

bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 15-24435) was dismissed on August 15, 2016, because of delinquency in plan payments. *See* Order, Bankr. E.D. Cal. No. 15-24435, Dckt. 35. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors thirty (30) days after filing of the petition.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on September 6, 2016. Dckt. 15.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty (30) days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtors failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

Elliot-Cook, 357 B.R. at 814–15.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtors' disabled daughter needed additional care, which negatively impacted Debtors' ability to work. Specifically, Debtor Sueane Richards was not able to work part-time or full-time as a bookkeeper because she was acting as the sole caregiver to Debtors' daughter. Then, Debtor Fred Richards faced difficulty when his income declined because of working fewer hours.

Debtors state that the Plan will succeed now because Debtor Sueane Richards is receiving income from full-time employment with In-Home Supportive Services in a monthly amount of approximately \$3,400.00, and she expects that amount to be steady for the duration of the Plan.

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

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

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

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

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

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on July 1, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Objection to Debtor's Amended Exemptions is sustained.

The Trustee objects to the Debtor's use of the California exemptions after the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then

they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court’s review of the docket reveals that the spousal wavier has not been filed.

However, on the Debtor’s amended Schedule C, the Debtor claims exemptions under California Code of Civil Procedure § 704.

The Trustee objects on the grounds that the Debtor waived the ability to claim exemptions pursuant to California Code of Civil Procedure § 704. The Debtor may have already received some of the funds as to the claimed exemption, pursuant to a sale ordered by the court (Dckt. 114) of possibly \$40,000.00 or more. No closing statement has been provided to the Trustee.

DEBTOR’S OPPOSITION

The Debtor filed an opposition on July 19, 2016. Dckt. 125. The Debtor states that his counsel has prepared and sent to the Debtor for signatures a withdrawal of Spousal Waiver of Exemptions and shall file the withdrawal upon receipt.

PRIOR HISTORY IN THE CASE

A review of the docket shows that on July 26, 2016, Debtor Rudolph Jugoz and non-debtor spouse Elizabeth Jugoz filed a withdrawal of the Spousal Waiver (Dckt. 16) previously filed in this case. Dckt. 127.

Debtor commenced this bankruptcy case on September 5, 2013. On Schedule A Debtor lists owning one piece of real property - 10650 Calvine Road, stating the value was \$402,506.00. Dckt. 1 at 8. On Schedule C Debtor did not claim an exemption in the Calvine Road Property. *Id.* at 13-14. A waiver of exemptions was filed by Debtor’s non-filing spouse. Dckt. 16. On Schedule D Debtor stated that the Calvine Property was encumbered by a deed of trust to secure a debt of \$402,506.00.

On March 17, 2016 (less than three years later) Debtor filed an Amended Schedule A/B in which he states that the value of the Calvine Road Property was \$615,000.00. Dckt. 82 at 2. No amended Schedule D has been filed, but Attachment A to Amended Schedule A/B lists the Calvine Property encumbered by a lien security \$433,897.37. That amount of the debt is what is stated by Creditor as being owed when the case was commenced. Proof of Claim No. 9.

Debtor has filed an Amended Schedule C, asserting a \$175,000.00 exemption in the Calvine Road Property. A comparison of the exemptions upon which the Debtor has prosecuted this case, and the court confirmed a plan, and the new asserted exemptions are set forth in the chart below.

EXEMPTION	ORIGINAL SCHEDULE C Dckt. 1 at 13-14	SECOND AMENDED SCHEDULE C Dckt. 87 at 2-3
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Calvine Road Property	None	\$100,000 C.C.P. § 704.730
Household Goods and Furnishings	\$2,500 C.C.P. § 703.140(b)(5)	\$2,500 C.C.P. § 704.020
Books, Art, DVD, CD	\$500 C.C.P. § 703.140(b)(3)	\$500 C.C.P. § 704.040
Firearms, Camera, and Camcorder	\$1,000 C.C.P. § 703.140(b)(5)	\$1,000 C.C.P. § 704.040
Clothing	\$2,500 C.C.P. § 703.140(b)	\$2,500 C.C.P. § 704.020
Wedding Rings, Rings, Jewelry	\$1,525 C.C.P. § 703.140(b)(4)	\$1,525 C.C.P. § 704.040
Safe Credit Union Checking	\$376 C.C.P. § 703.140(b)(5)	\$282.40 C.C.P. § 704.070
Safe Credit Union Savings	\$1.80 C.C.P. § 703.140(b)(5)	\$1.35 C.C.P. 704.070
Safe Credit Union	\$3,501 C.C.P. § 703.140(b)(5)	None
Lincoln Financial Sutter Health Retirement Account	\$67,708 C.C.P. § 703.140(b)(10)(E)	\$67,708 C.C.P. § 704.115(a)(1) & (2), (b)
Fidelity Sutter Health Retirement Account	\$36,203 C.C.P. § 703.140(b)(10)(E)	\$36,203 C.C.P. § 704.115(a)(1) & (2), (b)
2001 Toyota Tundra	C.C.P. \$5,100 § 703.140(b)(2) \$3,278 § 703.140(b)(5)	None
Animals	\$5,800 C.C.P. § 703.140(b)(5)	None

On its face, this attempted change of exemptions has caused some assets of value to “disappear.”

Having filed the Second Amended Schedule C, Debtor then filed a Motion to Sell the Calvine Property. Dckt. 94. Debtor stated in the Motion:

A. The sales price of the Calvine Property is \$615,000.00.

- B. Wells Fargo Bank, N.A. debt secured by the Calvine Property totals \$410,758.09.
- C. The real estate commission is \$30,750.00.
- D. A Preliminary Settlement Statement is provided as an exhibit.

The Preliminary Settlement Statement lists the net proceeds, after payment of all costs and expenses, was to be \$149,662.52. Exhibit B, Dckt. 97.

The Motion to Sell was set for hearing pursuant to an order shortening time. Dckt. 103. In the order, the court notes that Debtor was attempting to claim, under penalty of perjury, an enhanced homestead exemption of \$175,000. The Order also addresses a lack of accuracy and lack of truthful statements in the Motion for Order Shortening Time.

In the findings of fact and conclusions of law, stated in the Civil Minutes (Dckt. 113), granting the Motion to Sell, include the following:

- A. “The Trustee calculates that approximately \$76,000.00 of the proceeds would be sufficient to conclude the Debtors plan at 100% to all filed and allowed claims (with the Creditor being paid through the sale.)”
- B. “In paragraph 6 of the Motion, the Debtor states that The sale of the Property will net proceeds for the benefit of creditors beyond the current claim of exemptions of the Debtor. Dckt. 94, 6.”
- C. “Then, in paragraph 10, the Debtor states Upon the close of escrow and the short sale, all proceeds will be paid according to the Settlement Statement (HUD-1). Dckt. 94, 10.”
- D. “Just in the three-page motion, the Debtor fails to accurately state the type of sale.”
- E. “A review of the Settlement Statement discloses that rather than being a short sale, there will be approximately \$149,662.52 of net sales proceeds after paying the secured claims and closing costs.”

In the order approving the sale, Dckt. 114, the court required the following:

- A. “From the Net Sales Proceeds after payment of the above authorized liens and expenses, the first \$75,000.00 shall be disbursed to the Chapter 13 Trustee directly from the sale escrow. The Chapter 13 Trustee shall hold said funds, subject to any claim of exemption of Debtor which may be asserted in excess of the monies disbursed to Debtor in the following paragraph, pending further order of this court or as provide din [sic] a modified plan.”

- B. After payment of the \$75,000.00 to the Trustee, the balance of the net sales proceeds were authorized to be disbursed to Debtor directly from escrow.

Part of the Trustee's Objection is that Debtor has not provided the Trustee with the actual closing statement and disclosed how much Debtor received from the sale.

ADDITIONAL BRIEFING

The Trustee's Objection raises the issue of whether the Debtor, now three years in this case, can shift to a different set of exemption, change the rules, and possibly divert monies away from creditors. Issues of judicial estoppel, estoppel, or other state and federal law principles could possibly apply in the court determining what exemptions can now be claimed in this bankruptcy case. The apparent missing assets, for which exemptions are no longer claimed, may render it impossible for Debtor to now claim a different set of exemptions.

AUGUST 2, 2016 HEARING

At the hearing, the court set the following supplemental briefing schedule:

- A. "On or before August 16, 2016, the Chapter 13 Trustee shall file and serve Supplemental Pleadings addressing the grounds and legal authorities by which Debtor should not be allowed to change his exemptions.
- B. On or before August 30, 2016, Debtor shall file and serve Responses to the Trustee's Supplemental Pleadings.
- C. On or before September 7, 2016, the Chapter 13 Trustee shall file and serve Replies, if any, to the Debtor's Responses.
- D. The continued hearing will be conducted at 3:00 p.m. on September 20, 2016."

Dckt. 130.

TRUSTEE'S SUPPLEMENTAL BRIEF

The Trustee filed a Supplemental Brief on August 16, 2016, that is divided into five sections. Dckt. 131. Section I reviews the procedural history of the current case, concluding with statements of amounts owed to various parties as follows:

- A. Secured Claims
 - 1. American Honda Finance, Safe Credit Union, and Springleaf Financial Services for vehicles to be paid under the plan
 - 2. \$16,291.56 principal owed

3. \$399.90 interest currently due
- B. Priority Claims
1. Franchise Tax Board and Internal Revenue Service
 - a. \$42,396.59 principal owed, including \$17,498.18 in post-petition 2014 taxes to Franchise Tax Board
- C. Unsecured Claims
1. \$30,845.62 owed, including \$18,497.00 owed to the Internal Revenue Service

The Trustee states that \$58,688.15 will be required to pay priority and secured claims according to the confirmed Plan in the event that such sum is allowed to be paid into the Plan as a plan payment from the sale proceeds. Trustee states that no formal rescission of the spousal waiver appears on the record.

Section II alleges that the Debtor has failed to meet the burden of proof. Trustee asserts that Debtor has the burden of proof. *See In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). The Trustee states that under California Code of Civil Procedure § 703.140(b), a married debtor and the spouse are required to waive other exemptions to be eligible to claim the § 703.140(b) exemption.

