UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 6, 2015 at 1:30 p.m.

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1. 14-27045-E-13 HARINDER SINGH
PGM-1 Peter Macalsuo

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SACRAMENTO SIKH SOCIETY BRADSHAW TEMPLE
8-12-15 [90]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is denied.

Harinder Singh, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Sikh Society Bradshaw Temple ("Settlor"). The claims and disputes to be resolved by

the proposed settlement are those connected with the Adversary Proceeding No. 14-08837 which dealt with causes of action for false pretenses, false representation, and actual fraud.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 93):

1. Movant shall pay Settlor $30,000.00 on or before July 2, 2015 and a second payment of $30,000.00 on or before December 25, 2015, and the mutual release and other covenants contained in this Agreement, the parties:

   a. Release, acquit, and forever discharge the other and the others agents, employees, officers, directors, shareholder, investors, spouses, partners, members, managers, heirs, executors, administrators, and assigns, and each of them, from any and all claims, actions, causes of action and demands that ere brought, that could have been brought, or that are in any way related to the allegations in the pending Adversary Proceedings.

   b. Agree never to commence or prosecute, or cause to be commenced or prosecuted, against the other party that any action or proceeding “taste” directly or indirectly on any released claims.

2. Upon receipt of the total payment of $60,000.00, the Settlor shall cause the pending Adversary Proceeding to be dismissed. The dismissal shall not constitute and many not be used as an admission of res judicata as to the discharge ability of the subject underlying debt, should Movant file a Chapter 7 or other new bankruptcy case 90 days or less after either or both settlement payments.

3. In addition to and at the same time as the dismissal of the pending Adversary Proceeding, the Settlor shall deliver to Movant a Notice and Acknowledgment of Full Satisfaction of Judgment, on California standard Judicial Council Form, as to Movant as well as to Movant’s father, Hakam Singh, and Movant’s wife, Anita Singh, for purposes of releasing the abstract and judgment lien on the real property and residence located at 9012 Sand Field Court, Sacramento, California.

SETTLOR’S NON-OPPOSITION

The Settlor filed a non-opposition to the instant Motion on August 17, 2015. Dckt. 95.

DEBTOR’S DECLARATION

The Debtor filed a declaration on September 19, 2015. Dckt. 106. The Declaration states that the Debtor was a defendant in a state court case that resulted in an adverse ruling to Debtor and co-defendants and in favor or Settlor. The compensatory damages awarded were paid by one of the co-defendants, leaving Debtor and the remaining co-defendants liable for each of the punitive damage awards.

The Debtor states that he is willing to pay the two, lump sum payments of $30,000.00 to the Settlor since it would be half of what the Debtor would need to pay if he was required to pay the full punitive damage amount.

The Debtor states that he is a one-third owner of the residence in which the judgment lien is attached. The remaining thirds are owned by Hakam and Anita Singh, the Debtor's father and estranged wife.

The Debtor states that timely funding of the first installment under the terms of the settlement was made possible by the contribution of his father and father's estranged wife in the amount of $22,944.08 into Debtor's savings account on June 1, 2015 for the purpose of paying the first installment fee to SEttlor. The Debtor states he made the difference from current earning to make the full $30,000.00 installment payment on July 16, 2015.

The Debtor states that he has since been advised that he should have waited for the compromise to be approve before making the payment. The Debtor alleges that he did not mean to cause any harm and was concentrated on making the first installment to actually avoid harm.

The Debtor states that if the court would grant his previously filed application to dismiss the case, assuming the court approves the compromise, the Debtor and the other owners of the residence may be able to refinance the house and use any exempt equity to fund the second installment to the Settlor. If the court is unwilling to grant the dismissal, the Debtor states that he will have his bankruptcy counsel propose an amended plan to pay the second installment through the plan.

HAKAM AND ANITA SINGH'S DECLARATION

On September 19, 2015, Hakam and Anita Singh filed a declaration. Dckt. 107. The Declaration states that they provided $22,944.08 to the Debtor for the purpose of funding the first installment payment. Hakam and Anita Singh state that the instant declaration was filed to "reassure" the court that the money was to pay the first installment and that they do not expect repayment of th e $22,944.08.

SEPTEMBER 22, 2015 HEARING

In light of the Debtor and Hakam and Anita Singh filing declarations three days prior to the hearing, the court continued the hearing to 3:00 p.m. on October 6, 2015 to allow the Trustee, the U.S. Trustee, and other parties in interest the opportunity to review these filings. Any replies or responses to the late-filed declarations shall be filed and served on or before September 29, 2015.

ORDER FOR SUPPLEMENTAL EXHIBITS

On September 24, 2015, the court issued an Order for Supplemental Exhibits. Dckt. 111. The court's Order stated the following:

> On August 12, 2015, Harinder Singh ("Debtor") filed a Motion for Approval of Compromise with Sikh Society Bradshaw Temple ("Creditor"). Dckt. 90.

On September 22, 2015, the court continued the hearing to 3:00 p.m. on October 6, 2015, to allow the Trustee, the U.S. Trustee, and other parties in interest the opportunity to review the filings of the Debtor, Hakam Singh, and Anita Singh; these were filed on September 19, 2015, three days prior to the hearing. Dckt. 108.

The declaration of Debtor filed on September 19, 2015, states that $22,944.08 were transferred to Debtor on June 1, 2015, from Hakam Singh (Debtor's father) and Anita Singh (Debtor's estranged wife) Dckt. 106. No copies of any bank records or other documentation of the stated transfer were provided.

Debtor states that these monies were to be used, in part, to make the $30,000.00 payment to Creditor on July 16, 2015. No bank records or other documentation of how this payment was made to Creditor is provided by Debtor. To make the payment, Debtor states that he "made up the difference from current earnings (my next monthly paycheck)." Declaration, p. 3: 1-2.

However, on Schedule I Debtor states that his monthly take home income is only $6,908.58. Dckt. 1 at 21. On Schedule J Debtor states under penalty of perjury that his necessary monthly expenses are ($6,944.95). Id. at 23. Debtor does not provide an explanation as to how from his monthly paycheck he could take $7,055.92 (the amount necessary to achieve the $30,000.00 July settlement payment) and still pay any of his necessary monthly expenses.

The Debtor further states that he is a one-third owner of the real property commonly known as 9012 Sand Field Court, Sacramento, California ("Property"). The Debtor asserts that the remaining two-thirds are held by Hakam Singh and Anita Singh. This assertion is restated by Hakam Singh and Anita Singh in their separately filed declaration. Dckt. 107. No copies of the deed or current record title for the Property has been provided by Debtor.

The lack of documentation and the apparent economic inconsistencies raises significant concerns for the court concerning the conduct of the Debtor, Hakam Singh, and Anita Singh in this case and testimony provided. Further, it raises significant issues as to the actual ownership of the Property, and when Hakam Singh and Anita Singh would pay almost $60,000.00 to protect an undivided one-third interest of the Debtor.

Therefore, in light of the representation of testimony provided and apparent economic inconsistencies therein, the files in this case, the court orders that on or before October 1, 2015, the Debtor shall file and serve properly authenticated evidence (1) concerning the transfer of $22,944.08 from Hakam Singh and Anita Singh to Debtor for the

first installment payment under the proposed settlement agreement and (2) a certified copy from the County Clerk of Sacramento County of the deed of the Property showing the ownership interests of the parties.

Upon review of the Motion and accompanying declarations, and good cause appearing;

IT IS ORDERED that on or before October 1, 2015:

1. Harinder Singh shall file and serve properly authenticated, credible evidence documenting the stated transfer of $22,944.08 from Hakam Singh and Anita Singh to Debtor for the first installment payment under the proposed settlement agreement;

2. Hakam Singh and Anita Singh shall file and serve supplemental pleadings and credible, properly authenticated documents to support the testimony made under penalty of perjury in their declaration (Dckt. 107), as they deem appropriate; and

3. Harinder Singh shall file and serve a certified copy from the County Clerk of Sacramento County of the deed of the Property showing the current title and ownership interests of record in the Property.

DEBTOR'S SUPPLEMENTAL EXHIBITS

The Debtor filed supplemental exhibits on October 1, 2015. Dckt. 113. The Exhibits are listed by counsel on the cover sheet as:

1. Exhibit 1 - Supplemental Exhibits to Defendant's Pre-Trial Status Report

   a. Sup. Ex. 1.1: Withdrawal of $30,000.00

   b. Sup. Ex. 1.2: Deposits of $22,944.08

2. Anita's Bank Account Activity Ending in 154

3. Anita's Bank Account Activity Ending in 829

4. Harinder Singh's Deed Page #1

5. Harinder Singh's Deed Page #2

The Debtor does not provide any declarations to authenticate any of the documents. The only document self-authenticated is the Deed of Trust which is

certified as evidenced by Exhibit 5. While Debtor's counsel lists the Exhibits, nobody has offered any testimony under penalty of perjury that the Exhibits are the documents as labeled by Debtor's attorney.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

The Ninth Circuit in A & C Properties discussed stated

> It is clear that there must be more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement. The court must also find that the compromise is fair and equitable.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986)(citing *Citibank, N.A. v. Baer*, 651 F.2d 1341, 1345-46 (10th Cir.1980).

Even more broadly, debtors have a duty to prosecute the case in good faith. *See, e.g.* 11 U.S.C. § 1325(a)(3)(requiring that a plan be proposed in good faith)

The Debtor has failed to provide declarations authenticating any of the account statements that the Debtor provides. None of the statements have account holder names and are only identified by partial account numbers. The court nor any party in interest can determine the authenticity of the exhibits since the Debtor, even in light of the supplemental order of the court that required "properly authenticated" exhibits. For the court to accept these unauthenticated documents would reduce the court's role in the process to nothing more than that of issuing orders because one party filed a bigger pile of papers than the other, for which nobody is willing to state under penalty of perjury are true and correct.

Supplemental Exhibit 1 appears to be a screen shot from some type of bank account for which the owners are unnamed. The purported information is that on July 16, 2015, there was some type of $30,000 debit. Who made the

debit, to whom the money was transferred, and the source of the $30,000 are all hidden from the court. The purported date of this exhibit is September 12, 2015. It purports to state that the debit occurred on July 16, 2015. It is significant that: (1) no actual account records, copies of cancelled checks, or evidence of the source of the $30,000 provided; and (2) the Exhibit is devoid of any names to identify the account holders.

Supplemental Exhibit 2 appears to be another screen show for the same account as Exhibit 1, for which the account owner is not named. This purports to show credits totaling $22,944.08 being made On June 1, 2015 to this account. No disbursements are shown, and the purported balance in this account as of September 12, 2015, is $3.73.

There is a Second Supplemental Exhibit 2 which appears to be a computer screen shot for a purported third bank account. No owners of the account are identified. This purports to show a June 1, 2015 withdrawal of $15,311.03 from the account.

Supplemental Exhibit 3 appears to be a computer screen shot for another bank account. This purports to show a withdrawal of $7,633.05. The owners of the account are not disclosed.

Supplemental Exhibit 4 purports to be a Grant Deed recorded in Sacramento County, California. It states that the Debtor and Anita Singh, husband and wife, grant title to Harinder Singh and Anita Singh, husband and wife as joint tenants and Hakam Singh, a married man as his sole and separate property, all as joint tenant.

A separate Supplemental Exhibit 5 is a blank page, except for in the bottom right hand corner the purported certification by the Sacramento County Clerk of the blank page. It is not filed as part of the document which is presented as Exhibit 4.

The Supplemental Exhibits do not appear to be consistent with Debtor's prior testimony under penalty of perjury. Declaration, Dckt. 106. Debtor previously testified that he is a "one-third owner of the residence," with the other two-thirds interests being owned by Jakam Singh (identified as Debtor's father) and Anita Singh (identified as Debtor's estranged wife).

The copy of the Deed provided as Exhibit 5 is dated August 1, 2015, and has a recording date of August 11, 2003. It states that title is transferred to:

A. Harinder Singh and Anita Singh, husband and wife as joint tenants, and

B. Hakam Singh, a married man as his sole and separate property,

C. All as joint tenants.

This does not appear consistent with Debtor's testimony that he and the others are all one-third owners of the property. See Cal. Fam. Code § 760. Nor is it consistent with the testimony under penalty of perjury that each are one-third interest owners in the Property. Declaration, Dckt. 107. This inconsistency may well indicate that the purported title of the Property as

stated in the Deed, and as stated under penalty of perjury, does not reflect the real interests of the Debtor, and the bankruptcy estate, in this Property.

