in accordance with those directions.

Rev. Proc. 2002-26; 2002-1 C.B. 746; 2002 IRB LEXIS 183; 2002-15 I.R.B. 746.

Here, the question is how the Creditor allocated payments made by the Trustee pursuant the Chapter 13 plan in the previous bankruptcy case, which designated payments to be made for each portion of the Creditor's claim. The previous Chapter 13 plan specifically provided for payments for each of the secured, unsecured priority, and general unsecured claims of the Creditor. The Trustee's Final Report in the previous case indicates that, prior to dismissal, the Trustee disbursed: (1) $0.00 to the Creditor's unsecured claim; (2) $0.00 to the Creditor's priority claim; and (3) $20,584.00 to the Creditor's secured claim. Case No. 12-41638, Dckt. 71.

The Objector and Creditor get lost in the effect of dismissal on liens under nonbankruptcy law but do not address any legal authorities as to the treatment provided to the Creditor under the previous plan.

Therefore, the court continues the hearing to 3:00 p.m. on October 6, 2015. Objector and Creditor shall file and serve supplemental responses on or before September 15, 2015, specifically providing relevant statute, case law, and Internal Revenue Service's rules and procedures concerning the designation of partial payments to tax obligations. In the Creditor's reply, the Creditor shall provide an accounting on how it specifically applied the $20,584.00 disbursed by the Chapter 13 Trustee pursuant to the terms of the Chapter 13 plan in the prior case. The Objector and Creditor shall file and serve their replies on or before September 29, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service ("Creditor") filed in this case by Juan and Geneva Gomez ("Objector") 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 4 of the Internal Revenue Service is continued to 3:00 p.m. on October 6, 2015.

IT IS FURTHER ORDERED that the Objector and Creditor shall file and serve supplemental pleadings on or before September 15, 2015, specifically addressing the relevant statutes, case law, and Internal Revenue Service's rules and procedures concerning the effect of the designation of payments to specific federal tax obligations. The Creditor's reply shall also provide an accounting of how the applied the $20,584.00 disbursed by the Chapter 13 Trustee pursuant to the terms of the Chapter 13 plan in the prior case have been applied in correctly computing Creditor's secured claim in this case.

IT IS FURTHER ORDERED that the Objector and Creditor shall file and serve their replies, if any, to the supplemental pleadings of the other party on or before September 29, 2015.

29. 15-24768-E-13 RICHARD COMER
DPC-1 Scott Johnson

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-29-15 [23]

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

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

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

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 on July 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the Meeting of Creditors held on July 23, 2015. The Meeting has been continued to August 20, 2015. The Trustee's report of the August 20, 2015 meeting is that the Debtor again failed to appear. Trustee's August 21, 2015 Docket Entry Report.

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

§ 1325(a)(1).

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

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

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

30. 15-25168-E-13 DEBRA MCCLAIN
DPC-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-31-15 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on July 31, 2015. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan exceeds 60 months. The Trustee states that the Debtor has proposed a 60 month plan paying $625.00 per month to pay in a total of $37,500.00. Debtor proposes to pay $3,843.00 in attorney fees, $9,000.00 to Capital One and $45,902.00 at 8% ($71,950.24) to Dusty Sullivan in Class 2. Debtor also proposes to pay 100% of unsecured claims reported at $2,500.00. In order to pay all claims as proposed, the Debtor will need to pay in a total of $91,215.51, including Trustee Fees. The plan proposed is insufficient.

Additionally, the monthly dividend proposed to Class 2 creditor Dusty Sullivan/Sierra Investments in the amount of $305.12 per month, is insufficient to pay $45,902.00 at 8% in 60 months, the monthly dividend must be no less than

$930.73 per month.

The Trustee's objection is well-taken. Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will proposes to pay more to creditors than what is feasible given the monthly plan payment. As discussed by the Trustee, the proposed payment treatment of Dusty Sullivan alone is nearly double what the total payments of the plan would be. The proposed plan, facially, exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

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.

31. 15-25168-E-13 DEBRA MCCLAIN
KSR-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY DUSTY SULLIVAN PROFIT SHARING PLAN, ROVERT CHONKA PROFIT SHARING PLAN, ET AL.
7-30-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee on July 31, 2015. By the court's calculation, 32 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.