Section III cites case law for the proposition that “absent relief for mistake (of fact or otherwise), inadvertence, surprise, or excusable neglect, or similar showing, a properly executed spousal waiver may not be withdrawn.” *In re Gomez*, 530 B.R. 751, 757 (Bankr. E.D. Cal. 2015).

Section IV discusses the terms mistake, inadvertence, surprise, and excusable neglect and concludes that Debtor has not shown any of them. The Trustee points to California Code of Civil Procedure § 703.030(c) that allows the court “to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.” Further, California Code of Civil Procedure § 473(b) allows a court to grant relief for mistake, inadvertence, surprise, or excusable neglect, and the Trustee pointed to a California Fifth District Court of Appeals decision for discussion of those terms. In *Henderson v. Pacific Gas and Electric Company*, the court defined the terms as follows:

The terms mistake, inadvertence, surprise, and excusable neglect warranting relief under section 473(b) are defined as follows: “Mistake is not a ground for relief under section 473, subdivision (b), when the ‘the court finds that the “mistake” is simply the result of professional incompetence, general ignorance of the law, or unjustifiable negligence in discovering the law. . . .’ Further, [t]he term “surprise,” as used in section 473, refers to “some condition or situation in which a party . . . is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.”” Finally, as for

inadvertence or neglect, “[t]o warrant relief under section 473 a litigant’s neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief.”

187 Cal. App. 4th 215, fn. 7 (2010). The Trustee mentions that “California courts may properly consider prejudice to the opposing parties occasioned by the requested relief.” *Aldrich v. San Fernando Valley Lumber Co., Inc.*, 170 Cal. App. 3d 725, 740 (1985).

Section V applies the law to current matter. The Trustee believes that the law mentioned before indicates that the court should not allow the amended claim of exemptions.

The Trustee reiterates that the Debtor proposed a modified plan on February 12, 2016 (Dckt. 72), that provided for the Debtor to pay \$500.00 per month for the remainder of the Plan as well as to sell Debtor’s real property and use the net proceeds to pay the balance of the Chapter 13 Plan. Trustee mentions that even though the modified plan was denied (Dckt. 85), that modified plan appears to demonstrate that Debtor had intended to pay money into the Plan to complete the Plan. Eventually, Debtor sold that property with court approval (Dckt. 103).

In conclusion, the Trustee states that allowing the Debtor to claim the amended exemptions after the Debtor and his spouse waived the right to claim a set of exemptions renders the spousal waiver provisions meaningless. Trustee asserts that Debtor has not provided any showing of why allowing such a change would be equitable, and the Trustee asks the court to sustain the Objection.

DISCUSSION

The Trustee’s objection is well-taken. As the record reflects, Debtor and his spouse “withdrew” their Spousal Waiver of Right to Claim Exemptions on July 26, 2016. Dckt. 127. The law in this district is clear that “absent relief for mistake (of fact or otherwise), inadvertence, surprise, or excusable neglect, or similar showing, a properly executed spousal waiver may not be withdrawn.” *In re Gomez*, 530 B.R. 751, 757 (Bankr. E.D. Cal. 2015). Debtor has not shown any evidence that would satisfy those conditions. To allow Debtor to withdraw the Spousal Waiver would be prejudicial against the Chapter 13 estate and its creditors.

The Debtor filed a response on September 16, 2016, stating that Debtor’s counsel has prepared a proposed plan with a 100% dividend to creditors holding general unsecured claims. Dckt. 135. Presumably this is a plan that Debtor has authorized counsel to prepare and that in so representing that such plan has been prepared, Debtor’s counsel is saying what it appears the court is being told — Debtor will be filing a plan that provides for a 100% dividend.

It is also disclosed in the Response that Debtor, having sold his residence, has moved out of State. No information is provided as to where Debtor has moved. It is stated that due to the “time difference,” communication “has become somewhat more difficult.” A several hour time difference is a

modest challenge at best. If Debtor has moved farther away and is not communicating with counsel, then Debtor may be electing to not prosecute his case.

The mere promise of a 100% dividend is not the basis for overruling this Objection to Claim of Exemptions. Debtor has proceeded for three years in this case premised upon the exemptions he claimed under penalty of perjury. Debtor confirmed a plan premised on those exemptions. It is of severe prejudice to creditors for Debtor to try and change the exemptions at this late date. It appears to be of no prejudice to Debtor in sustaining the Objection, as Debtor will be proposing a plan to provide a 100% dividend to creditors holding general unsecured claims.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions are disallowed in their entirety.

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, party requesting special notice, and Office of the United States Trustee on August 16, 2016. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required.

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

The Motion to Confirm the Modified Plan is granted.

TRUSTEE’S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on September 6, 2016. Dckt. 47. The Trustee states that Roy Baza and Merlin Baza (“Debtors”) have proposed to increase monthly plan payments to \$1,085.00 and to keep the unsecured dividend at no less than 0%. The Trustee states that Debtors are current and that the modified plan is feasible.

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.

Kenneth Thompson and Kristine Thompson (“Debtors”) filed the instant Motion to Confirm the Modified Plan on July 11, 2016. Dckt. 123.

TRUSTEE’S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on August 2, 2016. Dckt. 128. The Trustee opposes confirmation on the following grounds.

- A. Debtors propose to treat creditor Employment Development Department (“EDD”) as a Class 4 secured claim to be paid directly by a third party. The Debtors may not be able to make certain that payments will be made or comply with the Plan.

The creditor has filed two claims with the court for \$621.81 and \$2,781.01 entitled to priority. Each claim reports the amount of the secured claim as \$0.00. The current plan however, asserts that these claims are secured and will be paid by the Debtors’ son. The Debtors’ Motion and Declaration both state the claims have been paid by the Debtors’ son, but no proof of payment has been provided.

- B. The Plan may not have been proposed in good faith.
1. The Debtors have not submitted either a supplemental Schedule I or Schedule J.
 2. The Debtors have not addressed the state of the Debtors’ business.
 3. The Debtors are reporting no income from the business.
 4. The Debtors’ Motion and Declaration refer to “our former business that our son now operates.” The Trustee cannot locate any information on PACER regarding the sale or transition of the business to the Debtors’ son.
 5. A change of address was filed with the court, indicating the Debtors’ address has changed from 3021 Orchard Park Way, Loomis, California, to 407-D Avedina Castilla, Laguna Woods, California. Debtors Schedule J only includes property expense for the Loomis Property; no rent or mortgage expense is reported for Laguna Woods.
 6. Debtors’ Schedule I at the time of filing indicated the Debtors’ employer was Thompson Sales, which was listed as a dba on the Petition, but no income was reported.

DEBTORS' REPLY

The Debtors filed a reply on August 9, 2016. Dckt. 131. The Debtors state that the Debtors will provide proof of payment to the EDD on or before the hearing and that the "Debtors filed Amended Schedules I & J on August 9, 2016."

The court notes that the Debtors, having filed under penalty of perjury "amended" schedules, altered the financial information provided under penalty of perjury as of the commencement of this case more than three years ago, but fail to provide any current financial information as of August 2016.

AUGUST 16, 2016 HEARING

At the hearing, the court continued the matter to September 20, 2016, at 3:00 p.m. to give Debtors time to resolve the Employment Development Proof of Claim. Dckt. 134.

KEVIN THOMPSON'S SUPPLEMENTAL DECLARATION

Kevin Thompson, Debtors' son, filed a supplemental declaration on September 13, 2016. Dckt. 135. He states under penalty of perjury that ownership of Thompson Sales was transferred to him from Debtors on January 1, 2016. He states that Debtors are not insured or liable to Thompson Sales and that they do not receive any form of income from the company.

Kevin Thompson states that he owes a balance of \$659.47 to the EDD, that he has contacted the EDD, and that the EDD has allowed him to make installment payments to pay the remaining balance. He states that on September 7, 2016, he made the first payment in the amount of \$100.00 (Exhibit A, Dckt. 136).

DISCUSSION

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

To date, no supplemental schedules have been filed in connection with the instant case. While Debtors have filed "amended" Schedules I and J, Debtors are providing information that is now more than three years old.

The Trustee's objections are well-taken. While Kevin Thompson's Supplemental Declaration addresses some of the Trustee's objections, it does not substantiate all of them.

The basis for the Trustee's objection is that the Trustee is unable to determine whether the Debtors can make the payments under the Plan or comply with the Plan. The Debtors have proposed to treat creditor Employment Development Department as a Class 4 secured claim and state that the Creditor's claims have been paid by Debtors' son. However, the Creditor has filed two Proofs of Claim with the court. Proofs of Claim No. 11 and 12. The Proof of Claim No 11 asserts a claim for \$686.16 with \$621.81 being claimed as priority and Proof of Claim No. 12 asserts a claim of \$2,781.01, all priority.

The Debtors are attempting to treat the EDD priority claim outside of the Plan, which raises serious questions over whether the Debtors' Plan is feasible or viable given the outside payment of the priority claim. This indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee also objects on the basis that the plan may not have been proposed in good faith. The Debtors have failed to submit a Supplemental Schedule I or J; failed to address the state of the Debtors' Business; are reporting no income from the business; the Debtors' Motion and Declaration state that the business is Debtors' former business and that their son now operates it; the Debtors filed a change of address, but failed to supplement Debtors' Schedule J to include a rent or mortgage expense for the Laguna Woods property; and Debtors' Schedule I indicated that the Debtors' employer was Thompson Sales, which is listed as a dba on the Petition, yet no income was reported from this employer.

Debtor s' Ownership of a Business

When this bankruptcy case was filed, both Debtors stated under penalty of perjury that they were employed by Thompson Sales. Schedule I, Dckt. 1 at 31. Only Debtor Kenneth Thompson listed receiving income from the business, stating it was \$2,500.00 a month. He states that he has been employed at that business for twenty-five (25) years, and Co-Debtor Kristine Thompson states that she had been employed at the business for two (2) years. That was in February 2013.

No income or self-employment taxes are listed on Schedule I or Schedule J to be paid by Debtors. *Id.* at 31–32. On Schedule B, Debtors do not list ownership of any stock or interests in any businesses, but list \$200,000.00 of accounts receivables, stating they have a net value of \$25,000.00 after deduction for bad debt. However, on the Statement of Financial Affairs, Question 18, Debtors state under penalty of perjury that they have operated a business since 1988 under the name "Thompson Sales." *Id.* at 37.

