

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

September 13, 2016 at 2:00 P.M.

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1. [16-20901](#)-C-13 ALICIA GADDIS MOTION TO CONFIRM PLAN  
MLA-4 Mitchell Abdallah 7-27-16 [[68](#)]

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 27, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Tentative Ruling:** The Motion for Approval of Compromise 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 18, 2016. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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 For Approval of Compromise is granted.**

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Brian Sanchez, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with United Parcel Service("Settlor"). The claims and disputes to be resolved by the proposed settlement are Debtor's workers' compensation claim related to a back injury.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court:

- A. Debtor is to be paid \$30,957.50 at \$290.00 per week.

- B. Debtor would retain the right to medical treatment paid for by Liberty Mutual so long as th treatment is related to the industrial injury and authorized by Utilization Review.
- C. Debtor would have until August 4, 2020 to reopen his workers' compensation case.
- D. Debtor will pay his attorney fees in the amount of \$4,644.00 out of the settlement funds.

The Chapter 13 Trustee filed a statement of non-opposition. Dkt. 73.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Likely. However, the question as to what amount of award he would receive is dependent upon Debtor's assigned doctor, who would determine the extent and nature of injury. Debtor's workers' compensation attorney thinks the settlement amount is fair.

### **Difficulties in Collection**

Not likely.

### **Expense, Inconvenience and Delay of Continued Litigation**

Movant argues that litigation would be complex fact-intensive inquire requiring medical evaluation and testimony.

### **Paramount Interest of Creditors**

Movant argues that settlement is in the paramount interests of creditors since the plan is a 100% plan.

**Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

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

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

The Motion to Approve Compromise filed by Brian Sanchez, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Compromise between Movant and United Parcel Service ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion(Docket Number 69).

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3. [16-24502](#)-C-13 KHALIDA MCROY  
CAH-1 C. Anthony Hughes

MOTION TO AVOID LIEN OF SIERRA  
CENTRAL CREDIT UNION  
8-15-16 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2016. 28 days' notice is required. That requirement was met

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

**The Motion to Avoid Judicial Lien is granted.**

A judgment was entered against the Debtor in favor of Sierra Central Credit Union for the sum of \$9,845.21. The abstract of judgment was recorded with Sutter County on June 1, 2016. That lien attached to the Debtor's residential real property commonly known as 902 Skyline Drive, Yuba City, California.

**The Chapter 13 Trustee filed a statement of non-opposition.**

**Sierra Central Credit Union Opposition**

Creditor states there is equity in the property to accommodate the judgment lien.

**Debtor's Reply**

Debtor calculates his equity in the property demonstrating \$0 non-exempt equity. Debtor holds a 50% interest in the property, which provides \$12,973.00 in equity as to the Debtor, all of which Debtor has claimed as exempt.

## Discussion

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$265,000.00 as of the date of the petition. The unavoidable consensual liens total \$239,054.00 on that same date according to Debtor's Schedule D, leaving equity of \$25,946.00, only half of which Debtor is entitled to at \$12,973.00. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$12,973.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Sierra Central Credit Union, Sutter County Superior Court, Document No. 2016-0007480, recorded on June 1, 2016., with the Sutter County Recorder, against the real property commonly known 902 Skyline Drive, Yuba City, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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4. [14-29005](#)-C-13 MARIE WILLIAMS  
DNL-6 Dale Orthner

MOTION FOR COMPENSATION FOR  
SUSAN K. SMITH, CHAPTER 7  
TRUSTEE  
8-15-16 [[203](#)]

Also #5

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**Final Ruling: No appearance at the September 13, 2016 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 15, 2016. 28 days' notice is required. That requirement was met.

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

Susan K. Smith, the former Chapter 7 Trustee for the bankruptcy estate of Marie F. Williams, the Chapter 13 Debtor, makes a Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 23, 2015 through July 26, 2016. Applicant requests fees in the amount of \$10,240.00 and costs in the amount of \$43.50.

#### **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 services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

Id. at 959.

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Movant's services rendered relate to the attempted liquidation of real property including formulating a stipulation pertaining to Debtor's exemption, attempting to access the property, obtaining an order for turnover.**

**Fees and Costs**

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

Asset investigation: 26.8 hrs  
Claims/ Compromise: 0.6 hrs  
General Administration: 29.7 hrs

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

Fees	\$10,240.00
Costs	\$43.50

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 Susan K. Smith ("Applicant"), the former Chapter 7 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 Susan K. Smith is allowed the fees in the amount of \$10,240.00 and costs in the amount of \$43.50 as a professional of the Estate.