When the court continued the hearing, the order expressly provides that "properly authenticated, credible evidentiary documents" are to be filed. Order, Dckt. 111. Debtor has made no effort to authenticate the Supplemental Exhibits. Further, computer screen shots of unidentified purported accounts are not "credible evidentiary documents."

Debtor has previously demonstrated, though a fiduciary of the bankruptcy estate, that he would engage in transactions and act in whatever manner he chose, without regard to the Bankruptcy Code and his fiduciary duties. That disregard (or disdain) for the basic judicial process continues in his failure to authenticate documents or provide minimally credible documents.

The Debtor having failed, after being provided two opportunities to present credible, properly authenticated evidence to support approval of the compromise and how a debtor bereft of assets came up with $30,000.00 to pay (without court authorization) to the other party to the settlement. The unsubstantiated statements by Debtor's wife and father that they just gave the Debtor the money, and have no right to repayment is not credible testimony. Though given the opportunity to document for the court the source of the monies and that they actually paid the monies to the Debtor, neither Anita Singh or Hakam Singh has provided any properly authenticated, credible evidence in support of those contentions.

The Debtor has failed to show that the settlement is in the best (or even better) interests of the estate. The evidence presented may indicate that it is in the Debtor's best interest to prefer the other party to the settlement over Debtor's other creditors. But it is not in the estate's interest, the interests of the fiduciary of the estate, or the other creditors.

The Settlement Agreement is clear that only the Debtor is the judgment debtor of the Sacramento Sikh Society Bradshaw Temple. Dckt. 93. Anita Singh and Hakam Singh are not judgment debtors. Therefore, whatever rights that the Temple has to proceed against the Property, it is limited to only the Debtor's interest.

Debtor has previously stated under penalty of perjury that the real property in which there is asserted joint ownership has a value of $280,000. Schedule A, Dckt. 1. Debtor further states under penalty of perjury that the property is subject to a lien of $268,641.79. *Id.* Of this, Bank of America, N.A. and Tri Counties Bank are stated to be owed $183,000, and the Temple is owed $85,679.28.

Assuming a one-third interest each, after payment of the two secured claims and eight percent for costs of sale (residential real estate in the Sacramento Region is usually sold with expenses of a six percent real estate broker commission and the additional expenses running approximately another two percent), then the net proceeds of $74,600 would remain. One-third of that belonging to the Debtor would total $24,867. The other two-thirds, if it actually belonged as separate property to Anita Singh and Hakam Singh, in the amounts of $24,867 each, would be free and clear of the claims of the Temple. To accept the statements of Anita Singh and Hakam Singh as truthful, the court

would have to believe that they gave away almost 30% of each of their net interests so that Debtor could make the $30,000 payment in July 2015.

Debtor has also failed to address another concern of the court - how the Debtor could have an “extra” $6,000 to fund the July 2015 $30,000 payment. If Debtor’s statements under penalty of perjury on Schedule I are taken as true, Debtor is only able to eke out $63.00 a month of disposable income to fund a plan (See proposed Plan, Dckt. 5) because his mother provides him with a $100 a month contribution. Schedules I and J, Dckt. 1.

Debtor ignores this issue, apparently attempting to gloss over it with the unauthenticated screen shots.

Debtor has demonstrated that in addition to the court not approving the proposed compromise, if the court is going to dismiss the case, the court should consider doing so with prejudice. The glaring omissions and failure to explain how Debtor could have the “extra” $6,000 to make the July 2015 payment is evidence that the information provided by Debtor under penalty of perjury is inaccurate, false, and an attempt to defraud the court, creditors, and other parties in interest.

The proposed compromise has not been presented by the Debtor, as the fiduciary of the bankruptcy estate, in good faith.

The Motion to Approve Compromise is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Harinder Singh, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise is denied.

2. 15-23668-E-13 JUAN/GENEVA GOMEZ
MET-1 Mary Ellen Terranella

CONTINUED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 4
7-6-15 [25]

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

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

Below is the court's tentative ruling.

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

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

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

The Objection to Proof of Claim Number 4 of Internal Revenue Service is sustained.

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

The Objector objects to the secured portion of the claim on the basis that it was paid in full in Objector's previous chapter 13 case, Case No. 12-41638. The Objector states that the Creditor filed a proof of claim in that case with

a secured claim amount for tax year 2008 in the amount of $20,584.00. Case No. 12-31638, Proof of Claim No. 3.

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

CREDITOR'S RESPONSE

The Creditor filed a response on August 18, 2015. Dckt. 37.

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

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

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

SEPTEMBER 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 6, 2015.

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

CREDITOR RESPONSE

The Creditor filed a supplemental response on September 15, 2015. Dckt. 48.

Creditor argues that Debtor's payments under the prior Chapter 13 Plan were applied to the joint tax liability for 2008. Creditor asserts these payments, a total of $20,584.42, did not extinguish the 2008 tax, interest, and penalties. Next, Creditor argues that Revenue Procedure 2002-26 does not apply because it only applies to "voluntary" payments, whereas bankruptcy payments

are involuntary. Also, the payments did not discharge the IRS's claims because Debtor did not complete the Chapter 13 plan. *Id.* at p. 3. Creditor draws further support from IRC § 6322, which states that a Federal tax lien remains in place until the liability is satisfied or otherwise unenforceable.

DEBTOR'S SUPPLEMENTAL BRIEF

The Debtor filed a supplemental brief on September 15, 2015. Dckt. 50.

Debtor asserts that the secured claim of $20,584.00 for 2008 was paid in full under the Chapter 13 Plan; Debtor requests the court decide whether payment of the secured portion resolves the entire claim for the IRS. *Id.* at pp. 5, 7. Further, that the $20,584.00 payment made was voluntary because Debtor was entitled to designate the allocation or distribution under the plan. *Id.* at p. 6. Finally, Debtor asserts that the lien should be considered void under § 506(d) because the lien is not an allowed claim.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee filed a non-opposition on September 28, 2015.

CREDITOR'S REPLY

The Creditor filed a reply to the Debtor's Supplemental Brief on September 29, 2015. Dckt. 52.

The Creditor states that the issue of voluntary or involuntary is irrelevant. The Creditor states that it applied the Debtor's plan payments consistent with the plan confirmed in the Debtor's prior case as to the Debtor's 2008 tax liability. The payments did not pay in full the Creditor's claim for the 2008 taxes. Since the case was dismissed, the Creditor argues that the lien is retained to the extent recognized by applicable nonbankruptcy law which the Creditor states does not require it to release the lien.

The Creditor states that while the Debtor correctly cites *Buffalow v. United States*, the Debtor fails to acknowledge that the unpaid remainder of the assessment retains its original validity. The Creditor also argues that the Debtor failed to apply the lien retention of 11 U.S.C. § 1325(a)(5), the effect of dismissal, and the determination of secured lien of § 506(a)(2).

The Creditor concludes by stating the Creditor's claim should be valued as of the date of the petition, the Creditor's Proof of Claim is presumed valid, and that the Debtor failed to rebut the presumption of the claim's validity.

DEBTOR'S REPLY

The Debtor filed a Reply to Supplemental Response on September 29, 2015. Dckt. 54.

Debtor first reiterates that the payments on the tax lien are voluntary because the plan payments were made according to the confirmed plan; thus flows from Debtor's citation to case law that provides "a payment is voluntary unless made as a result of judicial action or some kind of administrative action

resulting in the seizure of property or money." *Id.* at p. 4.

Finally, Debtor asserts that the IRS's claim of $20,584.00 should not be permitted on equitable grounds, to promote the success of the reorganization, and on § 06(d) grounds, because Debtor objected to the secured claim. *Id.* at 5-6.

APPLICABLE LAW

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

506(a) Valuation and Res Judicata or Collateral Estoppel

11 U.S.C. § 506(a)(1) provides that valuations "shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property."

The Ninth Circuit Court of Appeals addressed the effect of a valuation of property and allowed secured claim pursuant to 11 U.S.C. § 506(a) in *Gold Coast Asset Acquisition, L.P. v. 1441 Veteran Street Co.* (*In re 1441 Veteran Street Co.*), 144 F.3d 1288 (9th Cir. 1998). In holding that a § 506(a) valuation was binding only to the extent of the purpose for which it was made, the court stated:

> Section 506(a) operates to bifurcate a secured creditor's allowed claim into secured and unsecured interests based upon the bankruptcy court's valuation of the secured property. *See Dewsnup*, 112 S.Ct. at 777. A valuation under section 506(a), however, appears to be linked to its identified purpose-e.g., a plan of reorganization. Section 506(a) instructs the bankruptcy court to value the property "in light of the purpose of the valuation and of the proposed disposition or use of such property." 11 U.S.C. § 506(a); *see In re Madera Farms Partnership*, 66 B.R. 100, 104 (9th Cir. BAP 1986) ("[T]he need to look at the purpose of the valuation appears to have achieved virtually universal acceptance."). It follows that when the purpose behind a particular valuation no longer exists, that valuation becomes irrelevant.
>
> ...
>
> In the present case, the bankruptcy court valued the Property in light of Veteran's proposed plan of reorganization. Since the bankruptcy court rejected the plan, the valuation of the Property served no purpose under the Bankruptcy Code. Therefore, the valuation should not affect Gold Coast's rights

to post-petition rents under section 552.

Id. at 1291-92.

Citing *In re 1441 Veteran Street Co.*, the Bankruptcy Court in *In re Winitzky* discussed the limited ability of a bankruptcy court to discharge debts:

> The Bankruptcy Code only authorizes a bankruptcy court to issue a discharge in narrow circumstances as authorized by statute. See 11 U.S.C. §§ 727(a), 1141, 1228, 1328. If a court could strip a lien, with res judicata effect, without issuing the discharge, it would create a special "lien discharge" where a debtor would still be liable for a debt but the creditor could not enforce that debt with the bargained for lien. No language in the Code supports such a discharge and finding that it exists would be a major change from pre-Code practices. *See Dewsnup* 502 U.S. 417–419. A separate lien discharge would also contradict sections 348 and 349 of the Code. Section 348(f)(1)(B) voids 11 U.S.C. § 506(a) valuations when a case under Chapter 13 converts to one under Chapter 7 of the Code. Similarly, section 349(b)(1)(C) reinstates upon dismissal any lien previously avoided under section 506(d). These two provisions demonstrate that conversion or dismissal can happen at any time during a Chapter 13 case until the case is closed. Providing for the reinstatement of liens upon conversion or dismissal keeps the bankruptcy court from modifying state law lien rights without a separate legitimate bankruptcy purpose.

In re Winitzky, 2009 WL 9139891 at *3-4 (Bankr. C.D. Cal. 2009).

Finally, Collier on Bankruptcy ¶ 506.03[7][g] notes that "courts generally agree that a valuation determination in one context will not have *res judicata* or collateral estoppel effect with respect to a different valuation hearing in a different context within the same case." Collier on BANKRUPTCY ¶ 506.03[7][g] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Payments on Tax Lien in Bankruptcy

A taxpayer who makes voluntary payments to the IRS has the right to designate to which liability the payment will be applied. *In re Technical Knockout Graphics, Inc.*, 833 F.2d 797, 801 (9th Cir. 1987). When payments are involuntary, it is the policy of the IRS to apply the payments to whatever liability it chooses. *Id.*

The Ninth Circuit Court in *In re Technical Knockout Graphics, Inc.* noted that courts have struggled to define "voluntary payments" in a bankruptcy context. *Id.* at 802 n.1. (providing a list of federal cases demonstrating a split on whether payments pursuant to a reorganization plan under Chapter 11 are voluntary or not).

Here, the Internal Revenue Service has accounted for the prior payments as payments on the secured claim, as voluntarily provided for in the Chapter 13 plan which was confirmed by the court. Opposition, p. 1:21-23.

DISCUSSION

506(a) Valuation Not Given Res Judicata or Collateral Estoppel

This court follows the legal principles of the Ninth Circuit, and will not give res judicata or collateral estoppel effect to a § 506(a) valuation from a prior Chapter 13 case. This is supported by the language of 11 U.S.C. § 506(a), the policies underlying § 506(a), and the limited discharge powers of bankruptcy courts.