Now, it is disclosed that the business "Thompson Sales" was transferred to Kevin Thompson, their son, on January 1, 2016. Declaration of Kevin Thompson, Dckt. 135. Other than this passing reference, no explanation of how or why this business of the Debtors, upon which the current plan was based, has been transferred to their son. No declaration or any testimony has been provided by the Debtors.

When Debtors filed the present Motion to Confirm the modified Chapter 13 Plan, their testimony does not include any statements that they have transferred their business to their son. Instead, they casually mention, buried deep in the declaration, that, "We have further modified to include two claims from the Employment Development Department that have been paid by our son as well as a supplemental claim from Wells Fargo." Dckt. 126. This declaration was filed on July 11, 2016, a good six months after the business was transferred by the Debtors to their son.

Debtors also chose not to file supplemental schedules I and J. The Debtors' declaration does state that both of their primary incomes are from ATA Retail and Batteries Plus. Again, this is a casual reference, stated in a manner as if to mislead the reader into believing that this has been the source of income since this case was originally filed and testified to under penalty of perjury previously by Debtors. It is not and has not been so provided in testimony.

In the Motion to Confirm the Modified Plan, Debtors make no reference to having transferred the business to their son. They make no reference to having transferred away the business upon which the Chapter 13 Plan was confirmed in this case. The Debtors make no reference to having lost their prior income and there being an entirely new set of finances for them. Motion, Dckt. 123.

The court cannot find any motion seeking, nor the court issuing an order authorizing the transfer of Debtors' business to their son. The court does note that the review of the file in this case does disclose that Debtors have previously defaulted on the Plan, have had to respond to motions to dismiss due to defaults, and steadfastly asserted that they owned and operated a business upon which the Plan in this case was based.

Confirmation is Denied

The Debtors' conduct in this case raises substantial good faith issues. For the confirmation of any plan, a debtor must show not only that the case was filed in good faith, but that the plan was proposed in good faith. 11 U.S.C. §1325(a)(3), (7). Pursuant to 11 U.S.C. § 1325(a)(3), a plan must be proposed in good faith. Courts apply the totality of the circumstances test in making a good faith determination and consider several factors in determining whether a plan was proposed in good faith, including:

- A. Whether the proposed plan accurately states Debtors' secured and unsecured Debts;
- B. Whether the proposed plan accurately states Debtors' expenses;
- C. Whether the proposed plan accurately states the percentage repayment of unsecured claims;
- D. Whether the proposed plan has deficiencies and whether the inaccuracies amount in an attempt to mislead the bankruptcy court; and
- E. Whether the proposes payments indicate a fundamental fairness in dealing with one's creditors.

In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991) (citing *In re Smith*, 848 F.2d 813, 818 (7th Cir. 1984)). Although good faith in a Chapter 13 proceeding is determined on a case by case basis, a debtor must at minimum show that he or she has an honest intention. *In re Powers* at 992. One factor the courts consider is whether the Debtors acted equitably in proposing the Chapter 13 plan and whether a debtor has misrepresented facts in the plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed a plan in an inequitable manner. *Id.* at 992.

The Debtors have failed and refused to provide current financial information. Debtors have tried to slip by the court that they have transferred their business to their son—with Debtors failing or refusing to provide testimony of such transfer. FN.1.

FN.1. The court will not presume that when Debtors state under penalty of perjury that they are amending the schedules to correct an error that dates back to the filing of the case, that they really are testifying under

penalty of perjury as to a current, post-petition change in their income and expenses. Debtors are represented by counsel who is well aware of the difference between supplemental and amended Schedules. The court has expressly addressed this issue with counsel on a number of occasions over the past six-plus months.

Under the totality of the circumstances, the Debtors have not proposed this modified Chapter 13 Plan in good faith. The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 18, 2016. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

Salvador Cortes and Laura Cortes (“Debtors”) seek permission to refinance their residence, commonly known as 9542 Alta Mesa Road, Wilton, California (“Property”). The total loan amount is \$360,000.00, with monthly payments of \$2,375.80 for thirty (30) years and including 3.5% interest.

Debtors state the following grounds with particularity in accordance with Federal Rule of Bankruptcy Procedure 9013:

- A. “Debtors filed this case on or about January 19, 2012.
- B. At the time this case was filed Debtors owned their residence located at 9542 Alta Mesa Road, Wilton California subject to a loan in favor of Indymac Bank serviced by OneWest. The Indymac Bank loan was a construction loan and the full amount is due.

- C. Pursuant to the terms of Debtors' confirmed Chapter 13 Plan IndyMac is being paid as a Class 1 Creditors with an additional provision which requires that [they] refinance the property and pay IndyMac in full prior to the completion of the Chapter 13 Plan. See Declaration of Salvador Cortes and Laura Cortes which is being filed concurrently with this motion.
- D. Debtors have looked into refinancing and have now found a lender willing to refinance their property. Debtors have received an estimate of loan terms which was memorialized in a 'Pre-Application Worksheet', a copy of which is attached hereto as Exhibit A.
- E. Debtors wish to proceed with the refinance through American Pacific Mortgage Corp. While the terms are not yet locked, the estimated terms of the loan are as follows:
- | | | |
|----|----------------------------|--------------|
| 1. | Loan amount: | \$360,000.00 |
| 2. | Term | 30 years |
| 3. | Interest Rate | 3.5% |
| 4. | Monthly payment (with P&I) | \$2,375.80 |
- F. Debtors are current in payments due under their Chapter 13 Plan. The refinance is also required under the terms of their plan.
- G. The new debt is a single loan incurred only to refinance the existing debt and Debtors will not receive cash out of the refinance.
- H. The only security for the new debt will be the property being refinanced.
- I. All creditors with liens and security interests encumbering the property will be paid in full from the proceeds of the refinance.
- J. The new monthly payment will be less than \$2,500.00."

Dckt. 80.

TRUSTEE'S RESPONSE

The Trustee filed a Response on September 16, 2016. Dckt. 89. The Trustee states that he has no opposition to the instant Motion based upon the proposed loan terms.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr.

P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Terms of Current Plan

Debtors' confirmed Amended Chapter 13 Plan, Section 6.01 - Additional Provisions for Section 2.08 and 2.11, provides the following:

“Debtors intend to refinance their residence prior to the completion of this Chapter 13 case. Through any refinance OneWest Bank, FSB and all other claims secured by the residence shall be paid in full in a manner consistent with this Chapter 13 Plan. Upon the refinance Debtors intend to file a modified Chapter 13 Plan to adjust payments and provide for the new lender to be paid directly.”

This provision, commonly referred to as an “Ensminger Additional Provision,” provides terms for a debtor to confirm a plan, proceed in the prosecution of a bankruptcy case, provide adequate protection to creditors having secured claims, and the debtor and creditors pursue in good faith a loan modification which will be part of a plan. The possible modification of the plan would follow the loan modification, with the modification to be obtained either by a noticed motion or an ex parte motion (depending on the impact of the loan modification on other creditors).

Status of the Refinance Proposal

In the Motion, Debtors state that they do not yet have an actual proposed loan modification agreed to with the new lender, but only possible proposed items.

Debtors have not filed an actual refinance agreement for the court to review, but instead, they have filed a “Pre-Application Worksheet” (Exhibit A, Dckt. 83) that states at the top in bold: “Your actual rate, payment and costs could be higher. Get an official Loan Estimate before choosing a loan.” The court is concerned that Debtors have presented terms for the Motion that are not concrete and are subject to change. Within the “Pre-Application Worksheet,” the court sees that the projected loan amount is different than stated in Debtors' Motion. The “Pre-Application Worksheet” lists a total loan amount of \$366,300.00.

While not expressly stated in the Motion or the supporting Declaration (Dckt. 82), it appears that at this junction in Debtors' attempts to refinance the existing secured debt (which was construction, not long term financing), it appears that the possible lender is seeking confirmation that these Debtors are actually the correct parties to incur this new debt, with court authorization.

While the court cannot pre-authorize a debtor to go out and get a loan on whatever terms wanted, and if they turn out different to just come back and tell the court after the fact, the court can treat this as a motion for authorization to proceed with finalizing the loan and setting the matter for a final hearing.

The court authorizes the Debtors to proceed in finalizing the terms for a loan on the following general terms:

- A. Lender.....American Pacific Mtg. Corp. dba First Priority Management.
- B. Collateral.....9542 Alta Mesa Rd, Wilton, California
- C. Interest Terms
 - 1. Rate.....Not to Exceed 3.75%
 - 2. Interest Rate Terms.....Fixed
- D. Term.....Not to Exceed 360 Months
- E. Loan Amount.....Not to Exceed \$370,000.00
- F. Use of Loan Proceeds
 - 1. Pay Claims Secured by Collateral
 - 2. Pay Costs and Expenses Related to Loan
 - 3. No Additional Monies for Debtors or Other Creditors (except as authorized by separate order of this court)
- G. Estimated Payments From Loan Escrow
 - 1. Stated in the Pre-Application Worksheet (Dckt. 83)

The court continues the hearing to 3:00 p.m. on October 25, 2016. The final hearing may be accelerated pursuant to an *ex parte* motion of Debtors, served on the Chapter 13 Trustee and U.S. Trustee, in the event that the loan may be closed sooner and it is advantageous to the estate to so do. Debtors shall file a copy of the final loan agreement or term sheet stating the significant terms of the loan on or before October 18, 2016, or at the same time as filing the *ex parte* motion to accelerate the continued hearing date. The final hearing on the Motion may be further continued as appropriate to accommodate the good faith prosecution of the post-petition financing.