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5. [14-29005](#)-C-13 MARIE WILLIAMS  
DNL-7 Dale Orthner

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR J.  
RUSSELL CUNNINGHAM, TRUSTEE'S  
ATTORNEY  
8-15-16 [[207](#)]

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**Final Ruling: No appearance at the September 13, 2016 hearing is required.**  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 15, 2016. 28 days' notice is required. That requirement was met.

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

Desmond, Nolan, Livaich & Cunningham, counsel of the former Chapter 7 Trustee for the bankruptcy estate of Marie F. Williams, the Chapter 13 Debtor, makes an Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 23, 2015 through July 26, 2016. Applicant requests fees in the amount of \$30,554.50 and costs in the amount of \$668.14.

**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 services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

Id. at 959.

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Movant's services rendered relate to the attempted liquidation of real property including formulating a stipulation pertaining to Debtor's exemption, attempting to access the property, obtaining an order for turnover. Movant also prepared applications to employ, the opposition to the motion to reconvert, and motions for the adversary proceeding for turnover.**

**Fees and Costs**

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

Asset investigation: 62.6 hrs  
Opposing Reconversion: 31.7 hrs  
Employment Applications: 6.5 hrs  
Exemption Resolution: 13.0 hrs

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

Fees	\$30,554.50
Costs	\$668.14

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 Desmond, Nolan, Livaich & Cunningham, ("Applicant"), counsel of the former Chapter 7 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 Susan Desmond, Nolan, Livaich & Cunningham is allowed the fees in the amount of \$10,240.00 and costs in the amount of \$668.14 as a professional of the Estate.

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**Also #7**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors are delinquent \$2,453 under the proposed plan.
2. The motion does not cite applicable codes.
3. The declarations is not sworn under penalty of perjury.
4. The plan may not be feasible due to a disputed mortgage payment (see matter below).
5. The plan fails to provide for the priority claim of the FTB and a Class 2 claim in favor of the City of Rancho Cordova.

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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7. [15-24912](#)-C-13 CHRISTOPHER/WENDY THOMAS OBJECTION TO NOTICE OF MORTGAGE  
SS-3 Scott Shumaker PAYMENT CHANGE AND/OR MOTION TO  
STRIKE  
7-18-16 [[43](#)]

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2016. Twenty-eight days notice is required. That requirement was met.

The Objection to Notice of Mortgage Payment 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 court's decision is to overrule the Objection.**

Debtors move this Court to:

- 1) Sustain Debtors' objection to Notice of Mortgage Payment Change filed by Wells Fargo Bank, N.A. as Trustee for Soundview Home Loan Trust 2007-OPT1, Asset-backed certificates, Series 2007-OPT1, LLC ("Creditor"), Dkt # 36; and/or
- 2) Strike "Notice of Mortgage Payment Change" filed by Creditor; and/or
- 3) Confirm that the amount of monthly mortgage payments on Debtors' residence (see below) due for principal, interest, property taxes, and insurance is \$1,704.8.

Assuming a \$2,500 annual tax bill, \$1,013.36 for annual hazard insurance, plus a maximum 2-month permissible buffer the total annual escrow payment should be no more than as follows, Debtor's estimated their monthly mortgage payment based on the following calculation:

Item	Amount annually	Monthly
Property Taxes	\$2,500	\$208.33
Hazard Ins.	\$1,013.36	\$84.45
2 month max buffer	\$585.56	\$48.79

Total allowable escrow account payment monthly	\$341.57
Ongoing principal mortgage payment	\$1,363.244
<hr/> Total allowable monthly mortgage payment	<hr/> \$1,704.81

The Plan as confirmed provides for ongoing Class 1 payments of mortgage principal and arrears to Creditor's servicer, Ocwen Loan Servicing, on Debtors' residence commonly known as 2321 McGregor Drive, Rancho Cordova CA 95670 ("the Property").

The deadline for a non-governmental creditor to file a claim expired on October 21, 2015. Neither Creditor nor Ocwen filed a claim. Accordingly, Debtors were compelled to do so and did file a claim on May 20, 2016 on behalf of Ocwen Loan Servicing. This was done so that the Trustee would be authorized to pay the Class 1 arrears of \$18,000. As of this date, no entity or person has objected to the claim.