Thus, the § 506(a) valuation from Case No. 12-41638 is not binding on this court. *In re 1441 Veteran Street Co.*, 144 F.3d 1288. While Debtor made payments under the previous Chapter 13 case, Debtor did not complete the payments owed, and the case was dismissed for failure to make plan payments. This dismissal prior to completion of the plan means there was no Chapter 13 discharge, and the IRS's claim was reinstated less the value paid to the IRS under the plan. This court cannot discharge the IRS's claim absent limited circumstances, and thus the claim survives the prior, dismissed Chapter 13 case. *In re Winitzky*, 2009 WL 9139891 at *3-4.

Here, there is no dispute that the voluntary Chapter 13 Plan in the prior case provided for payment of the secured claim, the court ordered that the payments be made on the secured claim, and that the Internal Revenue Service applied the payments on the secured claim in the prior case.

The Internal Review Service filed Proof of Claim No. 3 and Amended Proof of Claim No. 3 in the prior Chapter 13 case. 12-41638. In both Original Proof of Claim No. 3 and Amended Proof of Claim No. 3, the Internal Revenue Service states under penalty of perjury (and subject to the civil and criminal penalties for filing a false proof of claim) that the secured claim of the Internal Revenue Service for the 2008 tax year was $20,584.00 and the unsecured claim was $10,410.00.

In the current case, the Internal Revenue Service has filed Proof of Claim No. 4, which now states that the secured claim is $10,410.00 and there are an additional $5,220.00 in penalties. No computation is provided in Proof of Claim No. 4 accounting for the payments received in the prior bankruptcy case. All of the lien documents attached to Original Proof of Claim No. 3, Amended Proof of Claim No. 3, and Proof of Claim No. 4 are the same.

The Opposition to the Objection to Claim provides a cursory statement that the Internal Revenue Service is not required to release the lien except to the extent of the actual payment. The Internal Revenue Service does not offer any explanation as to how it computes the current claim in light of the proofs of claim in the prior case and the payments made therein.

The Internal Revenue Service attempts to hang its hat on the presumption that a proof of claim is prima facie evidence of the claim. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

In these two cases the prima facie evidentiary value cuts both ways. The Internal Revenue Service has filed Proof of Claim No. 3, as amended, which establishes that the secured claim for the 2008 tax year was $20,584.00. The court respects that statement of debt made under penalty of perjury (and subject to civil and criminal penalties). The Internal Revenue Service offers no evidence or theory to rebut that presumption, but instead now makes a contrary statement in Proof of Claim No. 4.

From Proof of Claim No. 4, it appears that the Internal Revenue Service has diverted the payments made by Debtor on the secured claim to the $10,410.00 unsecured claim, and under account for $10,410.00 payments on the secured claim. The Internal Revenue Service offers no explanation as to how it computes, and is entitled to be paid, an additional $5,220.00 in penalties on the secured claim. Though the court could imagine that statutory interest and some post-petition penalties could have accrued in connection with the secured claim in the prior case, the Internal Revenue Service offers no explanation or evidence thereof. The court will not guess "well it must be right if the IRS says it," especially when it would be so easy to provide a simple declaration providing credible, properly authenticated evidence of such amounts, if any.

The objection to the $15,630.00 secured claim stated in Proof of Claim No. 4 is sustained and the secured claim for the 2008 tax year is disallowed in its entirety. This disallowance of the claim is without prejudice to the Internal Revenue Service filing an amended proof of claim to state a different amount for the unsecured claim for the 2008 tax year.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service ("Creditor") filed in this case by Juan and Geneva Gomez ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim No. 4 stating a secured claim for the 2008 tax year is sustained and the secured claim is disallowed in its entirety. The disallowance of the secured claim is without prejudice to the Internal Revenue Service filing an amended proof of claim to correct the amount of the unsecured claim for the 2008 tax year.

3. 15-23668-E-13 JUAN/GENEVA GOMEZ
DPC-1 Mary Ellen Terranella

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

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

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

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

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

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

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

The court's decision is to overrule the Objection.

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

The priority portion of the claim is $2,548.19 higher than the amount scheduled by the Debtor.

JULY 21, 2015 HEARING

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

SEPTEMBER 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 1, 2015 to be heard in conjunction with the Debtor's Objection to Claim of Internal Revenue Service, Proof of Claim No. 4. Dckt. 39.

DISCUSSION

The court sustained the Debtor's Objection to Claim of Internal Revenue Service, Proof of Claim No. 4 on October 6, 2015. The court disallowed the secured claim of the Internal Revenue Service's claim.

In light of the Objection being sustained, the court must now determine whether, with the Internal Revenue Service's secured portion being disallowed in its entirety, the plan has enough cash flow to provide for the $2,548.19 differential in the priority portion of the claim that is not provided for in the plan to complete in the 60 months proposed.

The court's calculation shows that there is sufficient cash flow into the plan over the 60 months proposed to provide for the correct priority amount of the Internal Revenue Service's claim of $90,702.19. While the plan does not properly list the priority amount, the order confirming can correctly state that the Internal Revenue Service's priority claim is $90,702.19 for Class 5.

Therefore, in light of the secured portion of the Internal Revenue Service's claim being disallowed and there being sufficient cash flow in the plan to provide for the Internal Revenue Service's full priority claim, the Objection is overruled.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is confirmed, with the order confirming correctly stating the Internal Revenue Service's priority claim of $90,702.19.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 3, 2015 is confirmed. Counsel

for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the Internal Revenue Service's Class 5 priority claim to $90,702.19, 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.

4.	**14-32002-E-13 SJS-2**	**KAO SAECHAO AND MYHANH NGUYEN Scott Johnson**	**OBJECTION TO CLAIM OF THE GOLDEN 1 CREDIT UNION, CLAIM NUMBER 5 8-11-15 [33]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2015. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Proof of Claim Number 5 of Golden 1 Credit Union is overruled.

Kao Ching Saechao and Myhanh Thi Nguyen, the Chapter 13 Debtor, requests that the court disallow the claim of Golden 1 Credit Union ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,795.35.

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

APPLICABLE LAW

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim.

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

DISCUSSION

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

A. Debtor object to claim 5-1 of Golden 1 Credit Union on the grounds that the debt is not a secured one and should be listed as a general unsecured claim.

B. Allowed as an unsecured claim in the amount of $1,975.35.

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

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

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

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

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

in the amount $4,782.45.

As to the remaining issues, the check-box pleading submitted by the Debtor raises major concerns over whether the Debtor has met the pleading requirements of *Twombly*. Reviewing the Objection, the Debtor is alleging that the debt is not a secured. The only exhibit is a copy of Proof of Claim No. 5.

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

The fact that the Debtor merely states "the debt is not a secured one" does not rebut the *prima facia* validity of the Proof of Claim. The Debtor has not met its burden of providing evidence that is of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) and, therefore, the objection as to the unsecured claim of the Creditor is overruled. FN.1.

FN.1. The pleading falls well below the minimum standard for preparing pleadings in federal court. To accept this pleading, the grounds could fairly be restated to be, "the objection should be sustained because the Debtor states the objection should be sustained and the claim disallowed."

This pleading demonstrates that it was not worth the time of either Debtor or counsel to properly plead the objection in this motion, and instead seeks to draft the court into service as counsel's paralegal or associate to comb the supporting pleadings, the file, the proof of claim, and state the grounds for Debtor's counsel. The court declines the demand by Debtor and Debtor's counsel that the court provide legal services for Debtor's counsel. The court has previously commented that this "check the box" clerical approach to providing professional legal services demonstrates that counsel's reasonable hourly rate is substantially lower than attorneys who actually draft pleadings and clearly state with particularity the grounds for relief requested.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Golden 1 Credit Union, Creditor filed in this case by Kao Ching Saechao and Myhanh Thi Nguyen, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 5-1 of Golden 1 Credit Union is overruled without prejudice.

5. 10-44204-E-13 IRMA SANCHEZ **MOTION FOR HARDSHIP DISCHARGE**
MOH-7 Michael Hays **9-8-15 [120]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Hardship Discharge is granted

Irma Sanchez ("Debtor") filed the instant Motion for a Hardship Discharge on September 8, 2015. Dckt. 120.

The Debtor states that the instant case was filed on September 10, 2010 with a 60 month plan, which called for monthly payments of $391.00, with a monthly dividend of $186.00 to her secured car creditor and no less than a 1% dividend to her unsecured creditors.

The Debtor states that she was able to make these payment until late 2013 when she was hospitalized due to an illness and had to undergo surgery. Her income was reduced to SDI benefits because her doctor would not approve her going back to work immediately. When the doctor did approve her return it was only for light duty. The Debtor alleges that this light duty was not acceptable to her employer her let her go in March 2014. The Debtor's earning were reduced to EDD benefits and was unable to pay her rent and other necessities, including her plan payments.

The Debtor asserts that these facts are grounds for a hardship discharge pursuant to 11 U.S.C. § 1328(b)(1).

The Debtor further asserts that the Debtor surrendered her former residence and certain other personal property in her Chapter 13 plan and her

personal property was limited to items that were all fully exempt under California Code of Civil Procedure § 703. The Debtor asserts that she satisfies 11 U.S.C. § 1328(b)(2) because, in a Chapter 7, there would have been no dividend to creditors at all.

Furthermore, the Debtor asserts that modification under 11 U.S.C. § 1329 is impracticable because the Debtor's scheduled date for her 60th plan payment is September 25, 2015. If the Debtor was allowed to resume making her $391.00 monthly payments it would require a modification allowing for additional payments of $391.00 for an additional eleven months. The Debtor asserts that she nor her counsel "believe the court has the authority to grant such a request even when no other party is objecting."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on September 22, 2015. Dckt. 126. The Trustee states that the Debtor has paid a total of $19,159.00 and is delinquent in the amount of $3,910.00. The Trustee state that all secured creditors filing claims have either been paid in full per the terms of the plan or the creditor was provided for as secured to be surrendered. Attorney fees included in the plan have been paid in full. No priority claims were filed. Unsecured claims filed were $11,579.35 versus $31,321.00 scheduled. Therefore, unsecured creditors have been paid $5,275.94 or 45.8%.

The delinquency of the Debtor appears to be caused by circumstances which were beyond the Debtor's control, including the hospitalization and the loss of her job.

The Trustee asserts that a modification of the Debtor's plan at this point would extend the term of the plan beyond 60 months. Based on the PG&E arrears of $1,132.32 entry on Schedule J, no modification appears practicable for at least the following eleven months.

The Trustee has no opposition to the instant Motion.

DEBTOR'S COUNSEL'S STATEMENT

Debtor's counsel, Michael O'Dowd Hays filed a statement on September 22, 2015. Dckt. 129. Debtor's counsel states that he spoke with Mr. Macaluso, a bankruptcy attorney in the district, and Ms. Darling, an attorney with the U.S. Trustee, who both stated that neither were aware of a legal basis to conclude the Debtor's plan in less than 60 months even though she was below median income and the creditors had all received more than the plan provided.

APPLICABLE LAW

11 U.S.C. § 1328 deals with the discharge of a debtor in a Chapter 13 case. Section 1328 states the following, in relevant part:

> (b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

> (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
>
> (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
>
> (3) modification of the plan under section 1329 of this title is not practicable.

For purposes of 11 U.S.C. § 1328(b)(3), modification of a plan after confirmation is controlled by 11 U.S.C. § 1329, which states the following in relevant part:

> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to–. . .
>
> (2) extend or reduce the time for such payments;

Courts have determined that "hardship discharge" pursuant to 11 U.S.C. § 1328(b)(3) should only be permitted unless "the circumstances of the debtor at the time of the hearing on the discharge application make it impracticable to propose and obtain approval of a modification of the plan in accordance with section 1329." 16 COLLIER ON BANKRUPTCY ¶ 1328.03[3][c] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)(citing In re Bandilli, 231 B.R. 836 (B.A.P. 1st Cir. 1999)(hardship discharge denied due, in part, to failure to show modification was impracticable)).

DISCUSSION

Here, the Debtor has provided sufficient evidence under all three grounds pursuant to 11 U.S.C. § 1328(b) to grant a hardship discharge to Debtor.