Dusty Sullivan, Robert Chonka, Poly Comp Trust Company, West America Bank, Dean A. Howell, Kenneth Meyer, Connie Snowden, Margo Gardening, David A. Muraki, Judy Muraki ("Creditor") oppose confirmation of the Plan on the basis that:

1. The Debtor's plan does not treat all claims in the secured class in the same manner. The plan only proposes to pay

Creditor, as secured second deed of trust holder on Debtor's residence, only $45,902.00 of the $151,198.41 owing.

2. The plan is not feasible since the Creditor's note was all due and payable in 2011. According to the Creditor, the plan payment would need to be $2,519.00 per month. Debtor's income does not support that payment as Debtor's Schedule J only provides $1,390.00 for payments on her home with no excess income available to pay the requisite $2,519.00 monthly payment to creditors.

3. The proposed interest rate calculation is wrong. The proposed interest rate of 8.00% on the Creditor's note is impermissible as the subject note rate is 12.00% is all due and payable and is secured by the Debtor's residence.

4. The plan was proposed in bad faith since the plan schedules the Creditor's secured claim less than the amount owed.

The crux of the Creditor's objection is that the plan does not provide for the full secured claim amount. The Creditor asserts a claim of $151,198.41 in this case. Proof of Claim No. 2. The Creditor states its claim is secured by a second trust deed on the Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but only to be funded for a $45,902.00 claim. With $306.12 a month payments, and the proposed 8% interest rate, over the sixty months of the plan, only generates $18,367.20 – only 40% of the lower amount stated in the Plan.

Even if Debtor's stated amount is $45,902.00, amortizing that amount over sixty months with 8% interest would require monthly payments of $930.73. (Computed by the court using the Microsoft Excel Simple Loan Calculator program.) This monthly payment on the lower amount stated in the Plan is fifty percent higher than the $625 monthly plan payment by the Debtor in the proposed Plan.

While the Debtor may state a lower amount in the Plan, it is the creditor's claim which controls, unless disallowed, in all or part, by the court. Chapter 13 Plan Section 2, ¶ 2.04; Dckt. 5.

In the declaration, Creditor states that the loan was for $80,000.00 in 2006. Dckt. 17. It is asserted in Proof of Claim No. 2 that the interest rate is 11% (though a 12% interest rate is stated on the Note, Exhibit A, Dckt. 18). In the accounting provided in Exhibit C, Dckt. 18, Creditor asserts that the $80,000.00 principal amount is unpaid, there is $50,367.12, and that there is an additional $10,764.47 in compounded interest.

Here, the plan does provide for the claim of the Creditor but does not provide for the full claim amount as evidenced by Proof of Claim No. 2. Further, the Plan does not provide sufficient funding to pay the claim set forth in Proof of Claim No. 2. No objection has been filed to Proof of Claim No. 2.

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

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

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

32. 15-26469-E-13 LAURIE STEFANELLI MOTION TO EXTEND AUTOMATIC STAY
ET-1 Matthew Eason 8-14-15 [8]

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, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2015. By the court's calculation, 18 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.

Laurie Marie Stefaneli ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-21209) was dismissed on February 2, 2015, after Debtor failed to make payment plans. *See* Order, Bankr. E.D. Cal. No. 14-21209-C-13C, Dckt. 112, February 3, 2015. 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 her prior counsel did not frequently practice in the Eastern District Bankruptcy Court. Debtor states her new counsel has reviewed her prior case and found "many apparent deficiencies" in how her prior case was handled, but does not state what those particular deficiencies were. Dckt. 8, ¶ 8; Dckt. 10, ¶ 5.

The Debtor has not 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. Fed. R. Bankr. P. 9013 requires that "...[a] motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought..." Here, the Debtor does not state what particular deficiencies by prior counsel prejudiced Debtor's prior case. Nor does Debtor state how hiring local counsel will change Debtor's ability to make necessary plan payments. The fact that Debtor's previous attorney did not practice in the Eastern District frequently does not justify or explain why Debtor failed to make plan payments, as the responsibility to make such payments is on the Debtor, not Debtor's attorney.

However, the court notes that denial of this Motion will render there being no automatic stay in this case, at least with respect to the Debtor, since there will a hearing completed within the mandated thirty days of the commencement of the bankruptcy case. 11 U.S.C. § 362(c)(3)(B). This would necessitate Debtor filing yet a third bankruptcy case.

It may well be that Debtor can state grounds with particularity upon which the requested relief is warranted, rather than merely stating several legal conclusions. Debtor may be able to testify as to actual facts upon which the court can determine that such grounds exist, rather than merely parroting legal conclusions in a declaration.