However, on April 22, 2016, prior to Debtors filing Creditor's claim, Creditor filed a Notice of Mortgage Payment Change ("the Notice") which increased the Class 1 principal and interest payment from \$1,537.23 to \$2,254.10, which is an increase of over \$700. Dkt # 36.

Creditor estimates ongoing property tax liability of \$7,607.16 annually. Id., Annual Escrow Account Disclosure, p.3 of 4, 1st par. However, that is incorrect. According to the Sacramento County Tax Assessor, the Property has a net assessed value of \$188,120. Further, the site directly links to another page which estimates property taxes for a particular property, and it shows estimated property taxes of \$1,279.21.

Additionally, on July 11, 2016, Debtors' Counsel's staff contacted "Ron West" from the Sacramento County Assessor Bankruptcy Department. He estimates that after the addition of miscellaneous County and City fees, the annual property tax bill will be around \$2,500. Declaration of Piotr Reysner.

**Trustee's Response**

Debtors dispute creditor's estimate of property taxes at \$7,607.16 annually.

The most recent online property tax information of Sacramento County reports the original bill amount of \$6,593.80.

**Discussion**

The Debtors' contention the creditor estimated property taxes at \$7,607.16 annually is incorrect. The notice of mortgage statement calculates the mortgage payment by including two county tax payments of \$3,296.90. Dkt. 36. This amount totals \$6,593.80, the amount reflected on the most recent online property tax information of Sacramento County.

Further, the Debtors' evidence proffered to prove that their annual property tax amount is \$2,500 is based on the out-of-court statement of a Sacramento County staff member and is therefore inadmissible hearsay evidence. Fed. R. Evid. 801 (c).

The court's decision is to overrule the objection.

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 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 Notice of Mortgage Payment is overruled.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors are delinquent \$1,295 under the proposed plan.

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

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

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

The Motion to Confirm the Modified

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

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

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9. [16-24334](#)-C-13 SYLVIA KNIGHT  
AP-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
N.A.  
8-17-16 [[29](#)]

Also #10

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 17, 2016. Fourteen days' notice is required. That requirement is met.

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

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

Creditor, JPMorgan Chase Bank, N.A. opposes confirmation of the Plan on the basis that:

1. Debtor's Plan proposes to pay \$1,080.00 per month for 14 months, and then \$1,480.00 for the remaining 40 months of the Plan. Creditor, JPMorgan will be paid \$357.28 per month starting in month 15 for 40 months, totaling \$16,435.00 over the life of the plan. JPMorgan estimates that the pre-petition arrears will total \$23,244.74. Therefore, the Plan does not cure the pre-petition arrears owed to JPMorgan.
2. Debtor's Plan unreasonably delays arrearage payments to month 15.
3. Debtor's Plan is not feasible because the Debtor has disposable income of \$1,080.00 per month. Debtor proposes to pay \$1,480.00 per

month, starting on the 14th month depending upon Debtor's daughter contributing \$400.00 per month to the household.

### **Discussion**

Debtor's Plan does not provide for the complete payment of pre-petition arrears to JPMorgan. Additionally, the Debtor has not presented any evidence to assure the Court that an increase in payments in month 15 is feasible. 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, JPMorgan Chase Bank 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.

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10. [16-24334](#)-C-13 SYLVIA KNIGHT  
DPC-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-17-16 [[25](#)]

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.  
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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.**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 17, 2016. Fourteen days' notice is required. That requirement was met.

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

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

The Trustee withdrew the objection on August 17, 2016 (dckt. 36), and therefore the motion is moot.

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

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

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

**IT IS ORDERED** that the Objection is overruled.

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

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

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

-----  
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, and Office of the United States Trustee on August 30, 2016. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-25198) was filed on June 29, 2015 and dismissed on June 27, 2016, for delinquent plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?  
*Elliot-Cook*, 357 B.R. at 814-815.

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. Debtor asserts that the instant case was filed to cure pre-petition arrears and to retain a vehicle. Debtor has been employed 23 years, and his schedules reflect the ability to cover all necessary expenses.

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

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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12. [16-24342](#)-C-13 MICHAEL CRONE AND  
CELESTINA YSAIS  
Kristy Hernandez

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
7-19-16 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 19, 2016. Twenty eight days' notice is required. That requirement was met.

