UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 15, 2015 at 3:00 p.m.

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1. 15-24500-E-13 DPC-2 — RAMONA/ROBERT JONES — Pro Se — OBJECTION TO DEBTORS 11 U.S.C. SEC. 1328 CERTIFICATION BY DAVID P. CUSICK — 8-6-15 [34]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 6, 2015. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector"), filed the instant Objection to Debtor's Discharge on August 6, 2015. Dckt. 34.

The Objector argues that Romana Jones and Robert Jones, Jr. ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on June 27, 2012. Case No. 12-32011. The Debtor received a discharge on November 19, 2012. Case No. 12-32011, Dckt. 29.

The instant case was filed under Chapter 13 on June 2, 2015.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on November 19, 2012, which is less than four-years preceding the date of the filing of the instant case. Case No. 12-32011, Dckt. 29.. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-24500), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-24500, the case shall be closed without the entry of a discharge.

2. 14-26001-E-13 KEVIN/BEVERLY WAY
FF-2 Brian Turner

MOTION TO APPROVE LOAN MODIFICATION
8-18-15 [43]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Kevin and Beverly Way ("Debtor") seeks court approval for Debtor to incur post-petition credit. American Student Assistance ("Creditor"), whose claim the plan provides for in Class 4, holds a debt of $31,040.93 against Debtor and a co-debtor Ian Kanady. The terms of the modification are as follows:

1. The new payments will become first due on January 25, 2015

2. The co-debtor's monthly payment on the debt will be $282.00

3. After the co-debtor has made 9 consecutive payments, Creditor

will attempt to secure an eligible lender to purchase the loan

4. The loan will then return to normal repayment plan subject to the same conditions and benefits as any other loan under the Federal Family Education Loan Program

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. The Declaration states that Debtors will not make any of the payments on the loan.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on September 1, 2015. Dckt. 48. The Trustee states that the Motion is attempting to get court approval to allow the Debtor and non-filing co-borrower to modify the student loan. The Trustee states that it appears that the student loan is currently in default. The Trustee does not oppose the Motion but is concerns where the Debtor fail to provide a declaration of Ian Kanady, to his ability and willingness to modify and maintain the student loan debt himself outside the bankruptcy. The Trustee also notes that the proposed modified loan calls for nine payments of $282.00 per month starting January 25, 2015 but the Debtor does not provide any information or evidence that these payments have been made.

The Trustee also notes that the terms of the agreement include that if the rehabilitation or modification of the loan is reached, the loan will be resold with the collection costs of 16% of the outstanding principal balance plus the outstanding interest being added to the end of the loan.

The Trustee has confirmed that the loan modification does not cause any adverse impact on the bankruptcy estate.

DISCUSSION

A review of the attached exhibits provided for by the Debtor shows a letter from "Delta Management Associations, Inc." However, the Debtor appears to be seeking a modification with American Student Assistance. None of the information provided by the Debtor as to the modification states that the creditor is, in fact, American Student Assistance. A review of the plan shows that neither of those creditors are listed in any class nor does there appear to be any Proof of Claim filed by either creditor.

No Proof of Claim has bene filed by either Delta Management Associations Inc. or American Student Assistance. No Proof of Claim has been filed by the Debtor for either of these two "creditors." Because Debtor has such limited disposable income (notwithstanding having gross income of $9,800 a month), there is a 0.00% dividend for creditors holding general unsecured claims.

The "contract" for the loan modification does not identify the party with whom Debtor is purportedly modifying the loan. It does state that there is a loan "guarantor," American Student Assistance. This would appear not to be the "creditor" with whom Debtor must contract.

Debtor also neglected to tell the court that as part of the "modification," they are purporting to agree to pay a 16% fix fee "collection cost." This provision may well be (1) in violation of California law and (2) a violation of the California Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act. *Bondanza v. Peninsula Hospital and Medical Center,* 23 Cal.3d 260 (1979). In *Bondanza*, the California Supreme Court rejected that a consumer could be made liable for a flat percentage collection fee which did not represent an amount consistent with the actual reasonable costs of the collection activities. A flat percentage was determined to be an improper liquidated damages provision being imposed on a consumer. *Id.* at 266-268. See *Ballard v. Equifax Check Services*, 158 F, Supp. 2d 1163, 1174-1177 (E.D. Cal. 2001).

Here, the debt is stated to be $31,040.93 in the Motion. The 16% collection liquidated damages would be $4,966, which would be paid because the Debtor and co-obligor actually paid the debt.

The court is concerned in approving a potential modification when the court cannot accurately determine who the modification is with, especially when the Motion lists a creditor different than the creditor listed on the letter outlining the modification. The court will not issue "maybe-effective, maybe-not-effective" authorization to enter into any sort of modification, where not only the Debtor has an interest in but a third party co-debtor.

The court is also concerned that "authorizing" the Debtor to enter into such agreement may be misconstrued as the court implicitly validating a provision of the contract that may well violate California and Federal law.

On Schedule I Debtor states that Debtor's business is continued to be operated though it is losing ($446.90) a month. Schedule I, Dckt. 1 at 39. With such a tight budget and a business which is losing money, Debtor does not state how this requested financing fits into a rational financial plan in this bankruptcy case.

Therefore, because based on the Motion and the evidence provided the court cannot determine who the real creditor in interest is, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

3. 15-23902-E-13 JOHN/MELISSA RUS
DPC-1 Cindy Hill

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-23-15 [20]

Continued from 7/21/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 23, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the pending plan relies on the Motion to Avoid Lien of Waldorf School/Northern California Collection Services, Inc. The Motion to Avoid Lien is set for hearing on July 21, 2015 at 3:00 p.m.

On July 21, 2015, the court denied without prejudice the Motion to Avoid Lien.

JULY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 15, 2015. Dckt. 28.

DISCUSSION

The Trustee's objections are well-taken. The Plan relies on the Motion to Avoid Lien which has been denied due to the Debtor failing to show that the lien impairs an exemption claimed by the Debtor.

On August 20, 2015, the Debtor filed an amended Schedule C which exempts the Debtor's real property in the amount of $1.00.00 Dckt. 35. The Debtor also filed a "Renewed Motion to Avoid the Fixing of a Lien Pursuant to 11 U.S.C. 522(f)(1) or in the Alternative to Value the Collateral of Secured Creditor." Dckt. 32. The Motion, on its face, does not comply with Local Bankr. R. 9014-1(d)(1) which states, in relevant part, "[e]xcept as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion."

Here, the Motion is pleaded in the alternative, but under different code sections, namely § 522(f) and § 506(a). This is improper.

With the Motion facially improper, it appears that the plan cannot be confirmed since it relies on the Debtor either avoiding the lien or valuing the lien. While in an Adversary Proceeding the plaintiff may plead multiple claims against a defendant as permitted by Federal Rule of Civil Procedure 18, that Rule is not incorporated into bankruptcy court contested matter practice by Federal Rule of Bankruptcy Procedure 9014. If Debtor wants to file a motion to avoid a lien under 11 U.S.C. § 522(f), then such a motion can be filed. If Debtor seeks to value a secured claim pursuant to 11 U.S.C. § 506(a), such a motion can be filed. But with the rapid pace of contested matter practice, in which the responding party may have only two weeks to file an opposition, including evidence, stitching together multiple theories and claims into one motion is not proper.

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

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

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

4. 15-26309-E-13 KIRBY/CYNTHIA QUALLS — MOTION TO VALUE COLLATERAL OF CAR MAX AUTO FINANCE
RK-1 Richard Kwun — 8-14-15 [9]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 14, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Car Max Auto Finance aka CARMAX, ("Creditor") is granted. and the secured claim is determined to have a value of $5,400.00.

The Motion filed by Kirby Dwaine Qualls and Cynthia Ann Qualls ("Debtor") to value the secured claim of Car Max Auto Finance, a.k.a. CARMAX ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2003 Toyota Corolla LE ("Vehicle"). Dckt. 11. The Debtor seeks to value the Vehicle at a replacement value of $5,400.00 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 alleges in the Motion that the debt secured by the Vehicle was approximately $9,878 as of the commencement of this bankruptcy case. Motion, p.1:25-26, Dckt. 9.