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

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

The Motion to Incur Debt filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Salvador Cortes and Laura Cortes, the Chapter 13 Debtors under the confirmed Chapter 13 Plan in this case, are authorized to finalize the terms and conditions of a loan to refinance the

claims secured by the real property commonly known as 9542 Alta Mesa Road, Wilton, California. The general terms of the loan presented to the court are stated in the Pre-Application Worksheet (Dckt. 18) as follows:

- A. Lender.....American Pacific Mtg. Corp. dba First Priority Management.
- B. Collateral.....9542 Alta Mesa Rd, Wilton, California
- C. Interest Terms
 - 1. Rate.....Not to Exceed 3.75%
 - 2. Interest Rate Terms.....Fixed
- D. Term.....Not to Exceed 360 Months
- E. Loan Amount.....Not to Exceed \$370,000
- F. Use of Loan Proceeds
 - 1. Pay Claims Secured by Collateral
 - 2. Pay Costs and Expenses Related to Loan
 - 3. No Additional Monies for Debtors or Other Creditors (except as authorized by separate order of this court)
- G. Estimated Payments From Loan Escrow
 - 1. Stated in the Pre-Application Worksheet (Dckt. 83)

IT IS FURTHER ORDERED that the final hearing on the Motion for Authorization for Post Petition Financing is continued to 3:00 p.m. on October 25, 2016. The final hearing may be accelerated pursuant to an *ex parte* motion of Debtors, served on the Chapter 13 Trustee and U.S. Trustee, in the event that the loan may be closed sooner and it is advantageous to the estate to so do. Debtors shall file a copy of the final loan agreement or term sheet stating the significant terms of the loan on or before October 18, 2016, or at the same time as filing the *ex parte* motion to accelerate the continued hearing date.

The final hearing on the Motion may be further continued as appropriate to accommodate the good faith prosecution of the post-petition financing.

6. [16-23825-E-13](#) **JEFFREY NELSON AND LURDES** **CONTINUED OBJECTION TO**
DPC-2 **ROSALES** **CONFIRMATION OF PLAN BY DAVID**
Muoi Chea **P. CUSICK**
8-4-16 [29]

Final Ruling: The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the Objection to Confirmation on September 16, 2016, Dckt. 49, no prejudice to the responding party appearing by the dismissal of the Objection to Confirmation, the Chapter 13 Trustee having the right to seek dismissal of the Objection to Confirmation pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the Ex Parte Motion is granted, the Trustee's Objection to Confirmation is dismissed without prejudice, and the court removes this matter from the calendar.

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 filed by Trustee having been presented to the court, the Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 49, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Trustee's Objection to Confirmation is dismissed without prejudice.

7. [16-24229-E-13](#) **RANJIT BAINS**
DPC-1 **Richard Sturdevant**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
8-25-16 [20]

Final Ruling: No appearance at the September 20, 2016 Hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 25, 2016. 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.

The court's decision is to continue the hearing on the Objection to October 25, 2016, at 3:00 p.m.

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

- A. Debtor failed to appear at the First Meeting of Creditors held on August 18, 2016. The Meeting was continued to October 13, 2016 at 11:00 a.m., and Trustee requests a continuance to October 25, 2016, at 3:00 p.m. for the hearing on the instant Objection.

The court grants the continuance to October 25, 2016, which is after the Continued First Meeting of Creditors.

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

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

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

IT IS ORDERED that the hearing on the Objection to confirmation the Plan is continued to October 25, 2016, at 3:00 p.m.

**APPEARANCE OF DEBTORS' COUNSEL NOT REQUIRED IF
TRUSTEE HAS PROPOSED AGREED LANGUAGE FOR THE
ORDER CONFIRMING PLAN TO PRESENT TO THE COURT AT THE HEARING**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 25, 2016. 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 overrule the Objection.

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

- A. The Trustee is uncertain whether the plan complies with applicable law.
 - 1. The Plan lists a vague provision in Section 1.02 as: "Debtor's first or second plan payment will be funded by the refund of Debtor's garnished wages."

2. The Debtors' amended Schedules B and C on August 22, 2016, now list \$5,000.00 as "Garnished funds held by sheriff of approximately \$5,000." Schedule C fully exempts these funds. Schedule J states a one-time wage garnishment that occurred in the amount of \$1,100.00. The Trustee cannot determine the amount of the plan payment for months one and two. The plan payment proposed could be approximately \$5,000.00; \$1,100.00; or \$699.00.

DEBTORS' RESPONSE

The Debtors filed a Response to Trustee's Objection on September 6, 2016. Dckt. 24. The Response states that the Debtors have confirmed that the amount garnished before filing is \$1,141.35. From that amount, a Sheriff's fee of \$35.00 was deducted that Debtors' believe is not recoverable. Thus, a total of \$1,106.35 remains available for the Trustee to recover and apply to Debtors' Plan payments.

Because Debtors' have already made their first and second plan payments, any amounts recovered by the Trustee may be applied to the Debtors' third and fourth \$699.00 payment, leaving the Debtors to pay \$291.65 toward their fourth plan payments.

Month	Amount Paid by Debtors	Amount Paid by Garnished Wages Recovered by the Trustee	Total Paid
1	\$699.00	\$0.00	\$699.00
2	\$699.00	\$0.00	\$699.00
3	\$0.00	\$699.00	\$699.00
4	\$291.65	\$407.35	\$699.00

TRUSTEE'S REPLY

The Trustee filed a Reply to Debtors' Response on September 14, 2016. Dckt. 27. Trustee states that he has received Debtors' first and second plan payments of \$699.00 for a total of \$1,398.00.

Trustee states that he will send a letter to the Sacramento County Sheriff in an attempt to recover monies available in the amount of \$1,106.35 as stated in Debtors' Response.

The Trustee no longer opposes confirmation of the Plan if additional language is inserted into the court's order stating that the funds, when received, will be applied as Debtors' plan payments and not as additional plan payments.

DISCUSSION

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtors' Chapter 13 Plan filed on July 13, 2016, 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.

IT IS FURTHER ORDERED that if and when funds in the amount of \$1,106.35 are recovered from the Sacramento County Sheriff, those funds shall be applied as Debtors' plan payments and not as additional plan payments.

9.

16-23034-E-13
DPC-2

GREG SHOOK
Pro Se

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
8-18-16 [50]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), on August 18, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The objection is sustained as to some of the exemptions in their entirety; overruled in part as to some exemptions, but sustained as to the claim of exemptions in unlimited amounts; and overruled as to the remaining objections.

David Cusick, the Chapter 13 Trustee, objects to the exemption claimed on Greg Shook's ("Debtor") Amended Schedule C of August 2, 2016 (Dckt. 35). The Trustee notes that an amount of the

exemption is not claimed, even though Debtor selected the box that “100% of fair market value, up to any applicable statutory limit.” The Trustee is unable to determine the value of the exemption that Debtor is claiming for the following assets:

- A. Household;
- B. Electronics;
- C. Equipment;
- D. Clothes;
- E. Animals;
- F. Health aids; and
- G. Deposits.

The Trustee requests that the court disallow the exemption, unless the exemption is filed claiming a definite amount.

APPLICABLE LAW

California has created its own set of exemptions for debtors in bankruptcy, which a debtor may elect in lieu of the standard exemptions otherwise available under California law. *In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016). Debtors in California are not permitted to claim the Federal Bankruptcy Exemptions listed in 11 U.S.C. § 522(d). *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

“§ 703.130. Exemptions in bankruptcy

Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

Cal. C.C.P. § 703.130. The alternative exemptions which may be used under California law in a bankruptcy case are provided for (in pertinent part) as follows:

§ 703.140. Election of exemptions if bankruptcy petition is filed

(a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter [Cal. C.C.P. §§ 704.010 - 704.995], including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the **exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter,**

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), **but not both.**

Cal. C.C.P. 703.140(a) [emphasis added].

The general burden regarding California exemptions is for exemptions the claimant [debtor in a bankruptcy case or judgement debtor in a state court case] has the burden of proof in claiming an exemption. See *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329 (B.A.P. 9th Cir. 2016), and *In re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015), both citing California Code of Civil Procedure § 703.580(b).

DISCUSSION

On Amended Schedule C (Dckt. 35), Debtor claims the following exemptions and cites to the specific provisions of California Code of Civil Procedure upon which such exemptions are based. In addition, Debtor has checked the box on the new Schedule C form stating that he claims 100% of the amount of the exemption in the identified asset, not merely the value as of the commencement of the bankruptcy case.

Asset in Which Exemption is Claimed	Value of Debtor’s Interest in Asset	Amount of Exemption Claimed, Up to 100% of Allowed Exemption	Specific Law For Exemption, California Code of Civil Procedure Section
Home (Line 1.1 on Schedule A/B)	\$135,000	\$135,000	§ 704.720 Homestead Exemption § 704.730(a)(3)(A) \$175,000 for person 65 years of age or older
Toyota (Line 3.1 on Schedule A/B)	\$2,100	\$2,100	§ 704.010 \$2,300 Motor Vehicle Exemption
Household Goods (Line 6 on Schedule A/B)	\$900	\$900 Claimed in Unlimited Amount	§ 704.020 Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt if ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor’s family at the judgment debtor’s principal place of residence.

Electronics (Line 7 on Schedule A/B)	\$450	\$450 Claimed in Unlimited Amount	Same as above.
“equip.” (Line 9 on Schedule A/B)	\$325	\$325 Claimed in Unlimited Amount	Same as Above
Clothes	\$100	\$100 Claimed in Unlimited Amount	Same as Above
Jewelry	\$1,500	\$1,500	§ 704.040 “Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed six thousand seventy-five dollars (\$6,075).”
Animals	\$1,650	\$1,650 Claimed in Unlimited Amount	§ 704.020 Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt if ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor’s family at the judgment debtor’s principal place of residence.
Health Aids	\$150	\$150 Claimed in Unlimited Amount	§ 704.050 Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.
Deposit	\$30	\$30 Claimed in Unlimited Amount	§ 704.080(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

Claims	\$11,104	\$11,104	§ 704.210 “Property that is not subject to enforcement of a money judgment is exempt without making a claim.”
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On Amended Schedule A/B, Debtor lists these assets in which the exemptions are to be claimed. Dckt. 35. For some assets, the description is specific, such as for the residence and vehicle. For others, it is a general description, which when claiming an “unlimited” exemption becomes problematic.

The court disallows the following exemptions:

- A. Claim in the amount of \$11,104.00, exemption claimed pursuant to Cal. C.C.P. § 704.210.
 - 1. No basis is shown for claiming this asset as exempt. Debtor has not presented the court with any legal authority that the right to obtain a refund from the County is not “Property that is not subject to enforcement of a money judgment.”

- B. Animals consisting of two (2) horses, chickens, sheep, cows for personal consumption claimed as exempt pursuant to Cal. C.C.P. § 704.020 as Household furnishings, appliances, provisions, wearing apparel, and other personal effects if ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor’s family at the judgment debtor’s principal place of residence.
 - 1. Debtor has not provided the court with a factual or legal basis for two horses, an unspecified number of chickens, sheep, and cows are held for “personal consumption” and necessary as personal effects. While presumably not held for “personal consumption,” the court does not disallow the exemption claimed in one dog and two cats.