The court grants the motion on an interim basis, through and including October 30, 2015. The court orders that Debtor shall file a supplement to the existing Motion (not an amended motion)which states with particularity all of the grounds upon which the relief is actually based. Debtor shall provide a

supplemental declaration testifying to actual facts, from which the court may then make factual findings and the necessary legal conclusions to enter a final order granting or denying the motion. The supplemental pleadings shall be filed and served on the Chapter 13 Trustee and U.S. Trustee on or before September 14, 2015. Replies to the supplemental pleadings shall be filed and served on or before September 21, 2015. The final hearing on the Motion shall be conducted at 3:00 p.m. on October 20, 2015.

Therefore, the Motion is granted and the automatic stay is continued by an interim basis through and including October 30, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 on an interim basis through and including October 15, 2015, for all purposes and purposes unless terminated by further order of the court or operation of law.
>
> **IT IS FURTHER ORDERED** that the final hearing on the Motion shall be conducted at 3:00 p.m. on October 6, 2015.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve on the Chapter 13 Trustee and the U.S. Trustee on or before September 14, 2015, (1) a supplement to the existing Motion (not an amended motion)which states with particularity all of the grounds upon which the relief is based (Fed. R. Bankr. P. 9013) and (2) supplemental declaration(s) in which the declarant(s) testifying to actual facts, from which the court may then make factual findings and the necessary legal conclusions in ruling on the Motion. Replies to the supplemental pleadings shall be filed and served on or before September 21, 2015.
>
> No other or additional relief is granted.

33. 15-24476-E-13 KENNETH/STACEY ACKMAN — MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
TLA-4 Thomas Amberg — 8-18-15 [56]

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, Debtor's Attorney, Chapter 13 Trustee, Creditors, and parties requesting special notice on August 18, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of The Bank of New York Mellon FKA The Bank of New York, As Successor to JP Morgan Chase Bank, N.A., As Trustee For The Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Kenneth and Stacey Ackman ("Debtor") to value the secured claim of The Bank of New York Mellon FKA The Bank of New York, As Successor to JP Morgan Chase Bank, N.A., As Trustee For The Certificateholders

of CWEQ Revolving Home Equity Loan Trust, Series 2006-G ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 5700 20th Street, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $410,000.00 as of the petition filing date. As the owner, Debtor' 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).

FN.1. The Motion notes that the court previously denied a similar motion for the same lien due to the Debtor improperly identifying the creditor. The Debtor filed the instant Motion to correct this error.

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

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

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

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

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $434,871.00. The second deed of trust secures a claim with a balance of approximately $97,175.00. Creditor's third deed of trust secures a claim with

a balance of approximately $5,906.00. Dckt. 58, ¶ 5, 6. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kenneth and Stacey Ackman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon FKA The Bank of New York, As Successor to JP Morgan Chase Bank, N.A., As Trustee For The Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G secured by a third in priority deed of trust recorded against the real property commonly known as 5700 20th Street, Rio Linda, California, is determined to be a secured claim in the amount of $0.00. The value of the Property is $410,000.00 and is encumbered by two senior liens securing claims in the amount of $532,046.00, which exceeds the value of the Property which is subject to Creditor's lien.

No other or additional relief is granted.

34. 15-24979-E-13 LINDA VANPELT
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-29-15 [27]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on July 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on the Motion to Value Collateral of SunTrust Mortgage, Inc.

On August 11, 2015, the court granted the Debtor's Motion to Value Collateral of SunTrust Mortgage, Inc. Dckt. 34. As such, the Trustee's objection is overruled.

With no objections pending and independent review of the Plan, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

35. 15-22182-E-13 RUTH CLARK **CONTINUED MOTION TO CONFIRM PLAN**
PGM-1 Peter Macaluso **5-11-15 [64]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

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

TRUSTEE'S OBJECTION

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

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

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

DEBTOR'S REPLY

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

EL DORADO SAVINGS BANK STATEMENT

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

JUNE 30, 2015 HEARING

At the hearing, the court continued the Motion to 3:00 p.m. on September 1, 2015 in light of the Creditor's statement that a settlement agreement may be entered into that would materially change the terms of the proposed plan. Dckt. 82.

EL DORADO SAVINGS BANK'S OBJECTION

The Creditor filed an objection on August 13, 2015. Dckt. 89. The Creditor asserts that the Debtor owes $4,946.68 in pre-petition arrearages and $2,707.60 in post-petition delinquencies. The Creditor states that prior to the filing, the Creditor had to advance the insurance premium for the Property in the total of $418.00 and the Debtor incurred a prepetititon late charge of $352.64. Additionally, the Creditor states that as a result of the bankruptcy filed by the Debtor in 2013, the Creditor incurred attorney's fees and costs of $1,556.00.