Debtor declares the lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,878.00. Dckt. 9, 11. FN.1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $5,400.00, with a general unsecured claim of $4,478.00.

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.

FN.1. The court notes that there is no proof of claim filed to show the amount Creditor's claim. Further, the Qualls Declaration does not provide any testimony of the amount of Creditor's claim. On Schedule D, Debtor states under penalty of perjury that Creditor's claim is in the amount of $9,878.00. The court accepts the Schedule D statement as evidence of the amount of the claim.

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 Kirby Dwaine Qualls and Cynthia Ann Qualls ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor], "Creditor," secured by an asset described as 2003 Toyota Corolla LE ("Vehicle") is determined to be a secured claim in the amount of $5,400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,400.00 and is encumbered by liens securing claims which exceed the value of the asset.

5. 15-26412-E-13 NICHOLAS/SAMANTHA BAKER — MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
PLC-1 Peter Cianchetta — 8-27-15 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA Inc. d.b.a Chrysler Capital ("Creditor") is granted and the secured claim is determined to have a value of $21,662.88.

The Motion filed by Nicholas David Baker and Samantha Marie Finley Baker ("Debtor") to value the secured claim of Santander Consumer USA Inc. d.b.a Chrysler Capital ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Caravan AVP, VIN ending in 9306 ("Vehicle"). Debtor seeks to value the Vehicle.

Debtor alleges the value of the Vehicle is $15,640.00. 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). However, the lien on the Vehicle's title secures a purchase-money loan incurred in April 14, 2014, to secure a debt owed to Creditor with a balance of approximately $28,910.75. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized.

The Creditor filed a Proof of Claim No. 1 on August 20, 2015, claiming a secured claim in the amount of $28,910.75. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 1 shows that the total amount financed by the Movant was $30,198.01. The cash price of the vehicle was $17,775.00. There was a negative net equity of $6,670.58. This also included the $900.00 for GAP insurance on that negative net equity and $3,000.00 for a service contract, and other undisputed fees and taxes. Dckt. 19, Exhibit 2.

Movant is requesting that the loan held by Creditor be determined to be secured in the amount of $16,889.63 after the reduction of the alleged non-PMSI: the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of $6,670.58; the service contract valued at $3,000.00; and the GAP insurance valued at $900. FN.1.

FN.1. Debtor's motion asserts that the secured claim is $27,470.21, though Debtor's declaration does not support that assertion. The exhibits presented by Debtor and Creditor demonstrate that the secured claim is for $28,910.75. It seems Debtor used the principal of the secured claim for his calculations, rather than the full claim of $28,910.75 as filed by Creditor. Therefore, the court will use the valuation provided for in the Proof of Claim No. 1.

CREDITOR'S OPPOSITION

Creditor filed an opposition on September 1, 2015. Dckt. 21. Creditor broadly alleges that for portions of the service contract and GAP insurance, there are $2,464.35 in unearned premiums of the service contract and $712.50 of unearned premiums on the GAP insurance. Dckt. 21, ¶ 5. FN.2. Creditor also objects to Debtor's valuation of Creditor's purchase money security interest, and asserts the value should be at $22,240.17, which omits the value of the service contract and GAP insurance. Dckt. 21, ¶ 6. Alternatively, Creditor seeks to have the instant motion denied.

FN.2. The court notes that Creditor's opposition does not cite authority to support the reduction in the secured claim for any claimed or unclaimed portions. Creditor further fails to support the assertion with admissible evidence that the GAP insurance or service contract reductions have been earned by Creditor. See Local Bankr. R. 9014-1(d).

DISCUSSION

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11

U.S.C. § 1325(a), the Movant seeks to value the portion of the financing that was for the negative equity of the trade-in, not the actual purchase of the Vehicle. Movant also seeks to extend current law to include both the GAP insurance and the optional service contract. Dckt. 16, p. 2-3. For the reasons below, this court will consider the negative equity of the trade-in and GAP insurance from the purchase money security claim, but not the service contract .

Negative Equity

The lien on the Vehicle's title secures a purchase-money loan incurred in April 14, 2014, which is less than 910 days prior to filing of the petition. 11 U.S.C. 1325(a). In the 9th Circuit, negative equity is not considered a part of the price for the new vehicle, and is thus not included in the purchase money security interest. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S.Ct. 108 (2011). Debtor may value this portion of the loan.

Gap Insurance and Service Contract

Debtor seeks to extend the law of *In re Penrod* to include GAP insurance and an optional service contract. Whether GAP insurance or service contracts are included in the definition of a "purchase money security interest is determined by state law. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S.Ct. 108 (2011). Cal. Comm. Code § 9103 "does not provide a precise definition of a purchase money security interest, but rather a string of connected definitions." *In re Penrod*, 611 F.3d at 1161; Cal. Comm. Code § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

> "'Purchase money collateral' means goods or software that secures a purchase money obligation." Cal. Comm. Code § 9103(a)(1)." 'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Cal. Comm. Code § 9103(a)(2).

In re Penrod, 611 F.3d at 1161.

The California Commercial Code defines the term "good" to be,

> "(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (I) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by

> becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction."

Ca. Com. Code § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

Here, Debtor purchased a vehicle (a thing), was sold other insurance, and obtained additional credit to finance the negative equity that was in the vehicle that the seller agreed to take as a trade-in. The court organizes the various purchases and obligations as follows:

Purchase of New 2014 Dodge Grand Caravan	Source Document - Retail Installment Sale Contract. Exhibit 2, Dckt. 19	
Purchase Price of Vehicle (Cash Price Day of Sale)	$17,775.00	Price of Collateral
Document Processing	$80.00	Documentation as part of purchase of vehicle
Sales Tax	$1,517.68	Though This is Not a Tax Which the Purchaser is Obligated to Pay, but a Tax Which the Seller is Obligated to Pay, the Court includes it as part of the actual necessary cost in buying the vehicle. FN.1.
Electric Vehicle Registration	$29.00	Cost with above purchase price.
Vehicle License	$116.00	Estimated cost with above purchase price.
Registration	$101.00	Estimated cost with above purchase.
California [illegible] fees	$8.75	Cost with above purchase.

Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	$19,627.43	19627.43

FN.1. As discussed by the California Court of Appeal in *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (1977), the state sales tax is not a tax on the sale, but an excise tax imposed upon the retailer for the "privilege of conducting a retail business...." See Cal. Rev. & Tax. Code § 6051 (stating that tax is imposed on retailer). A retailer is allowed to add the sales tax to the sales price under specified circumstances (which is the common practice in California). Cal. Civ. Code § 1656.1.

In addition to the credit extended for the purchase of the vehicle, the Creditor extended further creditor to purchase or finance these additional items:

Item	Source Document - Retail Installment Sale Contract. Exhibit 2, Dckt. 19	
Service Contract	$3,000.00	This is a form of optional "insurance," in which the insurer is obligated to provide payments during a specified period for repairs required to the vehicle. In the Opposition, Creditor states that this was for "premiums" due on the service contract, and if the service contract is cancelled, then unearned premiums will be refunded.
GAP Insurance Coverage	$900.00	This is another form of insurance that the Creditor chose to finance, rather than having the Debtor provide evidence of insurance. As with the Service Contract, Creditor states that the insurance may be cancelled and unearned premiums recovered.
Safe Credit Union, Negative Equity in Trade-In	$6,670.58	This negative equity which Creditor chose to provide additional credit is not part of the purchase money obligation as determined by the court in *Penrod*.

Total obligation incurred not as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	$10,570.58	

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money financial and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations which would be so protected.

Here, Creditor argues that in addition to the obligation for purchasing the vehicle, the court should extend the purchase money obligation to include the voluntary insurance financing that the Creditor chose to provide. In the Opposition, Creditor states that neither the Service Contract or GAP Insurance Coverage are obligations for purchasing the vehicle, but both are obligations for the insurance contracts to provide services or benefits in the future. Creditor states that upon cancellation of these two insurance contracts, unearned premiums can be recovered. Creditor does not provide any credible argument as to why these future premium obligations for the contract for possible future repairs and for future insurance are part of the purchase money obligation.