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

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

Creditor Wells Fargo Bank opposes confirmation of the Plan on the basis that Debtor's plan states that Wells Fargo's pre-petition arrears are only **\$40,000.00**. However, Wells Fargo anticipates that its claim will reflect pre-petition arrears in the amount of **\$75,627.74**. The deadline for filing a proof of claim is not until November 9, 2016.

#### **Debtor's Response**

Debtor disagrees with the amount of pre-petition arrears. Debtor states that Ocwen Loan Servicing is the loan servicer for Wells Fargo. Debtor ordered a payment history from Ocwen Loan Servicing that shows that the last payments applied to Debtor's account occurred in November 2013. Debtor had previously filed for chapter 13 (2013-29532) in July 2013 (dismissed in July 2015).

During the pendency of that case, Debtor claims to have made payments to Ocwen since November 2013 that are not reflected in the accounting. The TFR shows a total of **\$39,831.75** in mortgage payments and **\$12,088.12** in pre-petition arrears payments paid to Ocwen during the pendency of that case. None of the payments made by the Chapter 13 Trustee appear in the accounting provided by Ocwen. Debtor anticipates that, taking into account these payments, the actual pre-petition arrears in this case will be **\$23,707.87**. Debtor proposes repayment of **\$40,000.00** in the Plan.

## Discussion

Wells Fargo's opposition is predicated upon the claim that Debtor's proposed plan payments are inadequate to cover the pre-petition arrears. However, Debtor has offered credible evidence that payments made to Wells Fargo, through Ocwen Loan Servicing, by the Chapter 13 Trustee in Debtor's previously filed bankruptcy, were not applied to Debtor's account with Wells Fargo (see dckt. 24).

Therefore, in the absence of further evidence, the Court's decision is to overrule Wells Fargo's objection to confirmation. 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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on July 1, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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13. [16-23745](#)-C-13 SCOTT/MELANIE MACKNIGHT MOTION TO VALUE COLLATERAL OF  
FF-1 Nekesha Batty WELLS FARGO BANK, N.A.  
8-12-16 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 12, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2013 Volkswagen Passat TDI SE . The Debtor seeks to value the property at a replacement value of \$9,375.00 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).

Debtor originally scheduled the vehicle with a value of \$10,095.00. Debtor now asserts the vehicle has a fair-market value of \$9,375.00 based on an appraisal. Dkt. 26.

**Creditor's Objection**

Wells Fargo Bank, N.A., Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$12,700.00 based upon NADA guidelines.

**The Trustee filed a statement of non-opposition.**

**Discussion**

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$16,161,86.

Creditor's valuation estimate is based on "clean retail" NADA valuation estimate. Debtor's valuation is based on an appraisal. Debtor has offered the strongest evidence of the vehicles value. An appraisal is more precise than NADA guidelines. The is inclined to continue the matter if, at the hearing, Creditor requests a continuance to obtain a competing appraisal.

Assuming Creditor does not wish to obtain an appraisal, the court's decision is to grant the motion to value at \$9,375.00.

Respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,375.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a purchase-money loan recorded against a 2013 Volkswagen Passat TDI SE is determined to be a secured claim in the amount of \$9,375.00 and the balance of the claim is a general unsecured claim. The value of the vehicle is \$9,375.00.

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14. [15-21848](#)-C-13 JOHN LABARBERA, AND  
DBL-1 JACLYN LABARBERA  
Bruce Dwigins

MOTION TO MODIFY PLAN  
8-2-16 [[66](#)]

\*\*\*\*\*

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

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

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

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

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

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

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

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

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

1. The debtor is delinquent under the proposed plan.
2. No explanation is provided for modification.
3. Debtor failed to file amended schedules I and J.
4. Trustee is uncertain of the treatment of the Country Fields Estates HOA.

**Debtors' Reply**

Debtors will cure the delinquency and file amended schedules. The reason for modification is an unexpected claim by the SBE. The HOA has not filed a

claim.

**Trustee's Amended Objection**

Trustee objects to confirmation on the basis that:

1. The amended schedule J reflects a new car payment. Debtors did not receive court authorization to incur this debt.
2. Trustee believes that Debtors may have more income than is reelected in their schedules.