As to 11 U.S.C. § 1328(b), as the Trustee and Debtor stated in their papers, the Debtor's medical issues followed by the loss of her job and a new position at lesser pay all are circumstances that were out of the Debtor's control. The initial reduction in duty at her previous employment was due to doctor's instructions and was of no fault of the Debtor. The reduction in income following the termination of her prior employment appears to have also been due to her medical ailments. Therefore, there is proper grounds pursuant to 11 U.S.C. § 1328(b)(1) for hardship discharge.

As to 11 U.S.C. § 1328(b)(2), the resulting distribution to unsecured creditors was 45.8%, which is substantially higher than the 1% minimum provided for in the plan. As stated by the Debtor, this dividend is more than what creditors would have received in a Chapter 7. Based on the Trustee's calculations, grounds for a hardship discharge under § 1328(b)(2) exists.

Lastly, as to § 1328(b)(3), the Trustee and the Debtor are correct that modification pursuant to 11 U.S.C. § 1329 would be impracticable because it would result in the plan extending beyond the 60 months permitted for a Chapter 13 plan. See 11 U.S.C. § 1325(d).

Therefore, the Motion is granted and the Debtor is granted a hardship discharge pursuant to 11 U.S.C. § 1328(b).

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 Hardship Discharge filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and discharge of Irma Sanchez shall be entered pursuant to 11 U.S.C. § 1328(b).

6. 15-27005-E-13 MICHELLE CAMPAU
RJ-1 Richard Jare

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
9-22-15 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 22, 2015. 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. At the hearing ----------.

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of $8,500.00.

The Motion filed by Michele Lee Campau ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Honda Insight EX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,500.00 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).

The lien on the Vehicle's title secures a loan incurred May 31, 2014, (which refinanced the original purchase loan) owed to Creditor with a balance of approximately $17,631.49. Dckt. 18 ¶ 5; Proof of Claim 1. Though the original purchase of the vehicle was financed, the current loan is not "an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Cal. Com. Code § 9103(a)(2), definition of purchase money obligation. Since the obligation is not one incurred to enable Debtor to acquire rights in or use the vehicle, it cannot be an obligation for which there is a purchase money security interest. Cal. Com. Code § 9103(b); *Americredit Financial Services v. Penrod*, 611 F.3d 1158, 1161-62 (9th Cir. 2010), cert. denied 132 S. Ct. 108 (2011).

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 $8,500.00. *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 Michele Lee Campau ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA ("Creditor") secured by an asset described as 2010 Honda Insight EX ("Vehicle") is determined to be a secured claim in the amount of $8,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

7. 13-31706-E-13 RUDOLPH JUGOZ **MOTION TO MODIFY PLAN**
SJS-2 Scott Johnson **8-20-15 [44]**

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 47 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.

Rudolph Delmar Jugoz ("Debtor") filed a Chapter 13 petition and plan on September 5, 2013. Dckt. 1, 6. David Cusick was appointed as Chapter 13 Trustee on September 6, 2013. Dckt 2. Debtor's September 5, 2013 Plan was confirmed November 22, 2013. Dckt. 17. Debtor filed a First Modified Plan on December 19, 2014, which was granted on February 11, 2015. Dckt. 25, 39. Debtor now files a Second modified Plan, dated August 20, 2015. Dckt. 45.

TRUSTEE'S OPPOSITION

Trustee filed an opposition on September 21, 2015. Dckt. 50. The basis for the Trustee's objection is that the Debtor is $4,500.00 delinquent in plan payments.

DISCUSSION

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

The basis for the Trustee's objection is that the Debtor is $4,500.00 delinquent in plan payments, which represents multiple months of the $4,140.00 plan payments. According to the Trustee, the Plan's Additional Provisions calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Dckt. 51. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

This Second Modified Plan was filed to address $10,000 of defaults under the prior confirmed plan. The modification is to waive the defaults and commence making payments of $4,500 a month beginning August 25, 2015. Debtor default in the first payment due under this proposed Second Modified Plan.

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

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

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

8. 14-28609-E-13 AURELIO/MARISSA VIOLA MOTION TO MODIFY PLAN
AFL-1 Ashley Amerio 8-21-15 [19]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 21, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. 15-26213-E-13 LEILANI NOVAL
RWH-2 Ronald Holland

MOTION TO VALUE COLLATERAL OF RC WILLEY
8-28-15 [25]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 39 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 RC Willey ("Creditor") is granted and Creditor's secured claim is determined to have a value of $145.00.

The Motion filed by Leilani Clavano Noval ("Debtor") to value the secured claim of RC Willey ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a mattress. The Debtor seeks to value the mattress at a replacement value of $750.00 as of the petition filing date. As the owner, the

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

The lien on the mattress secures a purchase-money loan incurred in May 8, 2012, which is more than 1 year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $3,980.38. Dckt. 27 ¶ 4, 7, 8; Dckt. 28 Ex. B. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized.

In addition to Debtor's Motion and testimony, Creditor has filed Proof of Claim No. 3 in this case. Filed September 3, 2015. The total claim asserted is $3,980.38, of which only $145.00 is asserted to be a secured claim. The collateral for the secured portion of the claim is stated by Creditor to be "Home Furnishings." No evidence has been presented that the mattress which is asserted to secure Creditor's claim is not a "Home Furnishing" as that term has been used by Creditor. The court accepts Creditor's valuation of all of the collateral at $145.00 as stated in Proof of Claim No. 3. Debtor has not provided the court with sufficient evidence to rebut the prima facie evidentiary value of the Proof of Claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Creditor's secured claim is determined to be in the amount of $145.00. *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 Leilani Clavano Noval ("Debtor") having been presented to the court, Proof of Claim No. 3 having been filed by Creditor stating that the collateral for its claim has a value of $145.00, 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 ("Creditor") secured by an asset described as "Home Furnishings"(which the court concludes includes the "Mattress" described in the instant Motion) is determined to be a secured claim in the amount of $750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the mattress is $750 and is encumbered by liens securing claims which exceed the value of the asset.

10. 15-25615-E-13 ANA HENRIQUEZ
SPS-2 Timothy McCandless

OBJECTION TO CONFIRMATION OF PLAN BY LINDEN RIVER FINANCIAL, LLC
9-10-15 [50]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

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

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

11. 14-27118-E-13 MELVYN/RITA LIBMAN
SJS-2 Scott Johnson

CONTINUED MOTION FOR AN ORDER TO SHOW CAUSE FOR VIOLATION OF THE CONFIRMATION ORDER
6-12-15 [68]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

The Debtor having filed a Withdrawal of the Motion for an Order to Show Cause for Violation of the Confirmation Order, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed with prejudice, based on the request of the Debtor, and the matter is removed from the calendar.**

12. 15-25318-E-13 MARK/COLLEEN MARTIN
SDH-1 Scott Hughes

MOTION TO VALUE COLLATERAL OF CALIFORNIA STATE BOARD OF EQUALIZATION
9-8-15 [18]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of State Board of Equalization ("Creditor") is denied without prejudice.

DEBTOR'S MOTION TO VALUE PERSONAL PROPERTY

The Motion to Value filed by Mark Arlo Martin and Colleen Renee Martin ("Debtor") to value the secured claim of California State Board of Equalization ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of an assortment of personal property, described as "various items of personal property listed in the schedules including miscellaneous camera and studio equipment" ("Personal Property"). Dckt. 20 ¶ 2.

Debtor states that the Personal Property is subject to two liens: a tax lien for the IRS in the amount of $30,524.65, and a tax lien by the California State Board of Equalization for $75,718.08. Dckt. 20 ¶ 4, 5. Thus, Debtor asserts the Personal Property does not have enough equity to cover both claims.

Debtor declares the real property at 2013 Beardon Street, Davis CA ("Real Property") was not sold in February 2015, and will instead be surrendered. Debtor believes the junior tax liens on the Real Property will be "wiped out be [sic] a senior foreclosure sale." Dckt. 20 ¶ 3.

CREDITOR'S OPPOSITION

Creditor filed an opposition on September 22, 2015. Dckt. 34. Creditor asserts four arguments against the valuation: first, that Debtor's Schedule A undervalues the Real Property; second, that the priority of competing Tax Agencies' claims is decided by tax assessment date, not lien recordation date; third, that Debtors cannot strip Creditor's claim; finally, that Debtor's request for valuation is premature.

Debtor's Schedule A values the Real Property at $595,000.00. Dckt. 1 Schedule A. Creditor offers the declaration of Kelly Lee ("Lee Declaration") to demonstrate equity in the Real Property. Dckt. 35 ¶ 7, Ex. 4, 5. FN1. Because there is equity in Real Property, the Creditor argues the secured claim in Personal Property is not subject to bifurcation under 11 U.S.C. 506(a)(1).

Second, Creditor asserts that the priority of claims between Tax Agencies is determined by the Tax Assessment date, not the lien recordation date. Creditor points to the Lee Declaration to support this argument. Dckt. 35 ¶ 6.

Third, Creditor argues that 11 U.S.C § 506 cannot be used to strip junior secured claims based on the holding in *Bank of America, M.A. v. Caulkett*. *Bank of America, M.A. v. Caulkett*, 135 S. Ct. 1995, 1998-1999 (2015) (applying *Dewsnup v. Timm*, 112 S. Ct. 773 (1992) (chapter 7 debtor cannot strip down lien of an undersecured bank creditor to the value of the collateral)). Creditor asserts that Debtor, as a Chapter 13 petitioner, may not strip Creditor's claim because:

> "BOE's claim is both secured by an interest in property and allowed under § 502. Thus, Debtors cannot use 11 U.S.C. § 506 to strip off BOE's claim, even in BOE's claim is junior to the IRS claim, and the value of the property is, as Debtors' contend, wholly insufficient to cover BOE's claim."

Dckt. 34.

Finally, Creditor argues that Debtor's Motion is premature because there has not been a foreclosure sale on the Real Property. Creditor argues that, if surrender occurs, the value of the property will be measured by the foreclosure sale price.

DEBTOR'S RESPONSE

Debtor filed a response on September 28, 2015. Dckt. 38. FN.1. Debtor respond with six counter arguments:

1. The value of the Real Property is irrelevant because the Debtors are surrendering the real property.

2. Creditor's argument on the assessment date rather than recordation date determining priority is irrelevant.

3. Creditor's argument that § 506 does not allow strip off for junior liens is incorrect.

4. Creditor's argument that the Motion is premature is incorrect.

5. Creditor's submitted Lee Declaration is inadmissible.

6. But for the tax liens, the sales taxes are dischargeable because they are not priority taxes.

FN.1. The majority of Debtor's Response is not supported by legal authority or supplemental evidence. LBR 9014-1(d)(6) requires "Each motion, opposition, and reply shall cite the legal authority relied upon by the filing party." LBR 9014-1(d)(7) requires "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating tha the movant is entitled to the relief requested."

Debtors argue the value of the Real Property is irrelevant because the value of the home is supported by Schedule D, which demonstrates that the Real Property could not be sold to pay for the two mortgages, tax liens, and expenses. Dckt. 1 Schedule D (Real Property valued at $595,000.00; various liens, mortgages, and arrears secured by the Real Property valued at a total of $64,245.20, $3,180.61, $65,799.88, $7,000.00, $15,000.00, $389,591.44, for a total of $544,817.13. Other liens, mortgages, and arrears are listed, but secured by other property). Debtor also objected to the admissibility of the evidence provided. FN.2. Also, Debtors argue the Real Property value is irrelevant because the real property is being surrendered under the plan; Debtor argues that Creditor's alleged secured claim is provided for in Class 3, against the Real Property to be surrendered, and Class Two, based on this motion to Value. Dckt. 38 p. 2.

FN.2. Creditor filed an Amended Declaration which resolved these objections.

Second, Debtor argues that the distinction between tax assessment versus recordation date is irrelevant because:

> "[t]he debtors do not really care about assessment dates and priorities. All they know is that they have about $30,000 worth of personal property to secure all the tax liens. They do not care who is in first position as far as the liens are concerned."

Dckt. 38 p. 3. Debtor asserts that Creditor offered no admissible evidence and did not dispute the value of the Personal Property.

Debtor's third argument distinguishes *Caulkett* and *Dewsnup* from the instant case. For instance, *Caulkett* and *Dewsnup* related to Chapter 7 cases, while the instant Motion involves a Chapter 13. Also, those cases focused on a junior mortgage, while this is a state tax lien. In addition, Debtor asserts that there is a dispute over whether Creditor's claim is secured, which motivated filing this motion. Dckt. 38 p. 3.