CONCLUSION

In this Motion Debtor asserts that the court should take the $28,910.75 amount of this claim as filed August 20, 2015, and then deduct from it 100% of the negative equity, service contract, and GAP insurance financed in April 2014. Debtor presumes that 100% of any payments made by Debtor were applied only to the purchase money obligation and not the non-purchase money portions of the total debt owed under the Retail Installment Sale Contract. No legal authority is provided for this proposition.

Creditor asserts that out of the $28,910.75 claim, the court should determine that $22,240.17 of it is the purchase money obligation, if the court does not deny the motion in its entirety. Creditor does not provide a clear analysis of how it computes this lower number.

The court begins its computation with the total obligation due under the Purchase Installment Sale Contract:

Purchase Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	$19,627.43	65.00%
Service Contract	$3,000.00	9.93%
GAP Insurance Coverage	$900.00	2.98%
Safe Credit Union, Negative Equity in Trade-In	$6,670.58	22.09%
Total Purchase Obligation	$30,198.01	100.00%

In light of the limited evidence and analysis presented the court determines that 65% of the claim presented by Creditor is the purchase money obligation and 35% of the claim is for non-purchase money credit provided by Creditor to re-finance the negative equity in the trade-in and finance future insurance contracts.

Therefore, the court computes the purchase money claim as of the commencement of the case to be $18,791.99 (65% x $28,910.75 claim). This portion cannot be reduced as provided in the "hanging paragraph" following 11 U.S.C. § 1325(a)(9). The remaining portion of the claim, $10,118.76, is a nonpurchase money secured claim which may be valued pursuant to 11 U.S.C. § 506(a).

The creditor's secured claim is determined to be in the amount of $18,791.99. *See* 11 U.S.C. § 506(a). The remaining $10,118.76 is determined to be a general unsecured claim arising from the negative equity from the trade-in. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. FN.1.

FN.1. The court notes several points at this time. Interestingly, the $18,791.99 is $3,152 more than the amount argued by Debtor. It is also $3,448 less than the amount advanced by Creditor. As counsel knows, this court does not merely "split the baby" in an attempt to resolve matters. However, for this contested matter, the correct application of the law results in a final secured claim which is almost halfway between what has been argued by Debtor and by Creditor.

Second, Creditor has stated that it may recover unpaid premiums by cancelling the GAP insurance and the service contract if Debtor does not pay for the insurance contracts that were financed. It may be that Debtor will stipulate to relief from the stay to do that or require Creditor to incur the

cost and expense in obtaining relief from the stay to terminate those insurance contracts for the failure to make the required post-petition payments.

Finally, the parties have not presented the court with any contentions as to what post-petition obligations may exist for the estate with respect for the service and insurance contracts which have not been cancelled by the post-petition Debtor.

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 Nicholas David Baker and Samantha Marie Finley Baker, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA Inc. d.b.a Chrysler Capital, "Creditor," secured by an asset described as 2014 Dodge Caravan AVP, VIN ending in 9306, ("Vehicle") is determined to be a secured claim in the amount of $18,791.99, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the vehicle is $15,640.00, and is subject to a claim in the amount of $18,791.99 secured by a purchase money security interest that cannot be valued pursuant to 11 U.S.C. § 506(a) which consumes all of the value of the vehicle.

6. 14-31916-E-13 JMC-6 RUPERT/JOSEFINA ARENAS Joseph Canning

MOTION TO APPROVE LOAN MODIFICATION
8-17-15 [92]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on August 17, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Rupert and Josefina Arenas ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will not change the monthly mortgage payment or the interest rate. The principle amount owed on the loan will change from $130,339.00 to $150,959.27. The Debtor states that arrearage, if any, in the mortgage payments will be cured.

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

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

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

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

The Motion to Approve the Loan Modification filed by Rupert and Josefina Arenas 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 Rupert and Josefina Arenas ("Debtor") to amend the terms of the loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 4576 Avondale Circle, Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 95.

7. 14-31916-E-13 RUPERT/JOSEFINA ARENAS MOTION TO CONFIRM PLAN
JMC-5 Joseph Canning 7-30-15 [86]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Rupert and Josefina Arenas ("Debtor") filed the instant Motion to Confirm the Amended Plan on July 30, 2015. Dckt. 86.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 1, 2015. Dckt. 100. The Trustee objects on the ground that the plan relies on the Motion to Approve Loan Modification, which is set for hearing on September 15, 2015.

DISCUSSION

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

On September 15, 2015, the court granted the Motion to Approve Loan Modification. Therefore the Trustee's objection is overruled.

Without any further objections remaining and a review of the plan and Motion, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

8. 15-25318-E-13 MARK/COLLEEN MARTIN
DPC-1 Scott Hughes

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-12-15 [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 12, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor failed to appear at the Meeting of Creditors on August 6, 2015.

2. Debtor proposes to surrender their residential real property but fails to indicate where they plan to reside post-foreclosure and how they will afford rents where they claim nine dependents not living with them on Schedule J. The Trustee

states that this may be a typographical error.

3. The Trustee asserts that this plan may not be the Debtor's best efforts, the Trustee is uncertain that all income has been reported, in light of the number of adult dependents. Furthermore, the Debtor's corporate tax return reveals that Debtor's business has $501,132.00 in gross business income and of that $34,866.00 was paid to officers, $160,769.00 to salaries and $29,542.00 to shareholders. The Trustee is trying to determine how much of the income was paid to the Debtor. The business income had an ending balance of $20,539.00 which does not appear as An asset calculated into the value as the business is not reported.

4. The Debtor failed to report the sale or foreclosure of real property at 10 N. East St., #104, Woodland, California on Statement of Financial Affairs. The property was listed in Debtor's prior case.

5. The plan may not pass the liquidation analysis. While Schedule B report an ownership interest in "Colligiate Studios" and values it at $500.00, it does not attempt to explain how this value was computed. Schedule I shows the Debtor as employed by "Eventography, Inc." and describes one of the Debtor as self-employed; in the event that the Debtor owns "Eventography, Inc." it is not scheduled or valued on Schedule B. A search of the California Secretary of State website shows that Mark Martin is the agent for service of process of this corporation at the address listed for the employer's address on Schedule I.

The Trustee's objections are well-taken.

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

The Trustee's remaining objections boil down the fact that the Debtor has not provided accurate, transparent, and complete information. The Debtor has failed to disclose the foreclosure of their home or how, following the surrender of their home, where the Debtor will be living and how they intend to afford the new housing. Additionally, as noted by the Trustee, the Debtor appears to have interests and assets in businesses that are not fully disclosed on the Debtor's schedules or business income and expenses sheet. The issues raised by the Trustee, which the court also have concerns over, is whether the filing of the instant case accurately depicts the financial reality of the Debtor. Without all the businesses listed and income provided for, the court, Trustee, nor any other party in interest can determine whether the Debtor passes the Chapter 7 Liquidation analysis pursuant to 11 U.S.C. § 1325(a)(4) or whether the Debtor is complying with the Bankruptcy Code or is, in fact able to make plan payments. See 11 U.S.C. §§ 1325(a)(1) and (5).

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.

9. 15-21819-E-13 TERRY/CHARLOTTE SEELY — MOTION TO MODIFY PLAN
PLC-1 Peter Cianchetta — 7-17-15 [21]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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 17, 2015. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on October 27, 2015.

Terry and Charlotte Seely ("Debtor") filed the instant Motion to Confirm the Modified Plan on July 17, 2015. Dckt. 21.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 27, 2015. Dckt. 26. The Trustee objects on the ground that the plan will take longer than 60 months to complete. The Trustee states that the

plan calls for payments totaling $33,715.00 for 60 months. Disbursements under the plan are approximately $41,595.07 including Trustee fees. Disbursements are $7,880.00 greater than proposed payments (Secured principal and interest $9,662.54, attorney fees $3,875.00, unsecured claims $25,354.53 and Trustee fees $2,703.00). The Trustee estimates that 15 additional months would be required.

DEBTOR'S REPLY

The Debtor filed a reply to the instant Motion on September 4, 2015. Dckt. 37. The Debtor states that they have filed an Objection to Claim No. 8 which is set for October 27, 2015. The Debtor asserts that the claim of EnerBank was filed 5 days after the claims bar date, and the claim amount of EnerBank is $8,772.00 which is $890.00 more than the Trustee states the payments are to be short. The Debtor asks that the instant hearing is continued to October 27, 2015.