**Discussion**

As the Trustee's objections highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

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

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

**The court's decision is to continue the hearing to October 4, 2016 at 2:00 p.m.**

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

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

1. Debtors are delinquent under the proposed plan.
2. Debtor's schedule I filed 2/24/16 budgets \$100 per month for a retirement fund loan repayment. The prior schedule I did not include this expense. The court did not authorize Debtors to incur this debt.
3. A review of Debtors' 2013 and 2014 tax return reflects Debtors may be over-withholding.
4. Debtors have not filed a supplemental schedule I, have not provided 2015 tax returns and six months of paystubs, and have not indicated when the retirement loan payment completes.

## **Debtors' Reply**

Debtors request a short continuance to supplement the record and provide updated Schedules I & J as to address the Trustee's concerns.

### **Discussion**

The court's decision is to continue the hearing to October 4, 2016 at 2:00 p.m.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to October 4, 2016 at 2:00 p.m.

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

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

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

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

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

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

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

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

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

1. Debtor is delinquent under the terms of the proposed plan.
2. Trustee request that Debtor provide receipt for a \$100+ car air conditioning repair.

As the Trustee's concerns highlight, he modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 17, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtors are applying for a loan modification and indicated their intention to set aside **\$3,500.00** as adequate protection. However, the Debtor is not curing the default nor proposing when the creditor will start receiving payments.
2. Debtor claims that he has approval for a loan modification, however the Debtor has failed to provide the Trustee with proof of the loan modification.
3. Debtor paid a "friend" **\$2,600.00** on March 2016, 3 months pre-petition. Debtor has not adequately identified who was paid, nor taken any steps to preserve the ability to avoid this preference in

the event of a conversion to Chapter 7.

4. Schedule I shows that at least one Debtor has insurance sales income and has been employed since 2012. No accounts receivables or residuals are listed on Schedule B and the value and income is not clear on Schedule I.
5. Plan is not the Debtor's best effort under § 1325(b). Debtor is over the median income and proposes plan payments of \$3,559.00 for 60 months with a 30% dividend to unsecured creditors. Form 122C-2 reflects negative monthly disposable income of \$2,512.00 including a monthly payments to the IRS in the amount of \$4,166.67. However, the Plan (dckt. 18) shows proposed payments to the secured IRS claim in the amount of \$1,078.12 per month. The IRS claim is only \$45,425.00 secured (\$757.08 per month). Finally, Debtor has an expense of \$4,250.00 on Schedule J for school/dorm expenses that does not appear to be for a dependent.

#### **Discussion**

The Court has considered the Trustee's objections and finds them persuasive. Debtor has not proved that the Plan is Debtor's best effort under § 1325(b) because of the uncertainty surrounding the amount of the secured portion of the IRS claim and proposed payments to the IRS under 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\*\*\*\*

18. [13-31357](#)-C-13 MICHAEL/LISA BABICH  
PGM-1 Peter Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
8-12-16 [[35](#)]

\*\*\*\*

**Final Ruling:** No appearance at the September 13, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 12, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification filed by Michael and Lisa Babich, ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,623.38 a month at 4% over the next 480 months.

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

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

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

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

The Motion to Approve the Loan  
Modification filed by Michael and Lisa Babich

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

**IT IS ORDERED** that the court authorizes Michael and Lisa Babich ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 12641 Princeton Drive, Auburn, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 38.

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors have paid \$155 more than the plan states has been paid.
2. The plan reduces the dividend to unsecured creditors from 4% to 0%, but the Trustee has already disbursed funds to unsecured creditors. These payments have not been authorized by the plan.

**Debtors' Reply**

The Debtors' payment is ahead by \$155.00 as the changing of the automatic deduction did not mimic the term plans. The Debtors request to correct this amount in the Order Granting this motion.

The Debtors request that the disbursement previously made by the

Trustee be authorized in this Order.

**Discussion**

The Trustee's concerns can be addressed in the order confirming plan.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 3, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 17, 20016. Fourteen days' notice is required. That requirement is met.

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

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

The Debtor was dismissed on September, 9, 2016. Therefore, the objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection is overruled.

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.  
-----

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

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

**Below is the court's tentative ruling.**  
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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. Forty-two days' notice is required. That requirement was met.

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

**The court's decision is to continue the hearing on the Motion to Confirm to September 20, 2016 at 2:00 p.m.**

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

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

At the hearing, the Trustee confirmed that the delinquency was cured.