The fourth argument by Debtor is that the Motion is not premature. Debtor asserts that the First Amended Plan, set for hearing on October 27, 2015, depends on the instant Motion before the Plan may be confirmed. Dckt. 22, 25. In addition, Debtor stresses that this Motion is to value the Personal Property, not the Real Property.

Debtor's fifth argument asserts evidentiary objections to the Declaration and Exhibits that Creditor filed. Dckt. 38 p. 6. However, Creditor filed an Amended Lee Declaration in response to these objections. Dckt. 40.

Finally, Debtor asserts that Creditor's sales tax liens are dischargeable because the are not priority taxes. Debtor relies on *In re Raimon* and *In re Ilko* to support the argument that old sales taxes are dischargeable under § 523 because they are not trust fund taxes. Debtor then argues that:

> but for the tax liens, the sales taxes owed to the BOE would be dischargeable as a general unsecured claim. Much of the claim is interest and penalties since 2009. Debtors' 2009 sales taxes should be allowed as a general unsecured claim because there is no equity in the personal property to secure the BOE's secured claim and because they would not otherwise be priority taxes.

Dckt. 38 p. 7.

DISCUSSION

The Debtor seeks to value the Personal Property at a replacement value of $30,524.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor notes that the schedules filed value the personal property at $38,250.00, but claims that "Instead of using the schedules, I am using the value indicated in the IRS' claim of $30,524.65 to value the property as that seems about right with applicable exemptions." Dckt. 20 ¶ 7.

While the Debtor and FTB spar over the real property and purport to be unable to agree as to the value of the secured claim, to the extent of the personal property lien, then have already agreed on that point. Creditor's Opposition states that it has a $75,718.08 claim for which there is collateral. Creditor has filed Proof of Claim No. 7 in that amount. The Proof of Claim does not identify the specific property which is asserted to be subject to the lien, but only identifies by checking the "other" box and typing in tax lien. The tax lien itself is not the property securing the claim, but it the legal basis (as opposed to a deed of trust, mortgage, or financing statement) by which Creditor asserts it has a secured claim.

Creditor's Opposition does not contest the $30,524.65 valuation for the personal property stated with particularity in the Motion and as testified to by Debtor. Motion, Dckt. 18; Declaration, Dckt. 20.

Creditor's "beef" is with respect to the value of the real property asserts which are asserted to also be subject to Creditor's tax lien. Creditor asserts that based on the information provided under perjury on Schedule A, Debtor state's that the real property has a value of $681,259 and is subject to senior liens of "only" $595,000. Thus, there would be at least an $85,000

equity (before costs of sale).

Further, Creditor asserts that its tax lien has priority over the Internal Revenue Service tax lien. Thus, Creditor asserts that it has first claim to the monies from the real property collateral as well.

Debtor responds that the Motion seeks to value the secured claim that has to be paid for the personal property the Debtor is retaining. The Debtor's Chapter 13 Plan provides that the real property is surrendered. This frees Creditor, the Internal Revenue Service, and the creditor whose claim is secured by the deed of trust to enforce their respective rights. Debtor is not attempting to value that portion of the claim for which the real property is the collateral.

The court finds the Debtor's contentions to have merit, to the extent that the court is valuing the portion of the claim secured by the personal property. Pursuant to 11 U.S.C. § 506(a),

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest,..., is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property,..., 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.

Here, the court determines that the value of the creditor's interest in the Debtor's interest in the personal property is $30,524.65. Creditor offers no contrary evidence. While the described personal property is thin, since the Creditor's tax lien is wide ranging, there is no dispute that it has encumbered substantially all of the personal property assets.

With respect to the real property, the opinions vary. Debtor asserts that it has $0.00 to Debtor because Debtor is surrendering the Property. Creditor asserts that there is some value.

The court makes no determination as to the value of the Creditor's interest in the Debtor's interest in the real property. Debtor does not seek such a determination. Debtor instead provides for Creditor to get 100% of that interest, the Chapter 13 Plan providing for the surrender of that property. Creditor can exercise its lien rights to get the full value of what Creditor's interest in Debtor's interest.

The final issue raised by Creditor is that any valuation of its secured claim is barred by the Supreme Court's ruling in *Bank of America, N.A. v. Caulkett*, ___ U.S. ___, 135 S.Ct. 1995, 192 L.Ed. 2d 52 (2015). Creditor argues that so long as a secured claim is asserted, and deemed allowed, then there can be no valuation.

This contention misstates the ruling in *Caulkett*. If it were true, then there would never be any valuations pursuant to 11 U.S.C. § 506(a) and 11 U.S.C. § 506(d) would be rendered a nullity by judicial fiat.

In *Caulkett*, the Supreme Court addressed the contention by a **CHAPTER 7 DEBTOR**, that in **CHAPTER 7 CASE**, the **CHAPTER 7 DEBTOR**, could value a creditor's CHAPTER 7 CLAIM at $0.00, and then after receiving a **CHAPTER 7** discharge avoid

the creditor's lien. Justice Thomas, writing for all nine Justices, stated the issue presented to the court,

> "These consolidated cases present the question whether a debtor in a Chapter 7 bankruptcy proceeding may void a junior mortgage under §506(d) when the debt owed on a senior mortgage exceeds the present value of the property."

Bank of America, N.A. v. Caulkett, 135 L. Ed. at 55. The debtor in Caulkett asserted that the value of the collateral was exhausted by the debt secured by the senior lien, and thereby the claim secured by the junior lien should be determined to have a value of $0.00 pursuant to 11 U.S.C. § 506(a) and the lien avoided pursuant to 11 U.S.C. § 506(d). The Supreme Court rejected this contention, continuing to apply the rule enunciated in *Dewnsup v. Timm*, 502 U.S. 401 (1992) that a **CHAPTER 7 DEBTOR** could not used 11 U.S.C. §§ 506(a) and 506(d) to strip off a portion of a creditors lien in a **CHAPTER 7 CASE**.

In *Caulkett*, the Supreme Court did nothing more than state that in a **CHAPTER 7 CASE** a **CHAPTER 7 DEBTOR** could not use 11 U.S.C. § 506(a) to value a secured claim at $0.00 and strip off the entire lien. "The debtors do not ask us to overrule Dewsnup, but instead request that we limit that decision to partially—as opposed to wholly—underwater liens. We decline to adopt this distinction. The debtors offer several reasons why we should cabin Dewsnup in this manner, but none of them is compelling." *Bank of America, N.A. v. Caulkett*, 135 L. Ed. 2d at 57-58.

The Ninth Circuit Court of Appeals has previously addressed the distinction between a Chapter 7 debtor attempting to stip a lien and a debtor restructuring debt and providing for the secured and unsecured claims of a creditor in a Chapter 11, 12, or 13 reorganization. In *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1222 (9th Cir. 2002), the court confirmed that in a Chapter 13 case the Bankruptcy code allows for the modification of a creditor's rights, including the avoidance of liens against the debtor's property. See 11 U.S.C. § 1322(b)(2).

Most recently, the Ninth Circuit Court of Appeals has upheld the modification of a creditor's lien rights in the "Chapter 20" context. In *HSBC Bank USA, N.A., Trustee v. Blendheim (In re Blendheim)*, 2015 U.S. App. LEXIS 17251 (9th Cir. 2015) (filed October 1, 2015), the Court of Appeals determined that the lien of a creditor could be avoided through a Chapter 13 Plan even though the Debtor had received a Chapter 7 discharge of the underlying obligation in case filed less than four years before the Chapter 7 case. In discussing the permissible treatment of creditor's claims in a Chapter 13 case, the Court states,

> "These tools include the curing or waiving of a default, id. § 1322(b)(3); the "assumption, rejection, or assignment of any executory contract or unexpired lease," id. § 1322(b)(7); and the "modif[ication of] the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims," id. § 1322(b)(2). The last provision, providing for the modification of creditors' rights, is one of the most advantageous tools available to Chapter 13 debtors. For example, we have interpreted § 1322(b)(2) to permit debtors to void liens on their

> homes to the extent that the lien is wholly unsecured by the value of the home. In re Zimmer, 313 F.3d 1220, 1221 (9th Cir. 2002) (evaluating modification of "unsecured claim[s]," as defined under § 506(a)). Modification is a powerful tool; voidance—or "avoidance"—of a lien permits debtors to nullify a creditor's in rem rights by effectively removing from a creditor his right to foreclose on a property.

HSBC Bank USA, N.A., Trustee v. Blendheim, 2015 U.S. App. LEXIS 17251 at *18-*19. The Ninth Circuit Court of Appeals expressly determined that such application in a Chapter 13 case is supported by the Supreme Court's rulings in both *Dewnsup and Caulkett*. *Id.* at *28-*29.

Therefore, the court grants the motion and determines that the value of the secured claim, to the extent of the personal property collateral, is $30,524.65. The claim is also secured by the real property commonly known as 2014 Bearden Street, Davis, California, for which the court makes no determination as to the value of the secured claim. Debtor does not seek to value that claim, instead providing for it as a Class 3 claim in which relief from the automatic stay is granted creditors to enforce their lien rights against the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Mark and Colleen Martin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the California State Board of Equalization ("Creditor") which is secured by Debtor's personal property (the "Personal Property"), is determined to be a secured claim in the amount of $30,524.65, and the balance of the claim to the extent secured by the Personal Property is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Personal Property is $30,524.65, which value is completely consumed by the above value of the secured claim.
>
> Creditor also asserts a tax lien in the real property of Debtor commonly known as 2014 Bearden Street, Davis, California ("Real Property"). The Debtor has not requested, and the court has not made any determination of the value of Creditor's secured claim (the value of Creditor's interest in Debtor's interest in the Real Property) for which the Real Property is the collateral. Creditor retains all of its lien rights in the Real Property to the full amount of the claim it asserts as a secured claim, in addition to the $30,524.65 value of the secured claim in the Personal Property determined above.

13. 14-23319-E-13 IRENE RENAUD **MOTION TO MODIFY PLAN**
RAC-1 Richard Chan **9-1-15 [24]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 1, 2105 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.

14. 15-26620-E-13 KEVIN/DEBRA JOHNSON
BLG-1 Paul Bains

MOTION TO VALUE COLLATERAL OF NATIONWIDE ASSETS, LLC
8-31-15 [13]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Nationwide Assets, LLC ("Creditor") is continued to 3:00 p.m. on November 17, 2015.

The Motion to Value filed by Kevin D'Andre Johnson and Debra Johnson ("Debtor") to value the secured claim of Nationwide Assets, LLC ("Creditor") is accompanied by Debtor's declaration. Dckt. 13. Debtor is the owner of the subject real property commonly known as 160 De Paul Dr, Vallejo, California ("Property"). Dckt. 15. Debtor seeks to value the Property at a fair market value of $226,000.00 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). FN1.

FN.1. Debtor has not provided the court with a basis for determining that the reference to an out of court statement from a Zillow.com report is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Debtor, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17). However, this defect is moot as the debtor's valuation is presumptively valid.

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

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

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

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

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 which appears to be for the claim to be valued.

OPPOSITION

Creditor has filed an opposition on September 21, 2015. Dckt. 22. Creditor argues that Debtor has failed to provide sufficient evidence to value the real property at $226,000.00, and presents evidence that the value is $235,000.00. In the alternative, Creditor requests a continuation for time to value the interior and exterior of the real property. *Id.*

Creditor cites to *In re Meeks* to support the assertion that Debtor's opinion of value is not sufficient because Debtor did not make a showing of expertise in the field. *See In re Meeks*, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006). *T*he Debtor in *In re Meeks* provided lay person testimony on the value of the house, while the Creditor also presented evidence from an expert under Federal Rules of Evidence 702. *Id.*

Here, Creditor asserts that the testimony in Declaration of Theautis Persons rebuts the testimony of Debtor. Dckt. 15 (Debtor's Declaration); Dckt. 24 (Declaration of Theautis Persons). Creditor also requests a continuation to allow Persons time to conduct an exterior and interior valuation, as Persons' valuation is based only on the exterior. Dckt. 22, 24 ¶ 5. FN2.