DISCUSSION

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

A review of the docket shows that on September 3, 2015, the Debtor filed an Objection to Claim No. 8, set for hearing on October 27, 2015 at 3:00 p.m. Dckt. 29 and 35.

In light of the proposed plan relying on the court sustaining the Objection to Claim, the court continues the instant Motion to 3:00 p.m. on October 27, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to 3:00 p.m. on October 27, 2015.

10. 15-23332-E-13 KATHERINE GERRARD **MOTION TO CONFIRM PLAN**
DSS-1 David Silber **7-21-15 [52]**

DEBTOR DISMISSED: 07/26/2015

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

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

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

11. 15-20936-E-13 KENT TEIXEIRA
DBJ-3 Douglas Jacobs

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
7-14-15 [51]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Kent James Teixeira ("Debtor") to value the secured claim of US Bank N.A. as Trustee for Home Equity Loan Trust 2007-HSA-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 164 La Mirada Ave, Oroville, California ("Property"). Debtor seeks to value the Property at a fair market value of $412,000.00 as of the petition filing date. Dckt. 53, ¶ 4. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on

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

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

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $441,394.00. Dckt. 53, ¶ 3. Creditor's second deed of trust secures a claim with a balance of approximately $148,000.00. Dckt. 53, ¶ 6. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kent James Teixeira ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of U.S. Bank N.A. secured by a second deed of trust recorded against the real property commonly known as 164 La Mirada Ave, Oroville, California, is determined to be a secured claim in the amount of $0.00. The value of the Property is $412,000.00 and is encumbered by liens securing claims in the amount of $441,394.00, which exceeds the value of the Property which is subject to Creditor's lien.

12. 15-20936-E-13 KENT TEIXEIRA MOTION TO CONFIRM PLAN
DBJ-4 Douglas Jacobs 7-14-15 [56]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No 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 14, 2015. By the court's calculation, 63 days' notice was provided. 42 days' notice is required.

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

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

Kent Teixeira ("Debtor") filed this instant Motion to Confirm the Amended Plan on July 14, 2015. Dckt. 61.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 29, 2015. Dckt. 61. The Trustee objects on the ground that the proposed plan relies on a Motion to Value Collateral of U.S. Bank.

DISCUSSION

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

At the September 15, 2015 hearing, the court granted the Debtor's Motion to Value Collateral of U.S. Bank. Therefore, the Trustee's objection is overruled.

Therefore, after resolving the Trustee's objection and a review of the Motion and proposed plan, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 14, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. 15-23238-E-13 KATRINA NOPEL — CONTINUED MOTION FOR CONTEMPT
PLC-1 Peter Cianchetta — 7-20-15 [26]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 20, 2015. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Motion for Civil Contempt 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 for Civil Contempt is continued to 3:00 p.m. on October 20, 2015.

Katrina Nopel ("Debtor") filed the instant Motion for Civil Contempt

on July 20, 2015. Dckt. 26. The Debtor is seeking an order holding Springleaf Financial, Inc. ("Creditor") in civil contempt under 11 U.S.C. § 105 and Fed. R. Bankr. P. 9014 and 9020 for violations of the automatic stay.

AUGUST 4, 2015 ORDER

On August 4, 2015, the court issued an order continuing the hearing to 3:00 p.m. on September 15, 2015, pursuant to a stipulation of the parties. Dckt. 33.

STATUS REPORT

The Creditor filed a Status Report on September 9, 2015. Dckt. 38. The Creditor states that it and the Debtor have reached a settlement in principal to fully resolve the instant Motion. The Creditor states that a settlement agreement is being circulated. The Creditor requests that the hearing be continued for 30 days in order to finalize the settlement.

DISCUSSION

In light of the parties having appeared to reach an agreement and are in the midst of finalizing a settlement agreement, the court continues the instant hearing to 3:00 p.m. on October 20, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Civil Contempt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on October 20, 2015.

14. 15-25442-E-13 DPC-1 RICHARD SANCHEZ Matthew Eason

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-20-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection to the July 8, 2015 Plan.

David Cusick, the Chapter 13 Trustee, filed the instant objection on August 20, 2015. Dckt. 15. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Schedules B and G list a leased vehicle, a 2013 Volkswagen Jetta.

2. Section 3.02 of the Plan fails to assume the lease.

3. Debtor testified at the First Meeting of Creditors on August 13, 2015, that he intends to assume the lease and retain the vehicle.

Dckt. 15.

Debtor filed an Amended Plan and Motion to Confirm on August 26, 2015. Dckt. 23. The Amended Plan does include a lease in Section 3.02. *Id.*

The Trustee's objections are well-taken. Section 1325(a)(1) requires that "the plan complies with the provisions of this chapter and with the other applicable provisions of this title." Bankr. Rule 6006(a) requires that "[a] proceeding to assume, reject, or assign an...unexpired lease, other than as part of a plan, is governed by Rule 9014." Here, Debtor did not provide for the lease in the plan; a review of the court's docket shows no motion to assume the lease. Therefore, this Plan is facially invalid.

However, Debtor filed an Amended Plan and accompanying Motion on August 26, 2015 which corrects the error brought by Trustee. The court will construe the filing of the new plan and Motion as a de facto withdrawal by Debtor of the July 8, 2015 Plan. FN.1.

FN.1. A cursory review of the new motion to confirm the amended plan indicates that the motion may not state with particularity the grounds (11 U.S.C. § 1325 and § 1322) upon which confirmation is requested. It appears that the grounds stated with particularity in that motion are:

> 4. The First Amended Plan Dated August 25, 2015 has been proposed in good faith.
>
> 5. The First Amended Plan Dated August 25, 2015 proposes to pay the allowed unsecured claims an amount not less than they would have been paid if the estate of the Debtor was liquidated under the provisions of Title 11, US Codes, Chapter 7.
>
> 6. The Debtor has made all payments to the Trustee pursuant to the provisions of the First Amended Plan Dated August 25, 2015.
>
> 7. The Debtor has no Domestic Support Obligations, as defined.
>
> 8. Pursuant to 11 US Codes §1308, the Debtor has filed all applicable Federal, State and Local tax returns.

Motion, p.2; Dckt. 19. If upon further reflection counsel for Debtor believes that other grounds should properly be stated, filing a "Supplement to Motion to Confirm Plan" which states all of the necessary grounds required under the Bankruptcy Code, any such short coming may be remedied. The supplement shall be served on the U.S. Trustee and Chapter 13 Trustee.

Therefore, in light of the Debtor's subsequent filing of a proposed amended plan, the July 8, 2015 Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the July 8, 2015 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 David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the Plan filed on July 8, 2015, is not confirmed.

15. 15-25446-E-13 DONALD MAH
DPC-1 Ronald Holland

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-20-15 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, filed an Objection to Confirmation of the Plan on August 20, 2015. Dckt. 29. Trustee opposes confirmation of the Plan on the grounds that Debtor cannot make payments due to treatment of mortgage creditor.

Debtor's plan lists US Bank, NA in Class 4 as a direct pay. An additional provision in Section 6 states Debtor's wife will make the mortgage payments after litigation between Debtor and US Bank/Specialized Loan Servicing is settled or otherwise determined. The court reads this provision to be that no payment will be made on this claim pursuant to the Plan.

Contrarily, Debtor testified at the First meeting of Creditors that $4,200.00 per month is listed as the monthly mortgage payment. Debtor's budget does not indicate any mortgage payments, though $1,750.00 is allocated for litigation expenses in the Plan.

DEBTOR'S REPLY

Debtor filed a reply on August 27, 2015. Dckt. 33. Debtor alleges:

> ...1) he can make the plan payment and all other payments as proposed under the Plan and 2) the amount of the debt and the amount of the monthly payment on that debt owed to the mortgage referred to in the Objection is currently subject to litigation...no particular adequate protection payment can be allocated under Class 1 of the Plan until that matter is determined or settled. An Amended Complaint has been filed in that case and is awaiting a response.