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

**DEBTORS' RESPONSE**

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

#### **CREDITOR'S OPPOSITION**

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

#### **FEBRUARY 9, 2016 HEARING**

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

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

#### **DISCUSSION**

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

The evidentiary hearing set for September 6, 2016 was resolved per stipulation. Dkt. 90.

As of 9/12/16, the stipulation has not been filed. Debtor's attorney reports that creditor is in the process of formulating the stipulation language. The court's decision is to continue the hearing on the motion to confirm to September 20, 2016 at 2:00 p.m. The stipulation shall be filed before September 20, 2016.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Confirm is continued to September 20, 2016 at 2:00 p.m.

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on July 27, 2016 is  
confirmed, and counsel for the Debtors shall  
prepare an appropriate order confirming the Chapter  
13 Plan, transmit the proposed order to the Chapter  
13 Trustee for approval as to form, and if so  
approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

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23. [15-26366](#)-C-13 LINDA LOVELACE AND GLORIA OBJECTION TO CLAIM OF HSBC  
NBC-4 HOUSTON MORTGAGE SERVICES, INC., CLAIM  
Eamonn Foster NUMBER 7  
8-5-16 [[62](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 5, 2016. 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 7 of Household  
Financial Corporation of California is . . .**

**SUMMARY OF OBJECTION**

Linda May Lovelace and Gloria Jean Houston, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Household Financial Corporation of California ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$246,180.06. Objector asserts that the claim asserts arrears in the amount of \$12,507.31, however, on an "Informational Mortgage Statement" provided to Debtors on or before August 9, 2015, HSBC informed Debtors that their arrears were only \$5,322.88.

Debtors request that the arrearage portion of the claim be reduced to \$5,322.88.

## **CREDITOR'S OPPOSITION**

Creditor Household Financial Corporation of California opposes Debtor's objection to claim on the grounds that Debtor's arrears arise from two areas. First, prior to filing the petition, Debtor owed two payments in the amount of \$1,599.15 each. Second, Debtor owed \$9,309.01 in property taxes that Creditor paid on behalf of Debtor. Creditor states that according to paragraph 2 of the Deed of Trust, Creditor is entitled to recover property taxes paid on behalf of Debtor when incurred as a result of Debtors' default. The \$5,322.88 amount cited by the Debtor includes the two missed payments and a portion of the unpaid taxes to recover the \$9,309.01 over time.

## **DEBTORS' REPLY**

Debtors contend that:

The only evidence Creditor provides is a POC consisting of the Proof of Claim form, Official Form 10, an accounting of the mortgage, and the Deed of Trust. The POC does not contain, nor does HFC provide in its Opposition, the Promissory Note.

Pursuant to § 1322(e), the Plan proposes to cure the mortgage default. The "underlying agreement," as referenced in § 1322(e), is the Promissory Note. However, HFC has not provided the Promissory Note, and instead decided to rely solely on the Deed of Trust. Therefore, in order for the Creditor to satisfy its burden that the POC is accurate, the Deed of Trust must indicate that the note is in default if the debtors fail to pay the real property taxes.

The Deed of Trust provided by HFC and relied on in HFC's Opposition states no clause suggesting that the note is in default if Debtors fail to pay the real property taxes. There is one covenant in the Deed of Trust which deals with the payment of real property taxes. On page 10 of the POC, the second covenant states that only if the Lender requests it in writing, the "Borrower shall pay to Lender on the day monthly payments of principal and interest are payable Here, HFC never made a written request to hold property taxes and assessments in an escrow account. Rather, Debtors were free to make the payments on their own, and if they delayed, then HFC was free to protect its investment and make the payment on Debtors' behalf - which is what happened here. To date, HFC still does not have an Escrow account for the payment or repayment of the property taxes and insurance.

HFC never made a written request to hold property taxes and assessments in an escrow account. Rather, Debtors were free to make the payments on their own, and if they delayed, then HFC was free to protect its investment and make the payment on Debtors' behalf - which is what happened here. To date, HFC still does not have an Escrow account for the payment or repayment of the property taxes and insurance.