FN.2. The court notes two deficiencies in Creditor's evidence. First, Creditor presents no evidence to establish Persons as an expert, but merely asserts the conclusion that Persons is an expert. Fed. R. Evi. 702; Dckt. 22. Second, Creditor references a "Nationwide BPO" attached as Exhibit 1. Dckt. 22

p. 3. However, Creditor's Exhibit 1 is the Schedule D Debtor filed with Debtor's petition, valuing the real property at $226,000.00. Dckt. 23 Ex. 1. Exhibits 2, 3, and 4 are the Note, Deed of Trust, and Assignment of Deed of Trust, none of which assert a value for the real property. Id. Ex 2-4.

DISCUSSION

The parties have filed a Stipulation to continue the hearing to 3:00 p.m. on November 17, 2015. Dckt. 32.

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 Kevin D'Andre Johnson and Debra Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on November 17, 2015.

15. 15-25422-E-13 HAROLD/KIMBERLY BROWN
APN-1 Yasha Rahimzadeh

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
9-1-15 [27]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor's proposed plan does not provide the Creditor's claim as a purchase money security interest.

2. The plan does not provide the Creditor pre-confirmation adequate protection payment.

3. The interest rate proposed is 0.00% which is less than what should be provided for under *Till*.

The Objection is directed at the plan filed on August 20, 2015. Dckt. 22. Since then, the Debtor has filed a new proposed amended plan as well as motion to confirm. Dckt. 38 and 39. The Court will analyze the objection as to the August 20, 2015 plan, even though the Debtor's filing a new plan acts as a *de facto* withdrawal of the prior proposed plan.

The Creditor's objections are well-taken. The crux of the Creditor's objection is that it is not treated properly in the plan.

The objecting creditor, who holds a security interest in personal property, alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditor are insufficient to provide it with adequate protection during the period of the

plan. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) provides for the proposition that "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

Timbers, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See*, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., In re Sanchez, 384 B.R. 574, 576 (Bankr. D. Or. 2008); In re Denton, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

The objecting creditor alleges that its collateral declines in value per month. The plan provides only for a 0.00% in interest. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan filed on August 20,

2015 is not confirmed.

16. 15-25823-E-13 DPC-1 ELENA/MIRCEA RAVEICA Mark Wolff OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-2-15 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on September 2, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The plan is not the Debtor's best effort. The Debtor appear to be over the median income and propose plan payments of $1,060.00 for 60 months with a dividend of 15% to the unsecured creditors.

a. Class 4 proposes to pay the ongoing mortgage payment on two separate properties: (1) Residence at 7100 Linda Sue Way, Fair Oaks, California and (2) Rental property at 6002 Telesco Way, Carmichael, California. The Debtor stated at the Meeting of Creditors that they do not receive any rental income from the rental property. The mortgage payments on Schedule I is $3,021.14. Class 4 lists the mortgage payments in the amount of $1,478.85 for the Debtor's residence and $1,575.00 for the rental property. The Trustee is not certain both properties are necessary and reasonable. The Debtor admitted that their daughter resides at the rental property.

b. The Debtor received a total refund of $9,931.00 for tax year 2014 and $7,389.00 for 2013. No future tax refund income is projected on Schedule I. Debtor received $4,857.00 in a federal tax refund based on their total tax payments of $17,976.00 where only $13,119.00 tax was due. The Debtor also received a state refund from their 2014 return in the amount of $5,074.00. Of the $4,857.00 refund, $1,500.00 was from education credits, since the Debtor's daughter is reported on the tax return as a dependent. The Trustee asserts that the Debtor's income should be adjusted to either reflect the tax refund income or a lower tax expense.

c. Income is not clear. The Debtor's list net income from rental property on line 8a as $225.00 but there is no attachment to Schedule I nor is it listed on Statement of Financial Affairs.

2. The plan relied on the Motion to Value Collateral of IndyMac Bank

The Trustee's objections are well-taken.

To the first objection, it does appear that there are inconsistences and missing information that evidences that the plan is not the Debtor's best effort. Namely, the concern appears to arise over the Rental Property and whether there is any income coming in from the property, especially in light of the Debtor's daughter residing there. The Debtor's schedules and Statement of Financial Affairs does not provide sufficient information as to the current state of the Rental Property and whether it is actually bringing in any money through rents. Additionally, the overdeduction of the Debtor's taxes raises concerns to the Trustee and now the court that the Debtor is not providing all disposable income into the plan. The proposed plan and the schedules themselves appear to not give full disclosure as to the Debtor's financial reality. Therefore, the objection is sustained.

As to the second objection, a review of the Debtor's plan shows that it relies on the court valuing the secured claim of IndyMac Bank. However, the Debtor has failed to file a Motion to Value the Collateral. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

The 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.

17. 15-25827-E-13 DAVID ARESTAD
DPC-1 Mark Wolff

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-2-15 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on September 2, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent in the amount of $125.00. To date, the Trustee has not received any plan payments.

2. The plan may not be the Debtor's best efforts.

   a. The Debtor is an above median income and proposes plan payments of $125.00 for 24 months, $242.00 for 6 months, $692.00 for 18 months, and $1,092.00 for 12 months with 10% to the general unsecured claims.

However, the Debtor's Form 22C-1 has inappropriate deductions and the Debtor fails to use consensus figures.

i. Column B, Line #2 for Gross Wages, Debtor lists $4,200.00 versus the $4,766.67 listed on Schedule I

ii. Line #13d for Marital Adjustment. Debtor claims $778.00 as wife's personal loan for construction on home nad $200.00 for wife's credit cards. It is not clear what debts the nonfiling spouse pays as the Debtor failed to disclose the loan, the amount of the loan or credit card balances and when each creditor will be repaid. The plan payments do not increase after any of the creditors are repaid.

iii. Line 23 for optional telephone service, Debtor claims $115.00 for telephone service. It is not clear why $115.00 was listed on line 23.

iv. Line 26 for contribution of household or family member. Debtor claims $150.00 for contributions. The Debtor did not list an ongoing expense to a family member on Schedule J. It is not clear why this expense was listed on line 26.

v. Line 46 for actual vehicle expense exceeds standard allowance. Debtor claims $348.00.

b. Schedule I states "Vehicle payments end in 30 and 48 months; 457 repayment end in 18 months - Debtor has proposed increases in payments when these payments end." Class 4 lists a 2013 Toyota Prius with a monthly contract amount of $640.00. Class 4 also lists a leased 2014 Lexus with a monthly contract amount of $892.00. Debtor's total monthly automobile payments are $1,533.00. It is not clear why the Debtor proposes to increase the plan payments by only $850.00 when the payments end.

3. Debtor's plan proposes unfair discrimination as to general unsecured creditors. Line 17 for other, lists a Personal loan-66 months remains in the amount of $778.00 per month. The Debtor admitted at the Meeting of Creditor both he and his wife are signee's of the construction note of approximately $30,000.00. The monthly payment of $778.00 over 66 months would be approximately $51,348.00, not $30,000.00. It is not clear if this note is a secured or unsecured creditor. The Debtor failed to list the creditor in the plan or in the schedules. The Trustee asserts that the community property is part of the bankruptcy estate, including the income of the non-filing spouse so no reason exists to discriminate in favor of this unsecured debt at the expense of others.

4. Section 2.06 of the plan, Disclosure of Compensation, and the Rights and Responsibilities all state that Mr. Wolff received $0.00 prior to filing. According to the bank statements provided by Debtor's counsel to the Trustee, a card purchase was make on or around July 17, 2015 to "Markwolff Elk Grove Ca Card 2274." The transaction detail shows $1,174.00 was the amount purchased on the card. (While the Trustee has received and reviewed the bank statements, the Trustee has not filed the bank statements but will if necessary).

5. The Debtor lists a leased 2014 Lexus in Class 4 of the plan and on Schedule D. It appears this auto should be listed on Schedule G and Section 3.02 of the plan. Capital One Auto Finance (2013 Toyota Prius) appears to be a debt that should be listed in Class 2A of the plan, not Class 4, as the debt will be paid in full prior to completion of the plan.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $125.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The remaining of the Trustee's objections all concern the veracity and accuracy of the information the Debtor purports in his schedules and proposed plan. The court's own review of the Form 22C-1 reveals the same discrepancies as outlined by the Trustee. The Debtor appears to have misused the wrong census numbers and over deducted certain expenses.

Furthermore, the Debtor fails to explain why, after the vehicle payments are completed, why the plan payments do not increase to the full amount of those vehicle payments rather than just partial. This failure to explain is further exasperated by the Debtor failing to explain the preferential payment to "Personal loan" in which the Debtor is a co-signor on at the expense of other unsecured creditors. The creditor of this loan is not listed on the Debtor's schedules. This just further highlights that the court cannot confirm a plan when the schedules and the plan do not accurately nor fully disclose necessary information as to the Debtor's financial reality.

Also concerning is the attorney's fees. The Trustee's objection raises serious concerns as to whether the Debtor or Debtor's counsel is attempting to "hide" actual payment of fees. All the forms that require the disclosure of attorney's fees paid to date indicate that the Debtor has paid $0.00 to Debtor's counsel. However, the Trustee's objection raises concerns, once again, of the accuracy and truthfulness of the Debtor's schedules and plan.

Lastly, the Debtor improperly lists claimants on the vehicles on both the schedules and in the plan. The Debtor appears to have not followed the instructions of neither the Schedules nor the plan and improperly classified the lease and finance of the two vehicles. This facial inaccuracy is an independent ground to deny confirmation.

In total, the court's concerns over the accuracy and veracity of the Debtor's plan and Schedules make the plan unconformable until the Debtor

properly discloses all necessary information, including all creditors, as well as accurately completing the plan and schedules (for instance, properly classifying the creditors whose claims will mature during the life of the plan and the joint debt held with the non-filing spouse). 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.

18. 12-37428-E-13 DREW/LORETTA ODABASHIAN **MOTION TO VACATE DISMISSAL OF CASE**
PGM-1 Peter Macaluso **8-31-15 [46]**

DEBTOR DISMISSED:
06/29/2015
JOINT DEBTOR DISMISSED:
06/29/2015

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal is granted, and the Motion to Dismiss is restored to the Calendar.

Drew and Loretta Odabashian ("Debtor") filed the instant Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal on August 31, 2015. Dckt. 46.

The Debtor filed the instant Chapter 13 case on September 28, 2012. At

the time, the Debtor were represented by Scott CoBen but was later transferred to C. Anthony Hughes, although a Substitution of Attorney was not filed with this court or granted. Currently, Peter Macaluso is substituting into this case as attorney of record, the substitution currently pending with the court.

On May 19, 2015, David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss the Case for failing to make plan payments. Dckt. 37.

The Motion states that the Debtor were notified by Scott CoBen, by e-mail, that payments were delinquent and that the Debtor needed to catch up. However, the Motion states that the Debtor were not aware of the Motion filed with the court. FN.1.

FN.1. The court assumes the Debtor is meaning the Motion to Dismiss filed by the Trustee.

Debtor alleges that they continued to make payments to the Trustee until they became aware of the dismissal. Neither Mr. CoBen nor Mr. Hughes filed a response or objection to the Motion to Dismiss.

The Motion to Dismiss, due to lack of answer by the Debtor and the fact the Debtor were still delinquent at the time of the hearing, was granted and the case was dismiss on June 29, 2015. Dckt. 44.

Debtor state that they attempted to resolve the issue as soon as they were aware, but had difficulty in obtaining information from prior counsels.

Debtor state that they have made two payments to date for the 2009 Chevy Traverse directly to Wells Fargo Dealer Services, to avoid repossession of their only vehicle.

The Debtor state they will turn over funds to current counsel to bring case current. Fund will be held in trust and turned over to the Trustee, pending approval of the instant Motion.

TRUSTEE'S RESPONSE

The Trustee filed a response to the instant Motion on September 22, 2015. Dckt. 51. The Trustee states that he does not oppose the motion because it is not clear to the Trustee that the Debtor was adequately represented at the time of the Motion to Dismiss.

The Trustee states that there is no record that Mr. Hughes was ever the attorney of record.

The Trustee states that the delinquency at the time of the Motion to Dismiss was $850.00. Prior to the hearing, another payment became due totaling $1,275.00 to be paid before the hearing. The Trustee states that the Debtor paid $1,275.00 but not prior to the hearing and additional payments became due on the 25th of each month after the hearing.

The Trustee states that the Trustee received a payment of $425.00 on May 29, 2015. Debtor made two more payments each of $425.00 on June 26, 2015

and July 24, 2015.