Dckt. 33, ¶ 2. Debtor also asserts that, should the litigation conclude in his favor or settle, the litigation costs will also go toward mortgage payment. Dckt. 33, ¶ 3. Finally, Debtor claims to have testified to the litigation and associated costs at the First Meeting of Creditors. Dckt. 33, ¶ 4.

The court notes that Debtor's Reply has neither a Declaration nor Exhibits attached to it to authenticate the allegations. LBR 9014-1(d)(7).

DISCUSSION

Trustee's objection is well-taken. Trustee asserts that Debtor testified at the First Meeting of Creditors on August 13, 2015, claiming a monthly mortgage payment of $4,200.00 per month. Debtor's Reply confirms this fact, and the Plan accounts for a Class 4 secured creditor with no payment plan. Dckt. 17, 33.

First, if a debtor elects to provide for a secured claim in his/her Plan, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),

(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or

(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

Debtor's claim that the payments for the mortgage will be provided for once litigation has been concluded or settled is contingent on a theoretical, optimistic victory. Also, litigation in a state court from the Amended Pleading stage may take years to resolve, which will prejudice the rights of the mortgage holder in the mean-time. If Debtor had instead provided in the plan to make payments to the mortgage holder's claim, and that claim was reduced by litigation outcome, then the excess accounted for in the payment could be provided to unsecured creditors. On balance, the uncertainty and

prejudice to the rights of creditors fails to meet the Debtor's three options for providing for the secured Class 4 claim in Debtor's Plan, and thus is facially invalid.

Alternatively, the mortgage payment amount could be made monthly to the Chapter 13 Trustee and the money held, pending further order of the court. If Debtor prevails at the litigation, the money can be used as part of the dividend for general unsecured claims. If Debtor loses, the money can be paid to the creditor for its secured claim.

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

Finally, the fact that the Plan disregards payments to a Class 4 secured creditor suggests that the plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

The court notes that on Schedule B Debtor lists the litigation as an asset, which is property of the bankruptcy estate. Dckt. 18. 11 U.S.C. § 541(a). The litigation is also disclosed on the Statement of Financial Affairs. Id. On Schedule I Debtor states no wage income, but $2,800 net monthly income from rent or business. *Id.* at 17. The business is listed as Donald Mah Mediation. No attachment showing the gross business income and the expenses is included with Schedule I. On Schedule I Debtor lists gross wage income of $6,404.00 for his non-debtor spouse, for which there is $3,640 monthly take-home pay. Debtor provides two separate Schedules J for Debtor and non-debtor spouse. For the non-debtor spouse, the only expenses are the two car payments and a "litigation expense."

The court's review of the Docket does not disclose any order authorizing the employment of litigation counsel to enforce the rights f the bankruptcy estate. 11 U.S.C. § 327. If the employment is not authorized, then litigation counsel is not allowed to receive any compensation. It appears that as this case now sits, the litigation attorney is providing his or her services for free, allowing an even bigger dividend for creditors holding general unsecured claims.

On these facts, 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 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.

16. 15-20149-E-13 ANNA PETERSON
RAH-1 Richard Hall

CONTINUED MOTION TO CONFIRM PLAN
5-5-15 [58]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

Anna Peterson ("Debtor") filed the instant Motion to Confirm the Amended Plan on May 5, 2015. Dckt. 58.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 2, 2015. Dckt. 68. The Trustee objects on the following grounds:

1. The Debtor is $167.00 delinquent in plan payments to date. The Debtor has paid $334.00 into the plan to date.

2. The plan will complete in 73 months as opposed to 60 months. The cause of the over-extension is due to the priority claim of Placer County Department of child Support in Section 2.13 $3,445.35. In Section 6 of the plan, Debtor provides that Debtor's tax refund of $4,400.00 will offset the claim amount and that the claim should be paid $3,445.35.

3. The Debtor may not be able to make the payments because the Debtor fails to provide for the priority claim of Diamond Court Reporters, Proof of Claim No. 6, in the amount of $692.89.

DEBTOR'S RESPONSE

The Debtor filed a response on June 9, 2015. Dckt. 81. The Debtor responds in order of the Trustee's objections as follows:

1. Debtor has paid a total of $674.00, in the form of two cashier's checks for $167.00 each on May 5, 2015, and on May 29, 2015. Debtor made a payment in the amount of $340.00 via TFS. The Debtor is now current.

2. The Debtor has filed an Objection to Claim of the Placer County Department of Child Support Services. The objection is based upon a tax refund of $4,400.00 being redirected by the Internal Revenue Service to the Creditor. The Objection is set of hearing on July 28, 2015.

3. The Debtor has filed an objection to the claim filed by Diamond Court Reporters was filed on June 9, 2015 due to the debt being unsecured and not qualified as a priority claim. The Objection is set for hearing on July 28, 2015.

The Debtor requests that the court continue the instant Motion to July 28, 2015 to be heard in conjunction with the two Objection to Claim. FN.1.

JUNE 16, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on July 28, 2015 so the matters can be heard concurrently with the two Objections to Claim.

DEBTOR'S SUPPLEMENTAL DOCUMENT

On July 7, 2015, the Debtor filed a supplement to the Motion which further outlined the grounds to confirm the proposed plan and provided a liquidation analysis. A review of the attached plan shows that the only difference between the original proposed plan and the newly attached one is that the Debtor indicates in Section 2.06 that Debtor's counsel will be seeking fees as "no look" pursuant to Local Bankr. R. 2016-1(c).

PLACER COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES OBJECTION

Placer County Department of Child Support Services ("Creditor") filed

an objection to the instant Motion on July 16, 2015. Dckt. 100. The Creditor states that the proposed plan does not fully provide for total priority claim for child support for $7,845.35. The Creditor states that there is no evidence of a 2014 Internal Revenue Service 1040 tax filing by Debtor and that no credit should be given to the Debtor as outlined in the Debtor's additional provisions.

JULY 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 15, 2015 to be heard in conjunction with the Objection to Claim of Place County Department of Support Services.

TRUSTEE'S STATUS UPDATE

The Trustee filed a status update on Trustee's objection on September 1, 2015. Dckt. 110. The Trustee states that the Trustee has received a call from Florence Perkins of the Internal Revenue Service. The Trustee states that Mrs. Perkins indicated that Debtor is entitled to a tax refund of $2,085.07 from the filing of her 2014 tax return. The reason this is important according to the Trustee is that the Debtor has indicated that the tax refund will be used to offset the claim of Creditor. The Trustee notes that Creditor has not yet filed an amended claim. The Trustee is unable to determine whether the refund was sent to the Creditor or the Debtor.

DISCUSSION

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

The Debtor has not filed any supplemental papers since the court continued the hearing.

The Trustee's and Creditor's objections are well-taken. The Trustee's first and third objection are overruled, seeing that the Debtor has provided evidence of the delinquency being cured and the court sustaining the Debtor's Objection to Diamond Court Reporter Proof of Claim No. 6-1.

However, the Trustee's second objection and the Creditor's objection are troublesome. Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 73 months due to the failure of the Debtor to provide for the full amount of the Creditor's priority claim. The court overruled the Debtor's Objection to Creditor's Claim because the Debtor failed to provide any evidence as to the alleged $4,400.00 payment from the Debtor's tax refund. With the priority of the Creditor's claim in the full amount still valid, the plan does not properly provide for the full amount which results in a plan that would take 73 months to complete. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d) and also is evidence of the Debtor being unable to comply with the plan under 11 U.S.C. § 1325(a)(6).

As noted by the Trustee in his status update, it appears that the Debtor was entitled to a tax refund but there has been no evidence submitted by the Debtor or the Creditor as to whether either or both have received said refund. Without this information, the court cannot determine if the plan is

feasible.

Therefore, the objection is sustained.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

17. 15-20149-E-13 ANNA PETERSON
RAH-3 Richard Hall

CONTINUED OBJECTION TO CLAIM OF PLACER COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, CLAIM NUMBER 4
6-9-15 [76]

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, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 4 of Placer County Department of Child Support Services is overruled without prejudice.