HFC paid certain property taxes to protect its interest in Debtors' property. Section 7 of the Deed of Trust, as quoted above, allows HFC to prepay the property taxes. However, the same section only permits HFC to add that prepayment to the balance of the Note as "additional indebtedness." HFC's election to protect its interest by paying the property taxes is not a triggering event or condition upon which HFC may foreclose or accelerate the note. Rather, HFC's election to so act may accrue interest as additional indebtedness, increasing the principal balance.

Because HFC cannot place the note in default for Debtors failure to repay the paid property taxes, the amount is not necessary to "cure the default." Therefore, those amounts should not be allowed as an "arrearage." Debtors concede that those amounts may be used to increase the balance of the note, and they stress that this is HFC's only option.

## **DISCUSSION**

### Burden of Proof

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).

### Prima Facie Validity

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure shall constitute prima facie evidence of the validity and amount of the claim. FRBP 3001(f).

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. FRBP 3001(f).

Here, Creditor has not attached a copy of the promissory note, the basis of their claim, to the POC. Therefore, the POC is not prima facie evidence of the claim.

### Reimbursement of Property Taxes

The section of the Deed of Trust that handles lender-paid taxes is Section 7, on page 11 of the POC. That section, in relevant part, states:

**7. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest. ... Where the original principal amount of the Note then in effect is \$10,000 or more, any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof.

Section 7 does not indicate how property taxes shall be paid, only that the amount payable upon notice from the lender.

No Tentative Ruling

The court will make its decision at the hearing.

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

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

The Objection to Claim of Household Financial Corporation of California , Creditor filed in this case by Linda May Lovelace and Gloria Jean Houston, the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 7 of Household Financial Corporation of California is . . .

\*\*\*\*

24. [16-24172](#)-C-13 DARREN CARTER AND AMY  
DPC-1 ALEXANDER-CARTER  
Scott Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-17-16 [[14](#)]

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 17, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtors is **\$1,033.00** delinquent in plan payments to the Trustee and, at the time of filing, the next scheduled payment was due on August 25, 2016. The Debtor has paid **\$0.00** into the Plant to date.
2. Plan is not Debtor's best effort. Debtor is over median income and proposes plan payments of **\$1,033.00** for 60 months with a **8.74%** dividend to unsecured creditors. Form 122C-2 shows disposable income of **\$329.22**. Debtor lists expense in Schedule J in the amount of **\$225.00** for an auto payment. Debtor admitted at Meeting of Creditors on August 11, 2016 that this is payment for an Acura which is listed in the Plan as a Class 2 debt.
3. The Plan may fail Chapter 7 liquidation analysis. Debtor paid Diane

Alexander (Mom) a total of \$7,800.00 and still owes \$40,000.00. Debtors admitted at Meeting of Creditors that they have been making monthly payments to their mom and that they also continued to pay her back in their prior case #14-29023-13, filed on September 5, 2014 and dismissed on February 17, 2016.

4. Plan exceeds 60 months. The Plan will complete in 99 months based on the claim of the IRS filed on July 12, 2016. The creditor claims a secured portion in the amount of \$33,917.38 and a priority portion in the amount of \$29,041.24. The Plan provides for the secured portion in the amount of \$21,473.91 and the priority portion in the amount of \$1.00.

#### **Discussion**

The Court has considered the Trustee's objection and finds it persuasive. Debtor is delinquent on plan payments. The Plan exceeds 60 months and is therefore not confirmable under § 1322(d). Debtor does not pledge entire amount of disposable income. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 4, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The motion is not pleaded with particularity as required by FRCP 7.

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Modified

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 4, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the first meeting of creditors on July 28, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.\
2. Debtor is \$930 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$930 is due August 25, 2016. The case was filed on June 15, 2016, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
3. The total fees charged and paid in this case are not clear. Debtor's

plan section 2.06 states \$3,500 in attorney fees were paid and an additional \$1,000 shall be paid through the plan. The Disclosure of Attorney Compensation, Statement Pursuant to Rule 2016(b) indicates \$3,500 in attorney fees have been charged in the case and \$2,500 was paid prior to filing and \$1,000 balance is due. The Rights and Responsibilities states \$3,500 in fees were charged and \$2,500 by Debtor. The Statement of Financial Affairs states the debtor paid \$2,500. Schedule I does not reflect any business income, only \$4,000 is allowed in a non-business case.

Trustee asks the court to continue this objection to after September 1, 2016, the continued date of the first meeting of creditors, to September 13, 2016. If Debtor fails to resolve Trustee's objection, the Trustee prays the court deny confirmation of debtor's plan.