The court overrules the objection as to the following categories of items and the dollar amount specified, but sustains the objection as to the Debtor claiming the exemption in “unlimited” amounts. The court sustains the objection as to the “unlimited” amount due to Debtor not providing specific enough descriptions for the court to determine whether such items are reasonably necessary for the Debtor.

- a. “General household furniture and appliances, all very old” (Amended Schedule A/B, Line 6) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is “reasonable and necessary” will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.

- b. “TV, dvd, camera, cell phone, computer, printer all old types” (Amended Schedule A/B, Line 7) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is “reasonable and necessary” will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.
- c. “Exercise equip., bicycle, canoe, kayak, misc, tools, guitar all old and worn out)” (Amended Schedule A/B, Line 9) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is “reasonable and necessary” will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.
- d. “Everyday clothes, shoes, coats, etc.” (Amended Schedule A/B, Line 11) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is “reasonable and necessary” will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.

The court overrules the remaining exemptions as they are made to specific assets (such as the residence, vehicle, and only Social Security Benefits).

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

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

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

IT IS ORDERED that Objection is sustained, and the following claimed exemptions are disallowed in their entirety

- A. Claim in the amount of \$11,104.00, exemption claimed pursuant to Cal. C.C.P. § 704.210.
 - 1. No basis is show for claiming this asset as exempt. Debtor has not presented the court with any legal authority that the right to obtain a refund from the County is not “Property that is not subject to enforcement of a money judgment.”
- B. Animals consisting of two (2) horses, chickens, sheep, cows for personal consumption claimed as exempt pursuant to Cal. C.C.P.

§ 704.020 as Household furnishings, appliances, provisions, wearing apparel, and other personal effects if ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

1. Debtor has not provided the court with a factual or legal basis for two horses, an unspecified number of chickens, sheep, and cows are held for "personal consumption" and necessary as personal effects. While presumably not held for "personal consumption," the court does not disallow the exemption claimed in one dog and two cats.

IT IS FURTHER ORDERED that the objection is overruled as to the following categories of items and the dollar amount specified, but the objection is sustained as to the Debtor claiming the exemption in "unlimited" amounts. The court sustains the objection as to the "unlimited" amount due to Debtor not providing specific enough descriptions for the court to determine whether such items are reasonably necessary for the Debtor.

- A. "General household furniture and appliances, all very old" (Amended Schedule A/B, Line 6) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is "reasonable and necessary" will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.
- B. "TV, dvd, camera, cell phone, computer, printer all old types" (Amended Schedule A/B, Line 7) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is "reasonable and necessary" will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.
- C. "Exercise equip., bicycle, canoe, kayak, misc, tools, guitar all old and worn out" (Amended Schedule A/B, Line 9) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is "reasonable and necessary" will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.

- D. “Everyday clothes, shoes, coats, etc.” (Amended Schedule A/B, Line 11) exemption is disallowed for all amounts in excess of \$900.00. The issue of whether the value (in the aggregate) of any such items in excess of such amount is “reasonable and necessary” will be the subject of further proceedings in connection with confirmation of a plan or other proceeding if any such assets are identified.

IT IS FURTHER ORDERED that the Objection is overruled as to the remaining exemptions stated in the Objection as the exemptions are made to specific assets (such as the residence, vehicle, and only Social Security Benefits).

10. [16-24338-E-13](#) **DANNY CLARKE** **MOTION TO VALUE COLLATERAL OF**
PLC-1 **Peter Cianchetta** **BANK OF AMERICA, N.A.**
8-22-16 [22]

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 22, 2016. By the court’s calculation, 29 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 Bank of America, 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 Danny Clarke (“Debtor”) to value the secured claim of Bank of America, N.A. (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of the subject real property commonly known as 6443 Oakcreek Way, Citrus Heights, California (“Property”). Debtor seeks to value the Property at a fair market value of \$250,000.00 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 that 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.

NO PROOF OF CLAIM FILED

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

NO OPPOSITION FILED

Creditor has not filed opposition despite being served with notice of the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$273,000.00. Creditor's second deed of trust secures a claim with a balance of approximately \$61,418.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 6443 Oakcreek Way, Citrus Heights, 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 \$250,000.00 and is encumbered by a senior lien securing a claim in the amount of \$273,000.00, which exceeds the value of the Property that is subject to Creditor’s lien.

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 25, 2016. 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:

- A. Debtor cannot afford to make the payments or comply with the Plan. Debtor's Plan relies on the Motion to Value Collateral of Bank of America, N.A.. The Motion is set for hearing on September 20, 2016.

The court has granted that Motion, resolving this portion of the Objection to Confirmation.

- B. The Debtor has failed to provide the Trustee with answers to certain questions about the Debtor's business, Twin Rivers Gunsmithing and Clark's Press Technology, set out in a Business Case Questionnaire including:

1. a list of employees;
 2. description of business and assets; and
 3. other questions, and other documentation, including:
 - a. recent profit and loss,
 - b. copies of bank statements,
 - c. business tax returns,
 - d. licenses, and
 - e. any insurance policies.
- C. The Plan fails the Chapter 7 Liquidation Analysis. The Plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. The Debtor is proposing a 0% dividend to unsecured creditors, totaling \$80,995.48. The Debtor is married, and his spouse is not included in the bankruptcy. The Debtor has failed to file a Spousal Waiver for the Use of California State Exemptions under the California Code of Civil Procedure § 703.140.

The Trustee requests that the instant hearing be continued to October 25, 2016, at 3:00 p.m., which is after the continued First Meeting of Creditors set for October 13, 2016.

This case was filed on July 1, 2016. The Trustee's Report of 341 Meeting states that Debtor and his counsel appeared, and the First Meeting of Creditors was continued to October 13, 2016. On September 2, 2016, Debtor and his non-debtor Spouse filed a Spousal Waiver of Right to Claim Exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Dckt. 31.

Thus, it would appear that the request to continue the hearing on the Objection is part of a larger good faith prosecution of this case by Debtor, including the Trustee giving an extended period of time to provide the required financial information.

Unfortunately, the files in this case disclose more, the Chapter 13 Trustee filing on September 14, 2016, a Motion to Dismiss this case. Dckt. 32. The Motion to Dismiss asserts that Debtor is \$1,512.38 delinquent in plan payments. That is the amount of one monthly payment. The Trustee also asserts that the Debtor has not provided the business documents. Declaration, Dckt. 34.

It appears that Debtor's finances may not be as represented in the Schedules and purported to be able to fund the Plan. This is not the first attempt at a Chapter 13 case by Debtor and his counsel. On March 16, 2016, Debtor commenced bankruptcy case No. 15-22083. That case was dismissed on May 10, 2016. That case was dismissed due to Debtor's default in plan payments, which were stated to be \$2,920.00 in default as of March 30, 2016 (each monthly payment being \$1,460.00). Notice of Default, Dckt. 90; Declaration, Dckt. 92; Order of Dismissal, Dckt. 94.

The Trustee's objections are well-taken. The Objection to Confirmation is sustained, and the Plan is not confirmed. It appears that Debtor, his spouse, and counsel can use the opportunity to circle back and determine what plan, if any, is feasible.

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 Plan is not confirmed.

12. [16-20743-E-13](#) ANNA PETERSON MOTION TO CONFIRM PLAN
RWH-2 Ronald Holland 7-22-16 [82]

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2016. By the court's calculation, 60 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 Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. In fact, the Trustee filed a statement of non-opposition on August 9, 2016. 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 June 8, 2016, 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. [16-24246-E-13](#) **RICHARD CRUZ** **MOTION TO VALUE COLLATERAL OF**
EWV-100 **Eric Vandermey** **RIVER CITY BANK**
8-22-16 [26]

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 22, 2016. By the court's calculation, 29 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 River City Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Richard Cruz ("Debtor") to value the secured claim of River City Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 10 Hazeman Court, Woodland, California ("Property"). Debtor seeks to value the

Property at a fair market value of \$383,281.00. as of the petition filing date. FN.1. 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).

FN.1. The court notes that Debtor states in the Motion that the Property is valued at \$383,281.00, but Debtor's Schedules A and D list the Property's value as \$394,951.00.

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 6 filed by River City Bank is the claim that may be the subject of the present Motion. River City Bank filed a proof of claim on July 22, 2016, asserting a remaining balance of \$67,825.99 and a property valuation of \$393,721.00.

NO OPPOSITION FILED

Creditor has not filed opposition despite being served with notice of the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$407,731.00. Creditor's second deed of trust secures a claim with a balance of approximately \$61,877.00.

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

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

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

The Motion for Valuation of Collateral filed by Richard Cruz ("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 River City Bank secured by a second in priority deed of trust recorded against the real property commonly known as 10 Hazeman Court, Woodland, 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 \$383,281.00 and is encumbered by a senior lien securing a claim in the amount of \$407,731.00, which exceeds the value of the Property which is subject to Creditor's lien.

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 22, 2016. By the court's calculation, 29 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 Keybank National Association ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Richard Cruz ("Debtor") to value the secured claim of Keybank National Association ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 10 Hazeman Court, Woodland, California ("Property"). Debtor seeks to value the Property at a fair market value of \$383,281.00 as of the petition filing date. FN.1. 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).

FN.1. The court notes that Debtor states in the Motion that the Property is valued at \$383,281.00, but Debtor's Schedules A and D list the Property's value as \$394,951.00.

The valuation of property that 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.

NO PROOF OF CLAIM FILED

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

NO OPPOSITION FILED

Creditor has not filed opposition despite being served with notice of the Motion.

DISCUSSION

The senior in priority first and second deeds of trust secure claims with a balance of approximately \$469,608.00. Creditor's third deed of trust secures a claim with a balance of approximately \$33,510.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Richard Cruz (“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 Keybank National Association secured by a third in priority deed of trust recorded against the real property commonly known as 10 Hazeman Court, Woodland, 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 \$383,281.00 and is encumbered by senior liens securing claims in the amount of \$469,608.00, which exceeds the value of the Property which is subject to Creditor’s lien.