Anna Peterson ("Debtor") filed the instant Objection to Claim on June 9, 2015. Dckt. 76. The Debtor objects to Proof of Claim No. 4 filed by Placer County Department of Child Support Services ("Creditor") in the amount of $7,845.35. The Creditor filed Proof of Claim No. 4 as a priority claim pursuant to 11 U.S.C. § 507(a)(1)(A) or (B). The Debtor asserts that the classification of this claim should be priority in the amount of $3,445.35 because the Proof of Claim No. 4 does not provide for the off-set of the intercepted 2014 tax

refund in the amount of $4,400.00.

JULY 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 15, 2015 to allow the Creditor to review the Debtor's tax returns. Dckt. 105.

DISCUSSION

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

Here, the Debtor is asserting that the Creditor is overstating the priority claim amount since the Proof of Claim No. 4 does not take into consideration the Debtor's 2014 tax refund which the Debtor asserts was intercepted to pay for the claim in the amount of $4,400.00.

However, a review of the Proof of Claim No. 4 shows that no such off-set has taken place. The Debtor has not provided any evidence of the off-set or testimony of when the off-set took place. Instead, the Debtor merely states that the Proof of Claim No. 4 does not take into consideration this alleged "interception" of the $4,400.00 from the Debtor's tax refund. The mere accusation with no evidence does not raise to the level of overcoming the prima facie validity of the Proof of Claim No. 4.

Though no opposition has been filed, Debtor has not provided the court with evidence that there has been a $4,400.00 offset. No copies of any notice from the Internal Revenue Service of the offset has been provided. No amended proof of claim has been filed. At best, Debtor speculates that she should be entitled to a $4,400.00 refund.

The court denies the Objection without prejudice.

No party has filed any supplemental papers to the instant Objection since the court continued the matter.

Therefore, based on the lack of evidence before the court, the Objection to the Proof of Claim is overruled without prejudice. The Objection having been filed on June 9, 2015, and the hearing having been continued, the court will not continue the hearing further. If Debtor has a bona fide objection which she can support with credible, competent evidence, a new objection may be filed.

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 Placer County Department of Child Support Services, Creditor filed in this case by Anna Peterson, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 4 of Placer County Department of Child Support Services is overruled, without prejudice.

18. 15-24656-E-13 SDB-1 CASANDRA HALVORSON W. Scott de Bie MOTION TO CONFIRM PLAN 7-22-15 [26]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2015. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. 14-29961-E-13 JEANNE MCCULLOUGH
SJS-1 Scott Johnson

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

APPEARANCE OF SCOTT JOHNSON, ATTORNEY FOR DEBTOR REQUIRED FOR SEPTEMBER 15, 2015 HEARING Telephonic Appearance Permitted

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, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2015. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 3 of Rancho Bella Vista South HOA is sustained and the claim is disallowed as unsecured, and the Objection is overruled as to the unsecured claim.

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

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

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the Objection on July 14, 2015.

SEPTEMBER 1, 2015 HEARING

At the hearing, the court to continued the hearing to 3:00 p.m. on September 15, 2015. Dckt. 36.

APPLICABLE LAW

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

DISCUSSION

The Objection alleges the following facts and grounds upon which the request for relief is based, which utilizes a check-box form:

A. The basis for the objection is that the claim: does not include a copy of the security agreement.

B. The Proof of Claim filed by Rancho Bella omits the real property address of the subject property and therefore Debtor and counsel cannot identify the real property allegedly securing the Claim of Rancho Bella. Debtor and her counsel are informed and believe, and thereon allege, that the subject real property is commonly known as 30967 North Zircon Drive, San Tan Valley, Arizona 85143 (hereinafter "Subject Property"). Debtor and her counsel believe the Subject Property was foreclosed upon and a Trustee's Deed Upon Sale recorded in the county of Pinal, State of Arizona as Fee Number 2011-037283 (Exhibit B)

C. The Objection Party will ask the Court to enter an Order providing that the claim is: disallowed in its entirety.

The bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States*

Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

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

After reviewing the "Objection," the court discerns that the Debtor is objecting on the ground that the Proof of Claim No. 3 does not properly provide evidence of the perfection and that the alleged property securing the claim has been sold at a Trustee sale.

First, the court reviews the Proof of Claim itself. Proof of Claim No. 3 was filed on December 22, 2014. Attached to the Proof of Claim are two judgments from Arizona Dreamy Draw Justice Court for the County of Maricopa, entered March 27, 2012 and June 24, 2014 respectively. However, the Creditor does not provide any evidence of the judgment being perfected against any real property, even though on the Proof of Claim form, the Creditor indicates that the claim is secured by real property. Therefore, because the Creditor failed to provide the evidence of perfection, the court sustains the objection as to the secured claim of Creditor and disallows the secured portion of the claim in the amount $4,782.45.

As to the remaining issues, the check-box pleading submitted by the Debtor raises major concerns over whether the Debtor has met the pleading requirements of *Twombly*. Reviewing the Objection and the attached exhibits, the Debtor is alleging that the alleged real property that the Creditor is claims the security interest in was sold in a Trustee's sale. A review of the Trustee's Deed of Trust shows that the Trustee's sale took place on May 3, 2011. Dckt. 22, Exhibit B. The judgments in which the Creditor basis its claim on were entered March 27, 2012 and June 24, 2014, nearly a year after the alleged sale.

The check-box pleading could well be construed as an active attempt to mislead the court into incorrectly finding that property sold a year prior to judgment effectively "pre-paid" the judgment. This fact highlights the issues and concerns the courts have with such "check the box" form pleading are used by attorneys who have passed one of the most difficult bar examinations in the

Country. The Debtor, instead of reviewing the Proof of Claim, the accompanying time line of events, and determining the actual grounds for objection, utilized a check-box form that summarily states "grounds" for the objection and then generic "beliefs" to support the objection. As required by the Federal Rules and further discussed in *Twombly*, the Objection barely, if at all, meets the pleading requirements expected and necessary in federal court.

The fact that the Debtor has based, in part, the objection on the Trustee's sale of the real property which took place 10 months prior to the judgment being entered against the Debtor does not rebut the *prima facia* validity of the Proof of Claim. The Debtor has not met its burden of providing evidence that is 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) and, therefore, the objection as to the unsecured claim of the Creditor is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rancho Bella Vista South HOA, Creditor filed in this case by Jeanne Marie McCullough, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 3 of Rancho Bella Vista South HOA is sustained as to the secured portion of the claim, and disallowed as a secured claim.
>
> **IT IS FURTHER ORDERED** that the objection to Proof of Claim Number 3 of Rancho Bella Vista South HOA is overruled as to the unsecured secured portion of the claim, and is allowed as an unsecured claim.

20. 14-29961-E-13 JEANNE MCCULLOUGH
SJS-2 Scott Johnson

CONTINUED MOTION TO MODIFY PLAN
7-21-15 [25]

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

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

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

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

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

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

TRUSTEE'S OBJECTION

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

TRUSTEE'S WITHDRAWAL

On August 28, 2015, the Trustee filed a Notice of Withdrawal of the Trustee's objection, stating that the Debtor is now current. Dckt. 34.

SEPTEMBER 1, 2015 HEARING

The court continued the hearing to be heard in conjunction with the Objection to Claim of Rancho Bella Vista South Homeowners Association, Claim Number 3. Dckt. 38.

DISCUSSION

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

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

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

21. 15-21163-E-13 GIANNE/RUBY-ROSE APURADO MOTION TO CONFIRM PLAN
JME-2 Julius Engel 8-27-15 [45]

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

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

Below is the court's tentative ruling.

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

Correct NOT Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2015. By the court's calculation, 19 days' notice was provided. 42 days' notice is required.

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

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

Gianne Apurado and Ruby-Rose Apurado filed the instant Motion to Confirm the Amended Plan on August 27, 2015. Dckt. 45

However, the Debtor did not provide sufficient notice as required by Local Bankr. R. 9014-1(f)(1) and 3015-1(d)(1). Here, the Debtor only provided 19 days notice when 42 days notice is required for a motion to confirm "Modified Plans Proposed Prior to Confirmation." See Local Bankr. R. 3015-1(d)(1). In light of this failure to provide sufficient notice, the court denies the Motion without prejudice.