The Creditor states that, since the Debtor filed an adversary proceeding over the sale of the Property, the Creditor and purchaser of the Property reached an agreement where the sale was rescinded and the title to the

Property was re-vested in the Debtor subject to the Creditor's Deed or Trust and other preexisting liens. Due to this, the Creditor incurred foreclosure costs of $1,979.70.

The Creditor asserts that the Debtor's plan does not fully provide for the arrears of the Creditor. Furthermore, the Creditor asserts that the Debtor does not adequately explain how the plan is feasible, namely where the contribution from Tom Carey of $400.00 is coming from.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on August 14, 2015. Dckt. 94. The Trustee states that he does not agree that the Debtor has paid any funds to the Trustee or that the delinquency has been cured. The Trustee notes the amended proofs of claim filed by the Creditor and that the most recent filed states the Debtor owes pre-petition arrearages in the amount of $21,120.27 yet the plan only provides for the curing of $8,169.70.

The Trustee states that he does not believe the Debtor has proven that the plan will pay claims as filed, namely those of El Dorado County Property Taxes and Greg Hauck, holder of the second deed of trust.

DEBTOR'S REPLY TO TRUSTEE'S OBJECTION

The Debtor filed a reply to the Trustee's objection on August 24, 2015. Dckt. 97. The Debtor states in the Reply that the Property has been reconveyed to the Debtor. The Debtor further states in the Reply,

> "2. The Debtor has been paying the Clerk of the Court, and thus the Trustee has not been paid."

Reply, p.1:19.5-20.5; Dckt. 97.

The argument of payment is merely stated in the attorneys' Reply and is not supported by Debtor's testimony in a declaration. The Reply does not indicate a reason why Debtor was not available to provide such basic testimony, or that the Debtor was unwilling to so state under penalty of perjury.

The Debtor requests that the Trustee's objection be overruled and the Motion be continued or additional time be given to file and confirm an amended plan.

DEBTOR'S SECOND REPLY

The Debtor filed a reply on August 24, 2015. Dckt. 99. The Trustee acknowledges that a new plan must be filed and requests additional time to file and confirm an amended plan.

DISCUSSION

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

The Creditor represents that the Property was reconveyed to the Debtor on July 22, 2015, with the reconveyance recorded by the El Dorado County

Recorder. Dckt. 91, Exhibit C. Since the stated reconveyance, the Creditor filed an Amended Proof of Claim No. 1 on August 12, 2015. The Proof of Claim states that the amount of the secured claim is $81,518.08 (plus post petition interest and additional fees and costs), with pre-petition arrears of $21,120.27. The Plan only provides to pay $7,628.17 of the arrearages due in Class 1. The Plan does not propose to cure these arrearages in their entirety. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

As to the Trustee's objection, the it appears that the Debtor has misread the court's order in the Adversary Proceeding No. 15-2084 concerning the preliminary injunction. Adversary Proceeding No. 15-02084, Dckt. 41. The order language states:

> **IT IS FURTHER ORDERED** that Ruth V. Clark, the Plaintiff-Debtor, shall pay to the Clerk of the Bankruptcy Court $541.52 by the 5th day of each calendar month, commencing with June 2015, to be held by the Clerk as te undertaking required by Federal Rule of Civil Procedure 65(c) and Federal Rule of Bankruptcy Procedure 7065.

The Debtor is her first response states that "Debtor has been paying the Clerk of the Court, and thus the Trustee has not been paid." Dckt. 97. However, as is clear in the Preliminary Injunction language, the Debtor was only ordered to pay the $541.52 of the $1,100.00 plan payment proposed to the Clerk of the Court and the remainder should have been submitted to the Trustee.

The court understands Debtor's Reply to be that she has made the full $1,100.00 a month plan payment to the Clerk of the Court, not just the $541.52 as ordered in the Adversary Proceeding. None of the Parties have requested that the Clerk of the Court provide an accounting or other report of the monies received and being held in connection with this bankruptcy case and the Adversary Proceeding.

The Clerk of the Court reports that he has received the following payments from Debtor:

Date Received	**Date Deposited**	**Amount**
May 4, 2015	May 29, 2015	$1,086.00
June 8, 2015	June 25, 2015	$541.52
June 22, 2015	June 26, 2015	$541.52
July 7, 2015	July 29, 2015	$541.52
August 3, 2015	August 28, 2015	$541.52
August 13, 2015	August 28, 2015	$558.48
	TOTAL	$3,810.56

See Cash Register Receipts reported on the Docket for Adversary Proceeding 15-2084.