15. [16-24246-E-13](#) **RICHARD CRUZ** **MOTION TO VALUE COLLATERAL OF**
EWV-102 **Eric Vandermey** **SELENE FINANCIAL, LP**
8-22-16 [\[34\]](#)

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 22, 2016. By the court’s calculation, 29 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 Selene Financial, LP (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.

The Motion to Value filed by Richard Cruz (“Debtor”) to value the secured claim of Selene Financial, LP (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of the subject real property commonly known as 1293 Alice Street, Woodland, California (“Property”). Debtor seeks to value

the Property at a fair market value of \$327,000.00 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 that 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.

NO PROOF OF CLAIM FILED

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

NO OPPOSITION FILED

Creditor has not filed an opposition despite being served with notice of the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$487,500.00. Creditor's second deed of trust secures a claim with a balance of approximately \$54,415.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Richard Cruz (“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 Selene Financial, LP secured by a second in priority deed of trust recorded against the real property commonly known as 1293 Alice Street, Woodland, 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 \$327,000.00 and is encumbered by a senior lien securing a claim in the amount of \$487,500.00, which exceeds the value of the Property which is subject to Creditor’s lien.

16.	<u>15-29147-E-13</u> RK-2	JOHN QUIROZ Richard Kwun	CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF PATRICIA COSTLEY, CLAIM NUMBER 2 2-20-16 <u>51</u>
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Debtor’s Atty: Richard Kwun

Notes:

Continued from 5/24/16. Deadline for Patricia Costley extended through and including 9/29/16 in light of State Court proceeding.

SEPTEMBER 20, 2016 HEARING

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MAY 24, 2016 HEARING

The Parties reported that State Court proceeding has been set for June 29 and June 30, 2016 to determine the marital dissolution rights and interests of the parties. The parties have requested that this matter be continued into September 2016.

Additionally, the deadline for Patricia Costley is extended through and including September 29, 2016. In light of Ms. Costley and the Debtor not knowing what rights and obligations the State Court judge will determine Ms. Costley and the Debtor to have in connection with the dissolution of their marriage, the

18. [16-23350-E-13](#) JODY/JOY SILVA
CA-2 Michael Croddy

CONTINUED MOTION TO VALUE
COLLATERAL OF SANTANDER
CONSUMER USA
7-5-16 [25]

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 Debtors, 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 - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 5, 2016. By the court's calculation, 14 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. The court continued the hearing to allow for the filing of the opposition and evidence.

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is granted, with the secured claim determined to have a value of \$15,375.00.

The Motion filed by Jody Silva and Joy Silva ("Debtors") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtors' declaration. Debtors own a 2010 Ford F150 Super Cab, Short Bed with 125,000 miles ("Vehicle") at a replacement value of \$12,415.00 as of the petition filing date. As the owner, the Debtors' 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).

JULY 19, 2016 HEARING

At the hearing, opposition was presented, and the court continued the matter to September 20, 2016. The court stated that opposition should be filed by September 2, 2016, with replies (if any) filed by September 9, 2016. Dckt. 40.

CREDITOR'S OPPOSITION

Creditor filed opposition on September 2, 2016. Dckt. 55. Creditor objects to Debtors' valuation of the Vehicle. Creditor asserts that the Vehicle has a retail replacement value of \$16,675.00 as stated in the N.A.D.A. Guide for a vehicle of the same make, model, year, and general features (Exhibit C, Dckt. 58).

Creditor requests that the court deny the Motion to Value Collateral, or alternatively, that Debtors' Plan be amended to reflect \$16,675.00 as the Vehicle's value. Finally, Creditor requests that the court set an evidentiary hearing on or after November 1, 2016, because Creditor does not consent to the resolution of a disputed material factual issue (*i.e.*, Vehicle's value) pursuant to Federal Rule of Civil Procedure 43(c) and to give Creditor sufficient time to conduct discovery and obtain an appraisal of the Vehicle.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,981.44, according to Debtors' Schedule D. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized whether the court applies Debtors' or Creditor's valuation of the Vehicle.

Creditor's opposition is well-taken. The court notes that a N.A.D.A. Guide reflecting the same make, model, year, and mileage of the Vehicle has been submitted properly, and that report shows a retail replacement value of \$16,675.00 for the Vehicle. Exhibit C, Dckt. 58. This is the retail, showroom ready value of the vehicle.

Though real life judicial experience would cause one to infer that no car owned by a bankruptcy debtor is in "showroom used car retail condition," no specific information is alleged in the motion as to condition. However, Debtors do allege that the car is in fair condition (without providing an allegation of what is meant by "fair" condition) due to deferred maintenance. In Debtors' declaration, no specific information is provided about what constitutes "fair" condition or any specific maintenance that is required.

The court has been presented with competing well-known market reports (Fed. R. Evid. 803 (17)) for value of vehicles – Kelley Blue Book ("KBB") and the N.A.D.A. Guide. The KBB suggested retail value is \$13,701.00 and the N.A.D.A. value is \$16,675.00. The N.A.D.A. report provides some information as to the factors considered (mileage) and the KBB value just shows the retail value, without any background information.

Based on the KBB valuation presented, Debtors' testimony of a value of \$12,415.00 indicates that there is \$1,300.00 of deferred maintenance (the lower value stated by Debtors than the \$13,701.00 KBB retail value).

The court determines the replacement value of this vehicle, after allowing for \$1,300.00 of deferred maintenance (which is not unreasonable for someone who has been pushed to seek the extraordinary relief under the Bankruptcy Code) to be \$15,375.00. This gives Creditor the benefit of the doubt as between the two market guides, as well as the reality of the probable condition of the vehicle.

The lien on the Vehicle's title secures a purchase-money loan incurred in December 11, 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 \$23,981.44. 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 \$15,375.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Jody Silva and Joy Silva ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA ("Creditor") secured by an asset described as 2010 Ford F150 Super Cab, Short Bed ("Vehicle") is determined to be a secured claim in the amount of \$15,375.00, 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 \$15,375.00 and is encumbered by liens securing claims that exceed the value of the asset.

19. [16-23950](#)-E-13 **JOHN BURGESS**
DPC-2 Pro Se

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
8-17-16 [32]

Final Ruling: No appearance at the September 20, 2016 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 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.

20. [16-24661](#)-E-13 **RONNETTE ROGERS RUNNINGS** **MOTION TO VALUE COLLATERAL OF**
DAO-2 **Dale Orthner** **RC WILLEY HOME FURNISHINGS,**
 INC.
 8-19-16 [23]

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 19, 2016. 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 RC Willey Home Furnishings Inc, dba RC Willey Financial Services (“Creditor”) is granted, and the secured claim is determined to have a value of \$500.00.

The Motion filed by Ronnette Rogers Runnings (“Debtor”) to value the secured claim of RC Willey Home Furnishings Inc, dba RC Willey Financial Services (“Creditor”) is accompanied by Debtor's declaration. Debtor is the owner of a dual recliner sofa and a dual recliner love seat (“Assets”). The Debtor seeks to value the Assets at a replacement value of \$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).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 3 filed by Creditor on August 8, 2016, is the claim that is the subject of the present Motion.

NO OPPOSITION FILED

Creditor has not filed an opposition despite being served with notice of the Motion.

DISCUSSION

The lien on the Assets secures a purchase-money loan incurred in April 16, 2014, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$1,941.47. *See* 11 U.S.C. § 1325(a)(9) (stating the one-year period for personal property other than a motor vehicle). Therefore, the Creditor's claim secured by a lien on the assets is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$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 Ronnette Rogers Runnings ("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 RC Willey Home Furnishings Inc, dba RC Willey Financial Services ("Creditor") secured by assets described as a dual recliner sofa and a dual recliner love seat ("Assets") is determined to be a secured claim in the amount of \$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 Assets is \$500.00 and is encumbered by Creditor's lien securing a claim that exceeds the value of the Assets.

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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*) on August 25, 2016. 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:

- A. The Debtors have failed to provide the Trustee with their Employer Payment Advices received sixty (60) days prior to filing.
- B. The Debtors have failed to provide the Trustee with a tax transcript or a copy of their Federal Income Tax Returns with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. This is required seven days before the date set for the Meeting of Creditors.
- C. The Debtors cannot make payments under the Plan or Comply with the Plan.

1. Section 2.15 of the Plan is blank. The Debtors failed to list a dividend to unsecured creditors.
2. Debtors' plan relies on the Motion to Value Collateral of Santander Consumer USA. The Debtors have not filed the Motion to Date. If the Motion to Value Collateral of Santander Consumer USA is not granted, Debtors' Plan does not have sufficient monies to pay the claim in full.

No Motion has been filed by Debtors.

3. Debtors admitted that the childcare expense in the amount of \$540.00 will be reduced to \$300.00 per month. The Debtors have failed to amend Schedule I and J.
- D. Debtors' monthly net income on Schedule H totals \$2,501.70. Debtors' monthly Plan payments are \$2,000.00. The Plan is not the Debtors' best effort.
- E. The Plan fails the Chapter 7 Liquidation Analysis. Debtors' Schedule B lists the total of Debtors' property in the amount of \$21,823.00. The Debtors have failed to propose a dividend to pay the unsecured creditors. Schedule C does not list the amount of the exemption the Debtors claim. The Debtors have improperly used the exemption code for an automobile on Schedule C under C.C.P. § 703.140(b)(2) in an attempt to exempt personal property listed as "tv, dvd player, books and home de, kids bikes, sports ge, clothing for 2 adults, jewelry, dog."

The Trustee's objections are well-taken. The basis for the Trustee's objection is that the Debtors have not provided the Trustee with their employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. §521(a)(1)(B)(iv). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtors have failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is reason to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtors may be unable to make Plan payments or comply with the Plan. The Debtors may not be able to make Plan payments or comply with the Plan. The Debtors' Plan relies on a Motion to Value Collateral of Santander Consumer USA, but the Debtors have not filed such a motion. Without valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Plan may not be the Debtors' best effort. Section 2.15 of Debtors' Plan is blank, the Plan fails to list a dividend to unsecured creditors. Debtors' monthly net income on Schedule H totals \$2,501.70, but only proposes to pay \$2,000.00 per month into the Plan. Additionally, Debtors admitted that childcare expenses will be reduced to \$300.00 per month from \$540.00, yet the Debtors have not filed an amended Schedule I or J. The Plan does not appear to be the Debtors' best effort. 11 U.S.C. §1325(b).