The court also notes that no Amended Plan has been filed by Debtor. Improperly attached to the three page motion are nine pages of exhibits. L.B.R. 9004-1 and Revised Guidelines for Preparation of Documents requires that the motion, points and authorities, each declaration, and the exhibits (which may be in one exhibit document) shall be filed as separate documents. One of the improperly attached exhibits purports to be a "Modified" Plan. No such Plan has been filed in this case.

A cursory review of the motion indicates that it may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 which require that the motion state with particularity the grounds upon which relief is requested. It appears that Debtor has copied and pasted the text fo 11 U.S.C. § 1329 as the attempt to state grounds with particularity. There never having been a plan confirmed in this case, the provisions of 11 U.S.C. § 1329 are not applicable, but confirmation must be sought as provided in 11 U.S.C. § 1325.

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

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

22. 13-25668-E-13 MARK/SHAWNA SMITH
MMM-2 Mohammad Mokarram

CONTINUED MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
7-27-15 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JPMorgan Chase Bank, N.A. as trustee on behalf of the certificateholders of the CWHEQ Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2005-I ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Mark and Shawna Smith ("Debtor") to value the secured claim of The Bank of New York Mellon ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1557 Sweetgrass Lane, Lincoln, California ("Property"). Debtor seeks to value th e Property at a fair market value of $210,000.00 as

of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

AUGUST 11, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 25, 2015 to allow the Debtor the opportunity to address whether the real party in interest has been listed and whether relief has been requested against a creditor who has a claim in this case. The Debtor was ordered to file and serve supplemental papers on or before August 25, 2015.

AMENDED MOTION

On August 20, 2015, rather than filing a supplemental paper identifying the real creditor, the Debtor filed and noticed a new Motion to Value, under the same docket control number. The court construes the new Motion to Value as an amended Motion rather than a new motion completely.

In the amended Motion, the Debtor identifies the creditor as "The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JPMorgan Chase Bank, N.A. as trustee on behalf of the certificateholders of the CWHEQ Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2005-I."

Based on the Proof of Claim No. 3, this is the identified and actual creditor who has the secured claim the Debtor seeks to value.

The senior in priority first deed of trust secures a claim with a balance of approximately $296,000.00. Creditor's second deed of trust secures a claim

with a balance of approximately $68,769.94. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Mark and Shawna Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JPMorgan Chase Bank, N.A. as trustee on behalf of the certificateholders of the CWHEQ Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2005-I secured by a second in priority deed of trust recorded against the real property commonly known as 1557 Sweetgrass Lane, Lincoln, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $210,000.00 and is encumbered by senior liens securing claims in the amount of $296,000.00, which exceed the value of the Property which is subject to Creditor's lien.

23. 15-24672-E-13 ROBIN BUGBEE
DPC-1 Seth Hanson

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
8-6-15 [20]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector"), filed the instant Objection to Debtor's Discharge on August 6, 2015. Dckt. 20.

The Objector argues that Robin Bugbee ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on March 29, 2012. Case No. 12-26178. The Debtor received a discharge on July 17, 2012. Case No. 12-26178, Dckt. 27.

The instant case was filed under Chapter 13 on June 9, 2015.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on July 17, 2012, which is less than four-years preceding the date of the filing of the instant case. Case No. 12-26178, Dckt. 27. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-24672), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-24672, the case shall be closed without the entry of a discharge.

24. 15-24476-E-13 DPC-1 KENNETH/STACEY ACKMAN Thomas Amberg

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-9-15 [36]

Tentative Ruling: The Objection to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 9, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The hearing was continued to allow for the Debtor's prosecution of a motion to value a secured claim.

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on the Motion to Value Collateral of Real Time Resolutions, Inc.

2. The plan may not be proposed in good faith and may be causing unfair discrimination to the unsecured creditors. The Debtor is an above the median income and propose plan payments of $693.00 per month for 60 months, paying no less than 7% dividend to unsecured creditors. The Debtor's Schedule J states that the Debtor is paying an ongoing court ordered restitution in the amount of $1,400.00 per month. Debtor fails to disclose this treatment to creditors in their plan as either a Class 3, 4, or 5 or general unsecured to be paid directly by Debtor in the additional provisions. Additionally, the Trustee states he is unsure if the Debtor is entitled to relief under 11 U.S.C.

§ 109 because the Debtor failed to list the amount of claim owed to the Sacramento Department of Revenue Recovery, Community Bank/Lane Bryant, GECRB/Sams Club, and States Recovery System.

DEBTOR'S REPLY

The Debtor filed a reply on July 28, 2015. The Debtor states that the Motion to Value was continued to August 18, 2015 to allow counsel to file supplemental documents relating to the real creditor in interest on or before August 11, 2015.

The Debtor further states that the Debtor did disclose the obligation of the Sacramento Department of Revenue Recovery at a pre-Meeting of Creditors, at the Meeting of Creditors, and in other discussions. The obligation is disclosed in Debtor's Schedule C. The Debtor proposes to add a provision in the order confirming stating "The Debtors shall continue to make payments directly to the Sacramento County Department of Revenue Recovery in the amount ordered by said Agency. The Debtors shall notify the Trustee of any change in the amount of these payments."

The Debtor requests continuing the instant Objection to August 18, 2015 to be heard in conjunction with the Motion to Value.

AUGUST 11, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 18, 2015 to be heard in conjunction with the Motion to Value.

AUGUST 18, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 15, 2015. Dckt. 62.

DISCUSSION

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

On September 1, 2015, the court granted the Debtor's Motion to Value Collateral of The Bank of New York Mellon. Dckt. 66. Therefore, the Trustee's first objection is overruled

As to the second objection, the failure of the Debtor to provide the debt amount owed and the actual treatment, rather than merely stating that Debtor will pay whatever creditor demands, is grounds for sustaining the objection. The court will not, and cannot, confirm a plan which states that a creditor will post-confirmation alter the payment terms of a debt.

The Objection to Confirmation is sustained.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

25.	**15-25376-E-13 DPC-2**	**PATRICIA HEUSTESS Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-12-15 [20]**

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

26. 15-25376-E-13 DPC-3 PATRICIA HEUSTESS Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-12-15 [24]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

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

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

27. 15-25177-E-13 DAVID CIERLEY **MOTION TO CONFIRM PLAN**
ELG-1 Julius Engel **8-1-15 [27]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

David Cierley ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 1, 2015. Dckt. 27.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 1, 2015. Dckt. 36. The Trustee objects on the ground that the Debtor's plan fails the Chapter 7 liquidation analysis. The Trustee asserts that the Debtor's proposed plan proposes to pay 0% to unsecured creditors when the Debtor has non-exempt equity in the amount of $4,334.07. The Trustee asserts the following in non-exempt assets:

ASSET	NON-EXEMPT VALUE
Cash	$40.00
Golden One Checking	$327.30

Golden One Savings	$1.77
First US Bank Savings	$25.00
Firearms	$600.00
1999 Ford F250	$865.00
1985 Toyota 4Runner	$1,675.00
2004 Carson Trailer	$800.00

DEBTOR'S REPLY

The Debtor filed a reply on September 8, 2015. Dckt. 40. The Debtor states that the Debtor amended Schedule C to reflect the application of California Code of Civil Procedure § 704 to all of the Debtor's property.

The Debtor asserts because each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate was liquidated under a Chapter 11, Chapter 7 trustee fees of $985.00 ($3,940 x 25% = $985.00) are deducted from the nonexempt total value of $3,940.00 resulting in $2,955.00 that will be paid to creditors holding general unsecured claims over the term of the plan.

The Debtor states that he will pay to the Trustee $92,053.00 over five years. Providing for the net liquidation value of $2,955.00 would result in a 3.2% difference over the amount provided for the instant Chapter 13 plan. At a 3.2% increase, the addition is nonmaterial and Debtor requests that the net nonexempt value of $2,955 be provided for by in order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. Based on the amended Schedule C filed on August 19, 2015, which is the Schedule the Trustee appears to have relied on, there is a total of $4,334.07 in nonexempt equity. The Debtor's reply bases its own analysis on a nonexempt equity number equaling $3,940.00, which does not appear to be accurate. Even taking into consideration the actual value of the nonexempt equity and calculating the Chapter 7 Trustee's fees, there would be $3,250.55 ($4,334.07 x 75%) remaining to be disbursed to unsecured creditors, not the $2,955.00 alleged by the Debtor.