The representation of the Debtor that she has been making the payments to the Clerk of the Court appear to be misstated, and that she has made only the required Adversary Proceeding adequate protection injunction bond payment of $541.52 a month. It appears that the Debtor is trying to create the illusion that the Debtor has been paying the full plan payment to the Clerk of the Court to try and improperly delay these proceedings. This raises serious concerns over the veracity of any statements made by, or for, Debtor in this case.

It also appears that with the Property being reported reconveyed to the Debtor and the sale to the third party rescinded, the issues arising in the Adversary Proceeding should be resolved and that matter dismissed. However, there is no stipulation of the parties, no Motion to dissolve the Preliminary Injunction, or any stipulation to dismiss the Adversary Proceeding. The Preliminary Injunction remains in full effect and force, and the Parties having the ongoing obligations to prosecute that Action.

Debtor's replies merely request that the court continue the hearing, rather than deny the Motion to confirm a plan which appears to be significantly in default. If the court is not willing to continue the hearing, Debtor asks the court to set a time to allow Debtor to create and file an amended plan. As Debtor's counsel knows, the court does not grant set periods of time to file an amended plan – unless the court has grave doubts that the debtor or debtor's counsel is actually trying to prosecute the case. Normally, the court allows debtor and debtor's counsel to communicate with the Chapter 13 Trustee and creditors to take whatever time is reasonably necessary. If the Chapter 13 Trustee or creditors do not believe that the debtor is acting in good faith, or has the financial ability to perform a plan, then they are free to file motions to dismiss.

There is no reason to continue the hearing and have this Debtor dribble in possible amendments to create a piecemeal a plan together "on the fly." By denying this Motion, Debtor can in good faith work with her counsel to determine what plan she may not only confirm, but can actually perform. It may not be the plan that, if she had unlimited resources available, would choose. It may require her to sell the real property which she recently salvaged from the foreclosure.

If Debtor's financial information stated under penalty of perjury on Amended Schedules I and J is accurate, serious issues exist of how she would fund a Chapter 13 Plan. Debtor's gross monthly income is stated under penalty of perjury on Amended Schedule I to be $2,150.00. Dckt. 57 at 11. Of this, $400.00 a month is a gift identified as "Support of Friend: Tom Carey."

On Amended Schedule J Debtor states under penalty of perjury that her actual, reasonable, necessary monthly expenses are $1,050.90. *Id.* at 13-15. This expense does not include any mortgage payment (either for the current payment or to cure the arrearage). Some questionable "reasonable" amounts for expenses stated under penalty of perjury on Schedule J are:

A. Food and Housekeeping Supplies.....$200 ($6.66/day)
B. Clothing.....$ 5

C. Personal Care Products and Services.....$ 5
D. Transportation.....$180
E. Entertainment etc.....$ 7
F. Real Property Taxes.....$ 0

Reviewing this Schedule J the court is reminded of a phrase that it has used in connection with unrealistic expense projections made by debtors in reorganization cases – "Liar Declarations." The debtor, blinded by a desire to keep a home, lies about their expenses, creating a fictitious Schedule J or declaration of expenses so as to generate the pre-determined plan payment amount. Those debtors attorneys were more than willing to bend to the desires (or demands) of the financially unsophisticated consumers who were flushing the last of their resources down the toilet of financial futility. Those attorneys allow their least sophisticated consumer clients waste the last of their limited resources, as well as suffer the pressures of being in bankruptcy for a short delay from the inevitable.

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. All orders of the court entered in Adversary Proceeding 15-2084 remain in full force and effect.

36. 15-24984-E-13 MARIE GARY
DPC-1 Eric Vandermey

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-29-15 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on July 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor has failed to file a Motion to Value the Collateral of Green Tree's second and third Deed of Trust in which the proposed plan relies. (Green Tree Loan Servicing, LLC being a loan servicer, it is questionable whether a motion filed against "Green Tree" would value the secured claim of a creditor having a secured claim in this case.)