The Trustee opposes confirmation of the Plan on the basis that the Debtors' Plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While the Debtors propose a 0% dividend to unsecured creditors, additional equity exists. Debtors' Schedule C does not provide the amount of the exemption the Debtors claim, only the current value of the portion the Debtors own. The Debtors improperly used the exemptions C.C.P. § 703.140(b)(2) automobile exemption to exempt: TV, DVD player; books and home de [*sic*]; kids bikes, sports ge [*sic*]; clothing for two adults; jewelry; and a dog. This is cause to deny confirmation. *See* 11 U.S.C. § 1325(a)(4).

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

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

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

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

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

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

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

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

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 25, 2016. 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:

- A. The Debtor failed to appear at the First Meeting of Creditors held August 18, 2016. The Meeting was continued to October 13, 2016, at 11:00 a.m.
- B. The Debtor cannot make payments or comply with the Plan. Debtor is delinquent \$1,700.00. To date, the Trustee has not received any plan payments where one payment has come due. The next Scheduled \$1,700.00 payment is due August 25, 2016.

The Trustee's objections are well-taken. The basis for the Trustee's objection is that the Debtor failed to appear at the First 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 opposes confirmation offering evidence that the Debtor is \$1,700.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, and the Plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 25, 2016. 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.

The Internal Revenue Service ("IRS"), opposes confirmation of the Plan on the basis that the Plan does not properly provide for the treatment of the priority unsecured portion of the IRS's tax claim. The IRS's proof of claim states a priority unsecured claim in the amount of \$81,406.76. Proof of Claim No. 1. The Plan does not provide for any distribution to the IRS on its priority unsecured claim.

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

11 U.S.C. § 1325(b)(1) specifies the requirements of a Plan when the trustee or the holder of an allowed unsecured claim objects to the confirmation of the Plan. If the Trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the date of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim, 11 U.S.C. § 1325(b)(1)(A); or the plan provides that all the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan, 11 U.S.C. § 1325(a)(1)(B).

However, these are relevant only if the Plan provides for the unsecured priority claim.

Here, the Debtor fails to provide for the IRS's unsecured priority tax claim under 11 U.S.C. § 507(a)(8). This failure is grounds to deny confirmation.

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

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

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

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

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

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 25, 2016. 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:

- A. The Debtor failed to appear and be examined at the First Meeting of Creditors held August 18, 2016. The Debtor is required to attend the meeting and has not presented any evidence to the court as to why he failed to appear. The Meeting has been continued to October 13, 2016, at 11:00 a.m.
- B. The Debtor is not entitled to Chapter 13 relief under 11 U.S.C. § 109(e). The Debtor lists secured debts totaling \$1,532,863.85. The secured debt limit is \$1,184,200.00

- C. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. This is required seven days before the date set for the first meeting of creditors.
- D. The Trustee has requested, and the Debtor has failed to provide the Trustee with, the answers to certain questions about the Debtor's business, set out in a Business Case Questionnaire mailed to the Debtor, including: a list of employees; description of business and assets; copies of bank statements; business tax returns; licenses; and any insurance policies.

The Trustee's objections are well-taken.

The Debtor failed to appear at the First 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 asserts that the Debtor is over the secured debt limit of 11 U.S.C. § 109(e). Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date the filing of the petition, noncontingent, liquidated, secured debts of less than \$1,184,200.00 may be a debtor under Chapter 13. The Debtor's Schedule D lists noncontingent, liquidated, secured debts of \$1,532,863.85. Debtor is not eligible to be a debtor under Chapter 13 of the Bankruptcy Code. This is reason to deny confirmation. 11 U.S.C. §§ 109(e) & 1325(a)(1).

The Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is reason to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor has failed to timely provide the Trustee with answers to certain questions set out in the Business Questionnaire including: a list of employees; description of business and assets; copies of bank statements; business tax returns; licenses; and any insurance policies. . 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required seven days before the date set for the first Meeting. 11 U.S.C. § 521(e)(2)(A)(i). Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

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

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

25. [16-20777-E-13](#) **MICHELE WILLIAMS** **MOTION TO CONFIRM PLAN**
PGM-2 **Peter Macaluso** **8-8-16 [42]**

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 August 8, 2016. By the court’s calculation, 43 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.

Michele A. Williams (“Debtor”) filed the Instant Motion to Confirm First Amended Plan on August 8, 2016. Dckt. 42.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition to the instant Motion on August 26, 2016. Dckt. 49. The Trustee opposes confirmation on the bases that:

- A. The Plan fails the Chapter 7 Liquidation Analysis. The Debtor's non-exempt equity totals \$8,083.06, and the Debtor proposes to pay unsecured creditors a 0% dividend.
- B. It is not clear if the Debtor can make plan payments or comply with the Plan.
 - 1. Section 1.01 of the Plan filed on August 8, 2016, calls for four (4) payments of \$9,800.00, followed by eight (8) payments of \$2,900.00, then forty-eight (48) payments of \$3,550.00. The Debtor's Schedule J lists net income of only \$2,900.44.
 - 2. The Debtor is \$2,900.00 delinquent in Plan payments to the Trustee to date, and the next scheduled payment of \$2,900.00 is due on September 25, 2016.
 - 3. Section 6.02 listed in the Additional Provisions of the Plan states, "Debtor to seek a loan modification and amend the plan accordingly."

Debtor's declaration states, "I will begin remitting payments of \$2900.00 per month starting July 2016 for eight more months while I attempt to obtain a loan modification. If I get a loan modification I will amend my plan accordingly."

The Debtor's Plan relies on receiving a loan modification, but the Trustee has not been provided with a copy of whatever application for a loan modification that the Debtor has submitted.

DEBTOR'S RESPONSE

Debtor filed a Response to the Trustee's Opposition on September 13, 2016. Dckt. 53. Debtor states that she filed an amended Schedule C on September 13, 2016 (Dckt. 55) to complete the exemption of \$8,083.06 that was not claimed previously. Debtor asserts that the Plan now meets a 0% liquidation.

As to plan payments, Debtor asserts that she will provide the Trustee with the load modification application results, and the Debtor intends to either surrender the home or proceed with the modification based upon those results.

DISCUSSION

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

The Trustee's objections are well-taken.

The Trustee opposes confirmation of the Plan on a basis that the Debtor's Plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The court notes that an amended Schedule C was filed by Debtor that exempts the unaccounted \$8,083.06 amount.

The Trustee also opposes confirmation on the basis that the Debtor may not be able to make plan payments or comply with the Plan. Debtor's Plan calls for an increase in plan payments from \$2,900.00 to \$3,550.00 in month twelve of the plan. However, Debtor's Schedule J indicates that the Debtor has net income of only \$2,900.44. This is insufficient to fund the Plan once the plan payments increase in month twelve of the Plan. The Debtor's Plan depends on receiving a loan modification, but the Trustee has yet to receive a copy of whatever application for a loan modification the Debtor has submitted to date. This is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The Trustee opposes confirmation on the ground that the Debtor is \$2,900.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Debtor's reply shows the fundamental defects in the Plan. It appears that Debtor admits that she cannot make the payments, but must obtain a loan modification. But Debtor's Plan does not provide adequate protection payments and adequate protection for Debtor to pursue a loan modification in good faith, but merely reduce the monthly plan payments to Wells Fargo Bank, N.A. to \$200.00 a month for twelve months and then \$600.00 a month for forty-eight months. Possibly no opposition has been filed by Wells Fargo Bank, N.A. given how the motion and supporting pleadings were served by Debtor. Though the FDIC lists the address of 101 N. Phillips Avenue, Sioux Falls, South Dakota, 57104, that address does not appear on the Certificate of Service. Dckt. 47. The Bankruptcy Code does not provide for modifying this claim secured by Debtor's residence without creditor's consent. 11 U.S.C. § 1322(b)(2). The court does not ignore the Bankruptcy Code and issue orders confirming plans that clearly violate the Bankruptcy Code. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The court also notes that this is not the Debtor's first, or even second, Chapter 13 case in recent years. Debtor has filed and had three prior cases since 2010:

- A. Case 10-23333, filed on September 23, 2009, and Chapter 7 discharged entered July 30, 2010;
- B. Chapter 13 Case 11-41829, filed on September 9, 2011, and dismissed on March 24, 2014;
 1. Case dismissed due to Debtor defaulting in Plan payments.
- C. Chapter 13 Case 14-23385, filed on April 1, 2014, and dismissed November 9, 2015.
 1. Case dismissed due to Debtor defaulting in Plan payments totaling \$8,940.00 (with monthly plan payments of \$2,897.00) as of the time the Motion to

Dismiss was filed by the Chapter 13 Trustee. 14-23385; Civil Minutes, Dckt. 136.

Debtor has been represented by the same counsel since commencing her first Chapter 13 Case in 2011.

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.

26. [16-24481-E-13](#) **MARCO/MONICA ROMO** **OBJECTION TO CONFIRMATION OF**
DPC-1 **W. Steven Shumway** **PLAN BY DAVID P. CUSICK**
8-25-16 [20]

Final Ruling: No appearance at the September 20, 2016 Hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 25, 2016. 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.

The court's decision is to continue the Objection to October 25, 2016, at 3:00 p.m.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor failed to appear at the First Meeting of Creditors held on August 18, 2016. The Meeting was continued to

October 13, 2016, at 11:00 a.m. The Trustee requests that the Court continue this Objection to October 25, 2016, at 3:00 p.m., which is after the Continued First Meeting of Creditors.

DEBTOR'S RESPONSE

Marco Romo and Monica Romo ("Debtors") filed a Response to Trustee's Objection to Confirmation August 26, 2016. Dckt. 24. The Debtor's Response states that Debtors did not receive notice of the First Meeting of Creditors because they have had problems with their mail. Debtors agree that the Objection to confirmation of their plan should be continued to October 25, 2016, to give them an opportunity to appear at the Continued First Meeting of Creditors on October 13, 2016.

DISCUSSION

The court grants the continuance to October 25, 2016, which is after the Continued First Meeting of Creditors.

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

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

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

IT IS ORDERED that the hearing on the Objection to confirmation the Plan is continued to 3:00 p.m. on October 25, 2016.

27. [16-24481](#)-E-13
SW-1

MARCO/MONICA ROMO
W. Steven Shumway

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL
8-9-16 [17]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Chapter 13 Trustee on August 9, 2016. The United States Trustee was not served with notice. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to 3:00 p.m. on October 25, 2016.