However, given the minimal difference and the request of the Debtor to provide for the nonexempt portion into the plan so that the Debtor meets the liquidation analysis requirement of 11 U.S.C. § 1325(a)(4), the court overrules the Trustee's objection and the Debtor, in the order confirming, shall provide that the Debtor shall pay $3,250.55 to the Trustee on or before October 6, 2015 to be disbursed to unsecured creditors.

The amended Plan, after the order confirming is amended to provide for the payment to the Trustee of $3,250.55 on or before October 6, 2015 to be paid to unsecured creditors, complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and

is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, providing for the payment to the Trustee of $3,250.55 on or before October 6, 2015 to be paid to unsecured creditors 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.

28. 15-20687-E-13 SALEH BADDAWI **MOTION TO CONFIRM PLAN**
WSS-2 W. Steven Shumway **7-31-15 [32]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

Saleh Baddawi ("Debtor") filed the instant Motion to Confirm the Amended Plan on July 31, 2015. Dckt. 32.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 25, 2015. Dckt. 38. The Trustee objects on the basis that no claim has been filed for mortgage arrears. The Debtor proposes to pay the Class 1 arrears to Wells Fargo Bank in the amount of $38,512.96 from the funds received in the amount of $403,622.18 from the sale of his real property at 9665 Oak Leaf Way, Granite Bay, California. The Trustee has a balance on hand of $383,371.48, however the Trustee alleges that he is unable to pay the arrears as the creditor has not filed a claim. The Debtor may consider providing for this claim in the order confirming the plan.

DEBTOR'S REPLY

The Debtor filed a reply on August 8, 2015. Dckt. 42. The Debtor states that the Debtor, through counsel, filed a claim on behalf of Wells Fargo Bank.

DISCUSSION

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

Pursuant to 11 U.S.C. § 501(c), a debtor can file a proof of claim on behalf of a creditor if the creditor does not timely file a proof of claim. Here, the deadline for proofs of claim was June 3, 2015. Therefore, the Debtor had the authority to file a proof of claim on behalf of Wells Fargo Bank, N.A.

Therefore, since the Debtor has filed Proof of Claim No. 6 on behalf of Wells Fargo Bank, N.A., the Trustee’s objection is

Without further objections and upon the court’s review of the proposed plan, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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 31, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. 15-25094-E-13 DPC-1 ALEX/MICHELE MARTINEZ Mark Briden

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-20-15 [33]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 20, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's previous motion to Value Collateral of Green Tree Servicing LLC was denied on August 18, 2015. The Trustee alleges that without the court valuing the secured claim, the Debtor cannot make plan payments.

The Debtor filed a Motion to Value Green Tree Servicing LLC on September 11, 2015. Dckt. 40. A review of the Motion shows that the Debtor once again listed Green Tree Servicing LLC as the creditor without providing any evidence that Green Tree Servicing LLC is the actual creditor rather than merely the loan servicer. The court addressed the concerns of the court over Debtor listing Green Tree Servicing LLC as the actual creditor when there is no evidence that they are the holder of the second deed of trust and note.

Specifically, the court stated:

> Debtor seeks to value the collateral of "Green Tree Servicing LLC." However, the court cannot determine from the evidence presented what, if any, the identified entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion is actually the real party in interest. The court will not issue orders on incorrect or partial parties that are ineffective.
>
> From the Motion, the Debtor appears to be seeking to value the collateral of Green Tree Servicing LLC . The court is concerned that in granting a motion that seeks to value the collateral of an agent, rather than the actual creditor, would result in an "maybe-effective order." If the court were to grant such order, it would possibly be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

Dckt. 37.

The Debtor does not have seemed to rectify the concerns of the court in the recent Motion to Value. Therefore, since it appears that the pending Motion to Value will also be denied for failure to identify the actual creditor in interest, the Trustee's objection is sustained.

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

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

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

30. 15-22798-E-13 PARKER/DONNA PUGH — MOTION TO CONFIRM PLAN
CAH-1 Jin Kim — 7-30-15 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Parker and Donna Pugh ("Debtor") filed the instant Motion to Confirm on July 30, 2015. Dckt. 55.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 1, 2015. Dckt. 74. The Trustee objects on the following grounds:

1. Debtor's plan relied on the Motion to Value Collateral of Wells Fargo Auto Finance.

2. Debtor's plan relies on a Motion to Incur Debt-to obtain loan modification.

DEBTOR'S REPLY

The Debtor filed a reply on September 8, 2015. Dckt. 78. The Debtor states that no party objected to the Motion to Value and that the only objection to the Motion to Incur Debt was by the Trustee due to the failure of prior counsel in attaching the loan modification. The Debtor states the loan modification has now been filed.

DISCUSSION

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

On September 15, 2015, the court granted both the Debtor's Motion to Value Collateral of Wells Fargo Auto Finance and Motion to Approve Loan Modification. Therefore, the Trustee's objections are overruled.

Therefore, with no further objections pending and independent review, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

31. 15-22798-E-13 CAH-2 PARKER/DONNA PUGH Jin Kim

MOTION TO VALUE COLLATERAL OF WELLS FARGO AUTO FINANCE 7-30-15 [61]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of $5,500.00.

The Motion filed by Parker Emanuel Pugh and Donna Pugh ("Debtor") to value the secured claim of Wells Fargo Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Kia Sorrento ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). FN.1.

FN.1. The court notes that the "creditor" whose claim has been valued is Wells Fargo Auto Finance. No such entity has filed a claim, but a secured claim has been filed by Wells Fargo Bank, N.A. which may be this claim. Proof of Claim No. 5. This proof of claim was filed on July 2, 2015. The present Motion was filed on July 30, 2015, twenty-eight days later. Debtor and counsel can decide if they have an effective order against the creditor which actually has the secured claim to be valued. The certificates of service filed do not purport to have served the pleadings on Wells Fargo Auto Finance. Dckts. 64, 65.

The lien on the Vehicle's title secures a purchase-money loan incurred in June 17, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,619.21. Dckt. 38, 62. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $5,500.00. *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 Parker Emanuel Pugh and Donna Pugh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Auto Finance ("Creditor") secured by an asset described as 2004 Kia Sorrento ("Vehicle") is determined to be a secured claim in the amount of $5,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

32. 15-22798-E-13 PARKER/DONNA PUGH **MOTION TO APPROVE LOAN MODIFICATION**
CAH-3 **Jin Kim** **7-31-15 [66]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Parker and Donna Pugh ("Debtor") seeks court approval for Debtor to incur post-petition credit. FN.1. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which provides the following:

1. The interest rate for the fist five years of the loan is 2.00%; 3.00% for year 6; 4.00% for year 7; and then on month 8, the interest rate increased to 4.125% and will continue for the remaining months of the 402 month loan.

2. During the fist five years of the loan, the mortgage payment will be $1,489.43 per month. Property taxes and insurance are included in the monthly payment and will be $373.65 per month.

3. The payments for year 6 will be approximately $1,639.12 per month, followed by $1,794.62 on year 7.

4. Beginning month 9, and continuing for the remainder of the 402 months, the loan payment will be approximately $1,814.16. Property taxes and insurance are included in all payments.

FN.1. The Motion is titled a Motion to Incur Debt. In fact, the Debtor is attempting to seek approval of a loan modification. The court sua sponte corrects the Motion to properly reflect the relief requested.

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

TRUSTEE'S RESPONSE

The Trustee filed a response to the instant Motion on August 27, 2015. Dckt. 72. The Trustee states that he does not oppose the disclosed terms of the modification but no actual agreement has been presented and the Trustee is unaware of the amount of the anticipated balloon payment.

DISCUSSION

On September 8, 2015, the Debtor filed an exhibit in support of the Motion which is a letter from Wells Fargo Home Mortgage which states the term of the proposed loan modification. Dckt. 77, Exhibit A.

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 Parker and Donna Pugh 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 Parker and Donna Pugh ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 4383 Middlebury Way, Rancho Cordova, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 77.