2. The Debtor has failed to provide a business income attachment from the Debtor's employment as a Day Care Provider.

3. The Debtor's plan is not her best efforts. The Debtor is under the median income and proposes plan payments of $1,715.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor admitted at the First Meeting of Creditor's held on July 23, 2015 that she is receiving an additional $400.00 per month from her Day Care business that is not reflected on Schedule I.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Green Tree (or the actual creditor of the second and third Deed of Trust). However, the Debtor has failed to file a Motion to Value the Collateral. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

The Trustee's second objection concerns the Debtor's failure to provide a business income attachment as to the Debtor's self-employment as a day care provider. As such, the court nor any other party of interest can accurately determine whether the plan is feasible and viable or whether the Debtor's financial reality is capable of supporting the proposed plan. Therefore, the objection is sustained.

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

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

The Debtor admitted at the First Meeting of Creditors that there is an additional $400.00 not reported on Schedule I from the debtor's day care business which raises serious concerns over whether the plan is the Debtor's best efforts and whether the Debtor has further disclosed all income. Thus, the court may not approve the plan.

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

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

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

appearing,

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

37. 14-23685-E-13 PAUL LUDOVINA — MOTION TO CONFIRM PLAN
LBG-7 Lucas Garcia — 7-10-15 [105]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 14-28888-E-13 JAMES/JENNIFER CRUM
MRL-4 Jeremy Heebner

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS ATTORNEY(S)
7-27-15 [62]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Mikalah Liviakis, Attorney, ("Applicant") for James and Jennifer Crum, the Chapter 13 Debtors("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 15, 2015 through August 11, 215. Applicant requests fees in the amount of $1,538.50.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on July 29, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case administration concerning personal injury settlement, objections to claim, motions to authorize sale of Client's property, and application for compensation. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 1.3 hours in this category. Applicant assisted Client with discussing with Client regarding a motorcycle accident and the settlement, reviewing the notice of Filed Claims, and drafting two claims..

Objections to Claims: Applicant spent 1.4 hours in this category. Applicant objection to Proof of Claim No. 8 and estimated time of hearing.

Motions to Authorize Sale: Applicant spent 2.8 hours in this category. Applicant discussed the sale procedures of the Bankruptcy Code, drafted the motion to Authorize Sale, and estimated time of hearing.

Applications for Compensation: Applicant spent .8 hours in this category. Applicant drafted the instant Application.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mikalah Liviakis, Esq.	1.3	$355.00	$461.50
Andrew Redner, Esq.	3.8	$225.00	$855.00
Jeremy Heebner, Esq.	1.2	$185.00	$222.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,538.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$889.00	$889.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$889.00	

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $1,538.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid

by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,538.50

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mikalah Liviakis ("Applicant"), Attorney for 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 Mikalah Liviakis is allowed the following fees and expenses as a professional of the Estate:
>
> Mikalah Liviakis, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,538.50,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed plan in this case.

39. 12-26289-E-13 SARA GRACIA
MOH-3 Michael O. Hays

MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST COMPANY
7-30-15 [57]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and parties requesting special notice on July 30, 2015. By the court's calculation, 33 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 Deutsche Bank National Trust Company ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Sara Gracia ("Debtor") to value the secured claim of Deutsche Bank National Trust Company ("Creditor") is accompanied by documents from a prior, similar motion. FN.1. However, Debtor now asserts that the senior and junior liens were held by Deutsche Bank National Trust Company, not Ocwen Loan Servicing, LLC ("Ocwen"). Dckt. 57, ¶ 3, 4. To correct this error, Debtor now files this Motion and has served notice on Ocwen and Deutsche Bank National Trust Company. *Id.* at ¶ 6.

FN.1. Debtor is filing this motion to remedy a possible error in a prior motion. The prior Motion to Value was granted by this court on June 6, 2015. Dckt. 15. The prior Motion sought relief for the claims secured by the two liens against the Property. Dckt. 15. There, Debtor asserted in the prior motion that Ocwen Loan Servicing, LLC was the creditor holding claims secured by the senior and junior liens. *Id.* The Debtor filed the instant Motion to

correctly identify the Creditor.

Debtor is the owner of the subject real property commonly known as 2427 South Larkin Avenue, Fresno, California ("Property"). Debtor seeks to value the Property at a fair market value of $110,300.00 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). On June 6, 2015, this court held the Property had a value of $110,300.00 for the purposes of the prior motion. Dckt. 25.

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4 filed by Ocwen on behalf of Creditor is the senior lien. Proof of Claim No. 3 is the claim which is the subject of the present Motion.

OPPOSITION

Neither Creditor nor Ocwen has filed an opposition.