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

Debtor replies to Trustee's objections, asserting the following:

1. While the address is correct, debtor never received notice of the first meeting date. Debtor has every intention of appearing at the continued meeting set for September 1, 2016.
2. Debtor acknowledges that the first plan payment was not made July 25, 2016. Two monthly payments will be remitted before the date of the hearing on the objection.
3. Debtor acknowledged disparity in the information as to the attorney's fees, and suggests the matter be clarified in the order confirming plan that the gross amount of fees allowed in this case is \$4,000.

#### **Trustee's Amended Objection**

Section 2.08 lists two mortgages to Bank of America, and Class 1 table lists the monthly contract installment amount for the second mortgage as "0.00."

Section 6 of the plan attaches additional provisions to treat the first mortgage, but does indicate treatment for the second.

There is a footnote in the plan indicating 8 pages, though page 8 is not attached.

#### **DISCUSSION**

The court will not approve the plan until the Trustee's concern regarding the second mortgage with Bank of America is resolved.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2016. 28 days' notice is required. This requirement was met.

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

**The objection to claimed exemptions is overruled.**

The Trustee filed an objection to claim of exemption, which the court sustained on August 2, 2016. The Trustee again objects to the exemptions.

The Trustee objects to the Debtors' claimed exemptions on schedule C for a trust annuity arising from a personal injury settlement. The Debtor has claimed \$24,060.00 under CCCP § 703.140(b) (11) (D) and \$149,080.32 under CCCP § 703.140(b) (10) (E). The Debtors may not be entitled to those exemptions as:

1. Trust Annuity: Debtor first claims an exemption under CCCP § 703.140(b) (11) (D). CCCP § 703.140(b) (11) (D) provides that "The debtor's right to receive, or property that is traceable to, any of the following: (D) A payment, not to exceed twenty-four thousand sixty dollars (\$24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent."

The property Debtor describes as exempt is: "TRUST ANNUITY-ARISING FROM PERSONAL INJURY SETTLEMENT athene-annuity payments \$867.78 (per month) (per term of life): anti-alienation clause; [\$75,000 due 6/22/20, \$100,000 due 6/22/25].

Debtor does not identify who had the personal injury that resulted in this settlement, and even if the description is accurate, if the personal injury was to another party not the debtor or a dependent—such as a parent—this property would not qualify for the exemption under the statute.

2. Payment Under . . . Similar Plan. Debtor also claims an exemption for the same property under another statute where it is not clear how it could possibly qualify.

CCCP § 703.140(b)(10)(E) states "The debtor's right to receive any of the following: (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The description of the asset should cause the Court to disallow the exemption as it is not "A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract," and therefore not exempt.

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

Debtors respond to Trustee's objection, providing:

1. Debtors filed an amended schedule C on July 11, 2016.
2. The Debtor received the right to this Trust Annuity, which arose from the personal injury to the Debtor, and is necessary for the support of the Debtor given the small assets owned by the Debtor(s). See Debtor's declaration and exhibits.
3. Debtors meant to use CCCP § 703.140(b)(11)(E) rather than CCCP § 703.140(b)(10)(E).

#### **DISCUSSION**

Where a Debtor claims a California exemption, the California burden of proof requires that the party claiming the exemption bears the burden of proving entitlement to that exemption. In re Tallerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015). Here, the chapter 13 trustee has raised issue with two claims to exemption.

First, Debtors have resolved the Trustee's concern regarding the trust annuity.

Second, CCCP § 704.140(b)(11)(E) allows Debtors to exempt a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Debtors appear to have resolved the Trustee's concerns as both exemptions relate to funds received as a result of a personal injury to the debtor. The court's decision is to overrule the Objection.

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

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

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

**IT IS ORDERED** that Objection is overruled.

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**Final Ruling:** No appearance at the September 13, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 27, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 7, 2016. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-25198) was filed on May 31, 2016 and dismissed on August 5, 2016, voluntarily by the Debtor to secure potential financing to liquidate a claim. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

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. Debtor asserts that Debtor has high likelihood of success in her Chapter 13 because she has substantial income, her partner is willing to pay her expenses and fund the plan. Significantly, her partner is also a tenant in common with her in the residence and an obligor on the note secured by the trust deed encumbering the residence. He is highly motivated to ensure the success of the plan.

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

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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