DEBTOR'S REPLY

The Debtor filed a reply on September 29, 2015. Dckt. 56. The Debtor clarifies that they were unaware of the Motion to Dismiss even though the e-mail from Mr. Coben explained that they were delinquent in plan payments.

The Debtor further states that the Debtor's e-mail delivery system was "spamming" various mails, and that his responses from and to Mr. Coben had failed to be delivered due to it being recognized as spam, and they had never saw the Motion to Dismiss even after Mr. Coben sent it to them.

The Debtor then states that Mr. Coven contacted the Trustee's office after receiving the dismissal notice.

Mr. Macaluso asserts that he will be able to assist in the conclusion of the case and that there is an order for substitution of counsel pending.

APPLICABLE LAW

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting

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

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

DISCUSSION

The instant Motion raises multiple concerns for the court.

First, the issue of whether the Debtor was properly represented by counsel is very concerning. The representations made by the Debtor is that the Debtor was represented by Mr. Coben, but was then represented by Mr. Hughes, which was never approved by the court. Then, through the timeline outlined by the Debtor, Mr. Coben began to represent the Debtor again following the dismissal but now Mr. Macaluso is attempting to substitute in. As is facially obvious, there are serious problems with such non-authorized "attorney shifting." The court never authorized the substitution of Mr. Hughes in as the attorney of record.

The Motion to Dismiss was served on May 19, 2015. Dckt. 40. The Proof of Service states that the Motion to Dismiss and accompanying papers were served on the Debtor and Mr. Coben. The Debtor, in their declaration, state that "We do not recall receiving this notice from the Court." Dckt. 48, ¶ 2. However, the Debtor does not assert that they were not served. The fact that the Trustee served the Debtor and Debtor's attorney record at the time satisfies the notice requirements of Local Bankr. R. 9014-1(f)(1). The instant Motion does not indicate when this unauthorized substitution of attorney from Mr. Coben to Mr. Hughes took place but based on the fact that the Debtor received an e-mail from Mr. Coben prior to the hearing on the Motion to Dismiss about the need to make plan payments current indicates to the court that, at the time of the Motion to Dismiss, Mr. Coben was still acting as the attorney of record.

Additionally, none of the apparently three attorneys this case has been improperly transferred to and from filed a response to the Motion to Dismiss. This court has particularly made it clear to the attorneys the importance of filing replies or oppositions to motions that are filed under Local Bankr. R. 9014-1(f)(1). The nature of bankruptcy and law and motion practice highlights the necessities of filing oppositions within the 14-day window provided for on motions served on 28 days notice. Adding insult to injury, the Motion does not explain why none of these attorneys attended the scheduled hearing when the Proof of Service shows that at the minimum Mr. Coben was properly served.

Another concern of the court is that the Motion does not indicate on what grounds the Debtor is seeking the vacating of the order dismissing the case. Federal Rule of Civil Procedure 60 contains multiple grounds on which

vacating an order may be based. The Debtor, as required by Fed. R. Bankr. P. 9013, needs to state with particularity the grounds in which the relief sough is based. Here, there is nothing indicating what ground in which the Debtor is moving, outside of "[t]he motion is brought pursuant to 11 U.S.C. § 350 and Federal Rules of Civil Procedure 59 and 60," what justifies vacating the dismissal.

Furthermore, the Debtor does not offer any justification or evidence as to how the Debtor was able to come up with the funds to cure the arrearage due Wells Fargo Dealer Services while the instant Motion was pending.

However, even in light of the multiple issues over the instant Motion, the most concerning remains the representation of the Debtor. It seems to the court, if it were to grant the instant Motion and vacate the dismissal, the attorneys who allege to have either represented or are currently representing the Debtor should be disgorged certain fees due to their failure to provide adequate representation.

The court may have Mr. Coben, who to date still remains attorney of record, disgorge 50% of the fees earned due to this failure to provide adequate representation. If, somehow, Mr. Hughes was improperly representing the Debtor at the time of the Motion to Dismiss, Mr. Hughes may be liable for an equal amount of the disgorgement. Further, the court may issue an Order to Show Cause why there have been apparently improper substitution of attorneys that the Debtor themselves appear to have been unaware of who was representing them. See Declaration of Debtor, Dckt. 48.

Ability to Perform Plan

Debtor states under penalty of perjury that the defaults occurred due to continuing decline in business sales. However, Debtor's believe that they can (or have been) able to "catch-up" the arrearage. To do so, Debtor's appear to state that they actually have more projected disposable income. Debtor's offer no explanation of who they have such extra money. ($850 delinquency, with Debtor having only $425 of projected disposable income).

While Debtor has some explaining to do and it may be necessary to modify the plan, Debtor has now invested almost three years in this case.

The court is confident that Debtor, as the fiduciary of the estate, the Chapter 13 Trustee, and the U.S. Trustee can act as appropriate to seek order for the disgorgement of fees by professionals hired by Debtor who did not full fill their obligations to the Debtor and the estate.

The Motion is granted.
The court shall issue a minute order substantially in the following form holding that:

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

IT IS ORDERED that the Motion is granted and the order dismissing this case (Dckt. 43) is vacated. By separate order the court shall restore the Trustee's Motion to Dismiss to the calendar.

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

DCN: DPC-1

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

The Court having vacated the order dismissing this case, substantial issues continuing to exist concerning Debtor's good faith prosecution of this case and ability to perform a Chapter 13 Plan, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss this bankruptcy case filed by the Chapter 13 Trustee is restored to the calendar and a hearing thereon shall be conducted at 10:00 a.m. on November 4, 2015.

IT IS FURTHER ORDERED that opposition, if any, to the Motion shall be filed and served on or before October 19, 2015. Any opposition shall be supported by credible, properly authenticated evidence. The Opposition shall expressly address the financial ability of Debtor to perform and the sources of any monies used, or to be used, to cure the monetary defaults in this bankruptcy case. Replies to the Opposition shall be filed and served on or before October 26, 2015.

19. 12-31929-E-13 DORA CARRION **MOTION TO AMEND ORDER**
EWV-70 Eric Vandermey **CONFIRMING PLAN**
8-24-15 [51]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Amend Order Confirming Plan is denied without prejudice.

Dora Carion ("Debtor") filed the instant Motion to Amend Order Confirming Plan on August 24, 2015. Dckt. 51. The Debtor is seeking an order amending the order confirming the plan due to a mistake in the order confirming. The plan was intended to indicate a 36 month plan. However, the order confirming inadvertently listed the plan as a 60 month plan. The Debtor states that she and her counsel did not notice the mistake until July. The Debtor further states that the Debtor's house payment has increased significantly such that any modification to the plan that exceed 36 months would be financially impracticable to Debtor. The Debtor states that when she originally filed her petition, her house payment of $1,195 per month. However, as of July 2015, Debtor's house payment increased to $1,710 per month and will increase again October 1, 2015 to $2,225.00 per month.

The Debtor argues that the confirmed plan payment of $73.00 for one month and $245.00 for 35 months has appropriately funded her Chapter 13 plan.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on September 21, 2015. Dckt. 56. The Trustee states that the plan filed on June 26, 2012 was filed as a 36 month plan, which the Trustee did not oppose as the Debtor is a below median income. Dckt. 6. The Debtor and Trustee agreed to increasing the plan payment in the order confirming, since it was determined that the Debtor had an additional $172.00 per month to pay toward her debt. The Debtor provided an order confirming which erroneously proposed a modified payment schedule of $73.00 for one month and $245.00 for 59 months. The order should have read $73.00 for one month and $245.00 for 36 months.

Currently, the Debtor is in her 39th month and has made 38 payments on her plan. The Trustee does not oppose the order confirming to be amended to provide that Debtor pay $73.00 for one month and $245.00 for 37 months for a total paid in of $9,138.00. The Trustee also requests that the Debtor make no future payments and that no refunds will be made by the Trustee for payments already made by the Debtor.

APPLICABLE LAW

11 U.S.C. § 1328 deals with the discharge of a debtor in a Chapter 13 case. Section 1328 states the following, in relevant part:

> (b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

For purposes of 11 U.S.C. § 1328(b)(3), modification of a plan after confirmation is controlled by 11 U.S.C. § 1329, which states the following in relevant part:

> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to–. . .

(2) extend or reduce the time for such payments;

Courts have determined that "hardship discharge" pursuant to 11 U.S.C. § 1328(b)(3) should only be permitted unless "the circumstances of the debtor at the time of the hearing on the discharge application make it impracticable to propose and obtain approval of a modification of the plan in accordance with section 1329." 16 COLLIER ON BANKRUPTCY ¶ 1328.03[3][c] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)(citing In re Bandilli, 231 B.R. 836 (B.A.P. 1st Cir. 1999)(hardship discharge denied due, in part, to failure to show modification was impracticable)).

DISCUSSION

A review of the Motion shows substantial deficiencies and misunderstandings. The Motion is titled as a "Motion to Amend Order." Dckt. 51. The legal grounds stated in the Motion (no points and authorities was filed) states that the Motion is brought pursuant to 11 U.S.C. § 1328(b)(1), (2), and (3), and 11 U.S.C. § 1329(a)(1) and (2). Motion, Dckt. 51.

None of these Code sections deal with modifying an order of the court. The Motion makes reference to 11 U.S.C. § 1328(b) allowing the court to grant a discharge even if a debtor does not complete a plan. That is not the relief which is sought by Debtor. 11 U.S.C. § 1329 provides for a debtor to confirm a modified Chapter 13 plan. That is not the relief sought by the Debtor.

Debtor has not sought a hardship discharge or to modify the plan. Debtor has not stated grounds for a hardship discharge or to modify the plan. Debtor makes reference to there being an error in the order confirming which misstates the relief to be granted (a clerical error in which the order makes reference to a sixty month plan rather than a thirty-six month plan).

Debtor is correct that the Chapter 13 Plan states that the term for the plan is "36 months." Dckt. 6. The order confirming the Plan states that payments will be made for sixty months. Debtor states that this sixty month statement was merely a typographical error. There was no hearing on this Motion, with no amendments were made to the Plan.

While the court could research the issue, identify the proper Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure addressing clerical errors in orders or amending orders, such would require the court to advocate for Debtor. The court declines the opportunity presented by Debtor.

The court denies the Motion seeking to modify the confirmation order pursuant to 11 U.S.C. § 1328 or § 1329.

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

IT IS ORDERED that the Motion to Amend the Order Confirming the Chapter 13 Plan is denied without prejudice.

20. 15-23031-E-13 MAC-1 | **WILLIAM HAMILTON** **Marc Caraska** | **MOTION TO VALUE COLLATERAL OF TOYOTA FINANCIAL SERVICES 8-26-15 [49]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Toyota Financial Services ("Creditor") is granted and the secured claim is determined to have a value of $17,350.00.

The Motion filed by William Kenneth Hamilton ("Debtor") to value the secured claim of Toyota Financial Services ("Creditor") was filed August 26, 2015. Dckt. 49. Debtor's Motion is accompanied by Debtor's declaration. Dckt.

51. Debtor is the owner of a 2007 Toyota FJ4x4, VIN ending in 4467 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,500.00 as of the petition filing date.

CREDITOR'S OPPOSITION

Creditor filed opposition on September 22, 2015. Dckt. 74. Creditor alleges two grounds in opposition. First, that Debtor has undervalued the secured claim, which is $19,446.23 as shown in Proof of Claim 2-1. Second, that Debtor has not provided sufficient evidence for the valuation of the Vehicle. Creditor offers a NADA Guide, which shows a clean retail market value of $17,750.00 for this property. Creditor properly authenticated and provided a hearsay exception for the NADA guide, attached as Exhibit 1. Dckt. 76 Ex. 1.

Creditor requests that the Motion be denied, or in the alternative be continued to allow time for Creditor to procure an appraisal or other expert valuation. Dckt. 74.

DISCUSSION

The Debtor seeks to value the Vehicle at a replacement value of $12,500.00 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). Debtor does not state what this $12,500 value represents – whether private sale, trade-in, or retail value.

Creditor has provided evidence that rebuts Debtor's opinion with the NADA Guide. The NADA Guide valuation for retail value is $17,350. Exhibit 1, Dckt. 76. No definition of this value is provided by Creditor. In the supporting Declaration by Creditor, Chris Sparks authenticates Exhibit 1.