DISCUSSION

The senior first deed of trust secures a claim with a balance of approximately $178,339.32. Creditor's second deed of trust secures a claim with

a balance of approximately $26,468.93. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's second, junior 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 Sara Gracia ("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 Deutcshe Bank national Trust Company ("Creditor") secured by a second in priority deed of trust and recorded against the real property commonly known as 2427 South Larkin Avenue, Fresno, 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 $110,300.00 and is encumbered by a senior lien securing a claim in the amount of $178,095.57, which exceeds the value of the Property which is subject to Creditor's lien.

No other or additional relief is granted.

40. 15-24796-E-13 DPC-1 CHRISTOPHER/SARA VENTURA Pro Se OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-29-15 [41]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), on July 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor is $2,950.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan to date.

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

3. The Debtor has failed to provide the Trustee with their employer payment advices received 60 days prior to filing.

4. The Debtor’s plan is not the Debtor’s best efforts. The Debtor is over the median income debtor and proposes plan payments of $2,850.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor’s net disposable monthly income on Schedule J reflects $3,039.00 and Debtor is only proposing plan payments of $2,850.00. The Debtor lists an expense of $517.00 on Schedule J for an auto payment, yet the plan does not provide for an auto payment. Therefore, the Debtor may have an additional $517.00 per month to pay into the plan.

5. The plan fails the Chapter 7 liquidation analysis. The Debtor’s non-exempt equity totals $50,000.00 and the Debtor is proposing a 0% dividend to unsecured creditors.

6. The Debtor’s plan fails to provide for secured claim of Santander consumer USA, Proof of Claim No. 4 in the amount of $22,483.30.

7. The Debtor has failed to complete the Statement of financial Affairs, question 1. According to the Debtor’s Schedule I, the Debtor has been employed 2 years but does not list any prior income. The Debtor lists rental income of $2,000.00 per month on Schedule I, however the Debtor fails to list any rental income on the Statement of Financial Affairs.

8. The Debtors failed to appear at the First Meeting of Creditors. The Meeting has been continued to September 17, 2015.

9. The Debtor has filed three prior bankruptcies without a change in circumstance.

Case No.	Date Filed	Date Dismissed	Reason
13-23372-13	March 13, 2013	Jul 31, 2013	No tax return provided and the plan was not served by the Debtor
13-32210-13	September 18, 2013	December 6, 2013	On Trustee’s Motion to Dismiss
14-25173-13	May 16, 2014	July 9, 2014	No paystubs and tax returns; failure to appear at Meeting of Creditors; failure to provide prior bankruptcy cases

The Trustee’s objections are well-taken.

The basis for the Trustee's first objection is that the Debtor is $2,850.00 delinquent in plan payments. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

The Trustee's fourth objection asserts that the plan is not the Debtor's best efforts. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Plan proposes to pay a 0% dividend to unsecured claims, which total $0.00, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $3,039.00. Thus, the court may not approve the plan.

The Trustee next opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has non-exempt equity in their real property in the amount of $50,000.00. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0.00% dividend when there may be upwards of $50,000.00 in non-exempt equity.

Next, the Trustee alleges that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the creditor Santander Consumer USA's secured claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But,

nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

The Trustee's seventh objection concerns the fact that the Debtor did not completely and accurately complete the Statement of Financial Affairs as to prior income from employment and rental income. The failure to provide this information makes it impossible for the court to determine the feasibility and viability of the plan when the court does not have a full and accurate picture of the Debtor's financial reality.

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

Lastly, the Trustee objects on the ground that the Debtor is a serial filer without any change in circumstances to justify the most recent filing. The Debtor's recent bankruptcy case has implications for the duration of the

automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation. However, in light of the numerous other valid objections, the implications of the multiple filings yet the Debtor failing to comply with the Bankruptcy Code raises concerns over whether the proposed plan is, in fact, the Debtor's best efforts.

Therefore, for the reasons discussed supra, 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.

41. 15-24997-E-13 DAVID/AMY POST — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Pro Se — 7-29-15 [26]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*) on July 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on the Motion to Value Collateral of Citimortgage, which was heard on August 11, 2015.

On August 11, 2015, the court granted the Debtor's Motion to Value Collateral of Citimortgage and valued the secured claim at $0.00. The court having valued the secured claim at $0.00, the Trustee's objection is overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42. 15-24698-E-13 WALLEN YEP — **OBJECTION TO CONFIRMATION OF**
AP-1 Pro Se — **PLAN BY WELLS FARGO BANK N.A.**
7-28-15 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee and Office of the United States Trustee on July 28, 2015. 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.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not cure the Creditor's pre-petition arrears. According to the Proof of Claim No. 1 filed by the Creditor, the Debtor owes $19,295.45 in pre-petition arrearages.