Ally Financial ("Creditor") opposes confirmation of the Plan on the basis that the Plan's proposed interest rate fails to provide the present value of the Creditor's claim. Creditor requests that the court amend Debtors' Plan to reflect a 6.25% interest rate, which is the national prime rate of 3.25% at the time of Debtor's petition date plus 3%.

DEBTOR'S RESPONSE

Marco Romo and Monica Romo ("Debtors") filed a Response to Creditor's Objection to Confirmation on September 1, 2016. Dckt. 26. The Debtors' Response states that the contract interest rate

was omitted from the Plan due to a clerical error. The Debtors will stipulate that Creditor's claim shall accrue interest at the contract rate of 5.59% as stated in the loan agreement entered into by the Debtors. The Debtors ask to be allowed to correct the interest rate in the order confirming.

STIPULATION

The parties submitted a Stipulation Resolving Objection on September 15, 2016. Dckt. 28. The parties agree that Debtors shall provide for a collateral value of the vehicle in question (2012 Honda Crosstour, ending in Vehicle Identification Number 4322) of \$18,000.00 at 5.59% interest with monthly payments of \$650.00 beginning with the effective date of the Plan, and shall reflect the above terms in an Amended Plan, or in the alternative, in the Order Confirming Debtors' Chapter 13 Plan.

Subject to the stipulation being approved, Creditor withdraws its Objection.

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 9034(i) requires that any entity filing an objection to confirmation of a plan serve that objection on the United States Trustee. Federal Rule of Bankruptcy Procedure 5005(b)(1) specifies that such objection "be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending."

Here, the United States Trustee was not served with Creditor's Objection.

DISCUSSION

11 U.S.C. § 1323(a) allows the Debtor to modify a plan prior to confirmation. Debtors propose to cure the error in the order confirming the Plan. The Stipulation among the parties resolves the creditor's objection.

However, the proposed modification has not been served on the U.S. Trustee. Because the court is continuing the hearing on the Trustee's Objection to Confirmation due to Debtors' failure to attend the First Meeting of Creditors, the court continues the hearing on this Objection as well. The Debtors shall file and serve on the U.S. Trustee and the Chapter 13 Trustee on or before September 30, 2016, a Notice of Proposed Amendment to Proposed Plan that sets for the agreed changes to Creditor's plan treatment.

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

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

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

IT IS ORDERED that hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on October 25, 2016.

IT IS FURTHER ORDERED that Debtors shall file and serve on the U.S. Trustee and the Chapter 13 Trustee on or before September 30, 2016, a Notice of Proposed Amendment to Proposed Plan that sets for the agreed changes to Creditor's plan treatment.

28. [16-22791-E-13](#) **CHERYL SHEPPARD** **MOTION TO CONFIRM PLAN**
SJS-1 **Matthew DeCaminada** **8-3-16 [33]**

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 August 3, 2016. By the court's calculation, 48 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.

Cheryl Sheppard ("Debtor") filed the instant Motion to Confirm First Amended Plan on August 3, 2016. Dckt. 33.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, opposes confirmation on the basis that the Debtor is \$344.00 delinquent in plan payments to the Trustee to date. Dckt. 41. The next scheduled payment of \$347.00 is due on September 25, 2016. The Debtor has paid \$700.00 into the plan to date.

DISCUSSION

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

The Trustee's objection is well-taken. The Trustee opposes confirmation offering evidence that the Debtor is \$344.00 delinquent in plan payments. This is evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The 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.

29. [15-28894](#)-E-13 CASSIUS BELL
NUU-3 Chinonye Ugorji
DEBTOR DISMISSED: 08/15/2016

MOTION TO CONFIRM PLAN
8-5-16 [\[75\]](#)

Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

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

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

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

IT IS ORDERED that the Motion to Confirm Third Amended Plan is dismissed as moot, the case having been dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, party requesting special notice, and Office of the United States Trustee on August 8, 2016. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

Van Pham ("Debtor") filed the instant Motion to Confirm Second Modified Plan August 8, 2016. Dckt. 69.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, an Opposition to Debtor's Motion to Confirm Second Modified Plan on September 6, 2016. Dckt. 79. The Trustee opposes confirmation on the basis that:

- A. The proposed Modified Plan reduces plan payments by \$535.00—from \$591.00 per month to \$56.00 per month. The dividend to unsecured creditors is being reduced from no less than 33% to no less than 9%.
- B. The Motion may mislead parties as to the reason for the modification. While no child care expense is present on Schedule I or J, the Motion states:

Debtor had a rise in her income (paycheck included) and rise in expenses like child care (addressed through amendment). these changes are incorporated in this motion to modify (Dckt. 69).

1. The Debtor had proposed a modified plan paying \$393.00 per month on October 17, 2015, which included a current Schedule J. Although this Modified Plan was denied on December 12, 2015, the Debtor paid \$393.00 or more each month from January 2016 through August 2016.
2. Debtor had a Motion to Incur Debt granted December 2, 2015, allowing the Debtor to purchase a vehicle for \$457.00 per month. The current Schedule J reflects a car payment of \$357.09 per month.
3. The Debtor has filed current Schedules I and J with this Motion.
 - a. Debtor's income has increased by \$616.16, but Debtor's payroll taxes have decreased by \$85.18.
 - b. Deductions for insurance have increased by \$1,200.46
 - c. The paystub presented as an Exhibit to the Debtor without analysis appears to show what may be \$500.00 per month to health spending accounts (HSA and DCFSA) with no declaration from the Debtor explaining if these expenses are reasonable. Where a U.S. Bank HSA account was listed on Schedule B with a \$15,000.00 balance at filing, the paystub may show that the Debtor is diverting \$500.00 per month from income, which may not be reasonably necessary.
 - d. Debtor did not provide updated income and expenses in April 2016 as required by the Order Granting Debtor's Motion to Incur New Debt.
 - e. Debtor's Dependents' ages appear incorrectly listed. The children do not age between the first set of Schedules filed and in the most recent Schedule. The daughter has aged two years, while the son has aged four years.
 - f. Debtor no longer references any expected decrease or increase on Schedule I where previously she had stated she was not contributing to her 401K retirement and that she was no longer receiving \$1,700.00 in rental income.
 - g. Debtor does not directly address in her declaration whether her spouse has income.

DISCUSSION

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

The Trustee's objections are well-taken.

The Trustee objects to confirmation on a basis that the proposed Modified Plan reduces payments to \$56.00 per month, lowering the dividend to unsecured creditors to no less than 9%, and he has expressed concern regarding Debtor's Plan. The court is concerned that the Debtor's proposed Modified Plan may not have been proposed in good faith. To begin, the Motion may mislead the parties as to the reason for the modification. The Motion states:

Debtor had a rise in her income (paycheck included) and rise in expenses like child care (addressed through amendment). these changes are incorporated in this motion to modify.

However, no child care expense is present on Schedule I or J.

Additionally, there are a series of unexplained changes in the Debtor's Schedules. Even though Debtor's income has increased, Debtor's payroll taxes have decreased. Debtor's deductions for insurance have increased by \$1,200.46. The pay stub entered as an exhibit to Debtor's motion shows \$500.00 to HSA (\$300.00) and DCFSA (\$200.00). Debtor offers no declaration explaining if these expenses are reasonable, however. A U.S. Bank HSA account is listed on Debtor's original Schedule B with a \$15,000.00 balance. This pay stub could be an indication that the Debtor is diverting monies from her income, which may not be reasonably necessary. The Debtor's dependents' ages are incorrectly listed and inconsistent. The Debtor no longer references any expected increase or decrease on Schedule I, where previously she stated she was not contributing to Debtor's 401K account or receiving \$1,700.00 in rental income. Finally, the Debtor does not directly address in her declaration whether her spouse has income.

The Debtor was granted a Motion to Incur Debt to allow the Debtor to purchase a vehicle for \$457.00 per month, but the current Schedule J reflects a car payment of only \$357.09 per month. The Debtor also failed to provide updated income and expenses in April 2016 as required by the Order Granting Debtor's Motion to Incur New Debt. These issues, combined with the failure of the Debtor to provide sufficient information, are reasons to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Taking the Supplemental Schedule J as true and the information provided under penalty therein concerning expenses as true, Debtor cannot make even the minimal \$56.34 a month plan payment in light of her increased car payment by \$100.00 a month than what is stated in Supplemental Schedule J. FN.1.

FN.1. Debtor actually states that this is an Amended Schedule J, which would then date back to the date this case was filed, and a Supplemental Schedule J providing post-petition changed financial information as of July 27, 2016. The court will presume that Debtor, in her enthusiasm in advancing this proposed Modified Plan to reduce her plan payments, her careful review focused on the financial information and she forgot to question how she was doing both an amended and a supplemental filing.

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

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

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

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

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

31.	16-22328 -E-13 SS-2	MARIA COLEMAN Scott Shumaker	CONTINUED MOTION TO MODIFY PLAN 8-15-16 [34]
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Final Ruling: No appearance at the September 20, 2016 hearing is required.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 15, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

<p>The Motion to Confirm the Modified Plan is granted, and the Chapter 13 Plan is confirmed.</p>

Maria Coleman ("Debtor") filed the instant Motion on August 15, 2016.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, has filed a Non-Opposition to Debtor's Motion for Order Confirming First Modified Chapter 13 Plan. Dckt. 45. The Trustee notes that there are conflicting hearing dates on the documents filed in relation to the Motion, however. The Motion, Exhibits, and Proof of Service indicate a hearing date of September 20, 2016, while the Notice and Declaration each list a hearing date of September 13, 2016.

The Trustee notes also that Debtor has proposed increased monthly payments of \$416.00 and that the unsecured dividend remain at no less than 0%. Trustee states that Debtor is current under the proposed modified plan and that the modified plan is feasible.

SEPTEMBER 13, 2016 HEARING

At the hearing, the court continued the matter to September 20, 2016, at 3:00 p.m. to account for apparent scrivener's errors on some of the filings that indicated September 13, 2016, as the hearing date, instead of September 20, 2016. Dckt. 48.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. Trustee filed a statement of non-opposition. Dckt. 45. No opposition to the Motion was filed by 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 August 15, 2016, 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.