The Creditor's objections are well-taken. The Creditor holds a deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts $19,295.45 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for

payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

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

43. 15-24698-E-13 WALLEN YEP **OBJECTION TO CONFIRMATION OF**
DPC-1 Pro Se **PLAN BY DAVID P. CUSICK**
7-29-15 [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 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent in plan payments. The Debtor's plan does not propose an actual plan payment nor has the Debtor paid anything into the plan to date.

2. The Debtor's proposed plan is blank. Dckt. 14. The Debtor fails to provide a plan payment, plan term, and dividend to unsecured creditors.

3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with

attachments for the most recent pre-petition tax year.

4. The Debtor has 4 prior bankruptcy cases which are not listed on the petition:

Case No.	Date Filed	Date Dismissed
11-23126-13	January 14, 2011	March 1, 2011
12-26680-13	April 5, 2012	June 22, 2012
12-33657-13	July 25, 2012	July 30, 2013 (voluntarily)
14-29262-13	September 16, 2014	December 3, 2014

The Trustee's objections are well-taken.

The Trustee's first two objections appear to boil down to the fact that the Debtor has filed a blank plan, with absolutely no terms provided for, outside a note above Class 1, which states "Claim under dispute." Dckt. 14. While there is no plan payment proposed, at least one plan payment has come due. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). Additionally, the failure of the Debtor to provide any information in the plan, from creditors, to plan payment, to dividend for unsecured creditors makes this plan facially unable to be confirmed.

As to the Trustee's third objection, the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. This is an independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee's final objection is that the Debtor failed to report the four prior bankruptcy cases. The Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation. However, in light of the Debtor's failure to completely fill out the petition, schedules and proposed plan in their entirety, it is impossible for the court or any other party in interest to determine the feasibility and viability of the plan or whether the plan is the Debtor's best efforts under 11 U.S.C. § 1325(b).

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

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

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

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

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

44. 15-24698-E-13 WALLEN YEP **OBJECTION TO CONFIRMATION OF**
EAT-1 Pro Se **PLAN BY WELLS FARGO BANK, N.A.**
7-30-15 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee and Office of the United States Trustee on July 30, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the Debtor's plan fails to provide for the payment of the pre-petition arrearages. The Creditor asserts in the Objection that the Debtor

owes $124,149.48 in pre-petition arrearages.

However, while the Creditor states that it is in the process of preparing a Proof of Claim, the Creditor has not filed a Proof of Claim in connection with the lien at issue. A review of the claims register shows that Wells Fargo Bank, N.A. has filed Proof of Claim No. 1 on August 12, 2015. However, this Proof of Claim No. 1 is for a home equity credit line and not for the Deed of Trust which is the basis for the Creditor's objection.

The Creditor does not provide a declaration stating, under penalty of perjury, by an employee with personal knowledge of the loan, the amount of arrearages owed by the Debtor. Without such, the Creditor is merely asking the court to "take their word on it." Unfortunately, such an Objection without any authenticating documentation as to the actual amount of pre-petition arrearages, the court cannot sustain the objection.

Therefore, 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 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 the Objection is overruled without prejudice.

45. 10-49199-E-13 BERNARD BROWN **MOTION TO MODIFY PLAN**
DPC-1 Cindy Lee Hill **7-28-15 [45]**

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2015. 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 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 trustee to modify a plan after confirmation. David Cusick, the Chapter 13 Trustee, filed the instant Motion to Modify the Plan. Dckt. 45. The Trustee states the confirmed plan provided for a step up payment for the last 27 months of the plan in the amount of $807.00, with no less than 20% to the unsecured creditors. The Trustee asserts that according to his records, the Debtor submitted increased plan payments earlier than confirmed. The payments increased in month 23 of the plan rather than month 33 and the Debtor continues to submit the increased payment. The Trustee seeks to modify the plan to change the plan payments from $805.00 per month to $33,362.00 total paid in through June 2015, then $825.00 for the remaining 5 months of the plan. Additionally, the Trustee seeks to raise the 20% to unsecured creditors to no less than 25%.

The Chapter 13 Trustee has filed evidence in support of confirmation. No opposition to the Motion was filed by the Debtor 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 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, Trustee's Chapter 13 Plan filed on July 28, 2015 is confirmed. Counsel for the Trustee shall prepare an appropriate order confirming the Chapter 13 Plan and lodge the proposed order with the court.