In determining the value of the collateral for the secured claim, 11 U.S.C. § 506(b) requires,

> "[s]uch value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

This equates to the retail value of the vehicle. In Debtor's declaration, no testimony is provided as to the condition of the vehicle, other than stating that it has "over 95,000 miles." Declaration, ¶ 3; Dckt. 51. No testimony is provided as to the condition of the vehicle.

The $17,350 value stated in the NADA Guide specially takes into account the mileage.

The lien on the Vehicle's title secures a purchase-money loan incurred in 2007, which is more than 910 days prior to filing of the petition, to secure

a debt owed to Creditor with a balance of approximately $17,945.47. Dckt. 51 ¶¶ 4, 5. FN2. 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 $17,350.00. *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 William Kenneth Hamilton ("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 Toyota Motor Credit Corporation ("Creditor") secured by an asset described as a 2007 Toyota FJ4x4, VIN ending in 4467 ("Vehicle"), is determined to be a secured claim in the amount of $17,350.00, 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 $17,350.00 and is encumbered by liens securing claims which exceed the value of the asset.

21. 13-31632-E-13 JANELLE GILMORE
PGM-3 Peter Macaluso

MOTION TO MODIFY PLAN
9-1-15 [89]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 1, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

22. 15-25634-E-13 DPC-1 SERGEY YANOVSKIY Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-2-15 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 2, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent $85.00 in plan payments and has not

made any plan payments.

2. The Debtor failed to appear at the First Meeting of Creditors on August 27, 2015.

3. The Debtor failed to provide the Trustee with pay stubs for the 60 days prior to filing.

4. The Debtor failed to provide tax returns to the Trustee.

5. The Debtor failed to file completed Chapter 13 Documents:

   a. Schedule J lists Debtor's net income as $1,004.00 while the plan only states payments of $85.00 per month.

   b. Debtor lists Nationstar Mortgage on Schedule E but no creditors are listed in the plan.

   c. Debtor failed to choose whether there are additional provisions.

   d. The Trustee is uncertain if Schedules D and F have been completed.

   e. Statement of Financial Affairs is incomplete

The Trustee's objections are well-taken.

First, the court notes that on September 22, 2015, the Debtor filed a proposed amended plan. Dckt. 37. The new proposed plan appears to be facially the same except for the addition of Nationstar Mortgage as a Class 1 claimant, with 1% interest on the arrears and monthly installment amount of $750.00. The monthly plan payment remains $85.00. The Debtor, however, failed to properly notice and set the proposed plan for confirmation hearing.

As to the Trustee's objections, the basis for the Trustee's objection is that the Debtor is $85.00 delinquent in plan. According to the Trustee, the Debtor has paid $0.00 into the plan. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3).

The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Lastly, the Trustee objects that the Debtor has not completely fill out all the necessary information. Without information or explanation as to the Debtor's income and expenses and without the necessary forms being completed, the court cannot determine whether the plan and schedules properly reflect the Debtor's financial reality. Therefore, the objection is sustained.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan filed on July 28, 2015 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 filed on July 28, 2015 is not confirmed.

23. 12-38436-E-13 NARAINAN/UMA NAIR — MOTION TO MODIFY PLAN
SJS-9 Scott Johnson — 8-28-15 [117]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 28, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 10-53637-E-13 G./KATHLEEN ULBERG CONTINUED MOTION TO MODIFY PLAN
JGD-12 John Downing 8-19-15 [243]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

G. Wendell and Kathleen Ulberg ("Debtor") filed the instant Motion to Confirm the Modified Plan on August 19, 2015. Dckt. 243.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 8, 2015. Dckt. 249. The Trustee objects on the following grounds:

1. The Debtor may not have provided sufficient notice. The Debtor's papers appear on the docket dated August 19, 2015 which is only 34 days compared to the required 35 days pursuant to Local Bankr. R. 3015-1(d)(2).

2. The proposed plan does not authorize the payment approved by the court for the Debtor's Motion to Approve Settlement Agreement with Pacific Crest Partners. Dckt. 173. The Trustee has paid the creditor $73,574.64. Additionally, Proof of Claim No. 4, Internal Revenue Service, which claimed $690.51 as priority is not provided for in the modified plan. This claim was provided for by Minor Modification of the Debtor's plan. Dckt. 151. The Trustee has paid $690.51 to creditor.

3. The Debtor's plan does not accurately reflect the plan term and payments. The proposed plan specifies a term of 44 months but September 2015 is the 57th month of the case. The Debtor's Additional Provision states that the Debtor has make a total of $104,710.00 to date and these payments are deemed approved to

complete required payments under the plan. The Debtor has paid a total of $104,710.00 to the Trustee with the last payment of $700.00 posted August 27, 2014 which was month 44 of the plan. The Trustee has disbursed the full amount.

4. The Debtor's declaration is identical to the Debtor's prior declaration. Compare Dckt. 186 and 245. The declaration refers in item 4 to the fourth modified plan and states priority claims are to be paid in full.

5. The plan proposes a no less than 8% dividend to unsecured claims in Section 2.15. The Trustee has disbursed 24% to unsecured claims.

SEPTEMBER 22, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 6, 2015. Dckt. 255. The court ordered that the Debtor shall file a supplemental pleading stating the final amendments that are to be in the order confirming.

DEBTOR'S SUPPLEMENTAL PLEADING

The Debtor filed a supplemental pleading on September 29, 2015. Dckt. 256. The Debtor propose the following amendments to appear in the order confirming:

> **IT IS FURTHER ORDERED** that the $104,69.81 [sic] in payments made by the Trustee are approved, including without limitation the following:
>
> (1) $690.51 to the IRS (previously approved Docket #151);
>
> (2) $73,574.64 to Pacific Crest Partners (previously approved Docket #173)
>
> (3) 24% Disbursement to General Unsecured Creditors (Plan provides for no less than 8%)
>
> **IT IS FURTHER ORDERED** that the $104,710.00 in total payments made by the Debtors are approved as follows:
>
> (1) $720 a month (January through March 2011)
>
> (2) $2,650 a month (April and May 2011)
>
> (3) $3,150 a month (June 2011)
>
> (4) $2,650 a month (July through November 2011)
>
> (5) $2,750 a month (December 2011 through April 2014)
>
> (6) $0 a month (May 2014 and June 2014)
>
> (7) $700 a month (July 2014 through August 2014)

(8) $0 a month (September 2014 through September 2015)

TRUSTEE'S REPLY

The Trustee filed a reply on August 29, 2015. Dckt. 257. The Trustee requests the following amendments to the proposed amendments by the Debtor:

> **IT IS FURTHER ORDERED** that the $104,710.00 in payments made by the Trustee are approved, including without limitation the following:
>
> (1) $690.51 to the IRS (previously approved Docket #151);
>
> (2) $73,574.64 to Pacific Crest Partners (previously approved Docket #173)
>
> (3) 24% Disbursement to General Unsecured Creditors (Plan provides for no less than 8%)
>
> **IT IS FURTHER ORDERED** that the $104,710.00 in total payments made by the Debtors for the 57 month term of the plan are approved.

DISCUSSION

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

The proposed amendments for the order confirming as presented by the Trustee in his reply sufficiently address the Trustee's objections as well as the representations made by Debtor at the previous hearing.

Therefore, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed. The order confirming shall contain the following amendments:

> **IT IS FURTHER ORDERED** that the $104,710.00 in payments made by the Trustee are approved, including without limitation the following:
>
> (1) $690.51 to the IRS (previously approved Docket #151);
>
> (2) $73,574.64 to Pacific Crest Partners (previously approved Docket #173)
>
> (3) 24% Disbursement to General Unsecured Creditors (Plan provides for no less than 8%)
>
> **IT IS FURTHER ORDERED** that the $104,710.00 in total payments made by the Debtors for the 57 month term of the plan are approved.

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 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan containing the following language:

> **IT IS FURTHER ORDERED** that the $104,710.00 in payments made by the Trustee are approved, including without limitation the following:
>
> (1) $690.51 to the IRS (previously approved Docket #151);
>
> (2) $73,574.64 to Pacific Crest Partners (previously approved Docket #173)
>
> (3) 24% Disbursement to General Unsecured Creditors (Plan provides for no less than 8%)
>
> **IT IS FURTHER ORDERED** that the $104,710.00 in total payments made by the Debtors for the 57 month term of the plan are approved, which completes all payments due under this Modified Plan.

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

25. 14-25740-E-13 MARIO RILEY **MOTION TO MODIFY PLAN**
PGM-1 Peter Macaluso **8-26-15 [49]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on November 17, 2015. The Debtor shall file and serve supplemental papers on or before October 27, 2015. Any replies or oppositions shall be filed and served on or before November 10, 2015

Mario J. Riley ("Debtor") filed the instant Motion to Confirm the Modified Plan on August 26, 2015. Dckt. 49.

TRUSTEE'S OBJECTION

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 22, 2015. Dckt. 63. The Trustee objects on the following grounds:

1. The Trustee is uncertain as to the Debtor's ability to pay. The Trustee notes that the modified plan cures an existing payment delinquency of $6,190.00 under the confirmed plan which requires monthly payments of $3,095.00 per month. However, the proposed modified plan increases monthly payments to $3,520.00. The Trustee is concerned that the Debtor will not be able to make payments, given that the Debtor does not address the changes in the debtor's income and expenses. Debtor has failed to supply the Trustee with evidence (e.g., bank statements, pay stubs, and receipts) of the changes reflected in Schedule I and J, Dckt. 52, such as: the non-filing spouse's change in employment status, and an unaccounted for decrease of $5,000.00 in expenses, which may impact his ability to make plan payments.

DEBTOR'S REPLY

Debtor filed a Reply to the Trustee's Objection on September 29, 2015, Dckt. 66. The Debtor responds as follows:

1. That it is not customary to supply receipts for all expenses, bank statements, or pay stubs. Debtor's counsel requests additional time to provide the requested evidence so as to support the income and expenses, should the Court require such evidence.

DISCUSSION

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

The Trustees objections are well-taken.

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Schedule I reflects a change in income, that may be insufficient to support the proposed plan payment. Additionally, the Debtor fails to adequately explain the sudden decrease in expenses. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

The Trustee argues that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), because the Debtor's Schedule J lists monthly disposable income of $3,520.00, while the Plan proposes a $3,520.00 monthly payment. However, the Debtor filed amended Schedules I and J on August 26, 2015, which indicate a monthly net income of $5,745.58. Thus, on its face the plan appears feasible.

The Debtor's amended Schedule I reflects a decrease in average monthly income of $2,529.59. The Debtor's amended Schedule J reflects a decrease in expenses, totaling $5,183.34. The amended Schedule J reflects a decrease from $300.00 to $175.00 for electricity, heat, and gas; $240.00 to $145.00 for water, sewage, garbage; $440.00 to $30.00 telephone, cell, internet; $1,250.00 to $400.00 for food and housekeeping supplies; $1,247.00 to $0.00 for childcare and educational costs; $115.00 to $25.00 for clothing, laundry, cleaning; $100.00 to $25.00 for personal care products; $130.00 to $44.00 for medical and dental; $2,066.45 to $700.00 for transportation; $103.97 to $29.00 for entertainment; $600.00 to $100.00 for charitable contributions; $151.00 to $80.00 for life insurance; and $175.50 to $172.58 for vehicle insurance. Absent explanation from the Debtor as to how the drastic decrease in expenses, the court does not believe the Debtor's projection is in good faith. This is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

While the Debtor's counsel appears to believe that providing evidence of such changes in expenses and income is not necessary, the court will not confirm a plan in which it appears that the Debtor, who is already delinquent under the prior confirmed plan, may not be accurately reporting his financial reality.

Therefore, to afford the Debtor the opportunity to provide evidence to justify the changes in income and expenses, the court continues the instant Motion to 3:00 p.m. on November 17, 2015. The Debtor shall file and serve

supplemental papers on or before October 27, 2015. Any replies or oppositions shall be filed and served on or before November 10, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on November 17, 2015. The Debtor shall file and serve supplemental papers on or before October 27, 2015. Any replies or oppositions shall be filed and served on or before November 10, 2015.

26. 10-33944-E-13 ALAN/JILL MORI
DPC-2 Peter Macaluso

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 7-16-15 [141]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Mortgage Payment Change is continued to 3:00 p.m. on November 17, 2015.

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

Alan and Jill Mori ("Debtor") are in the 53rd month of their 60 month plan. The plan was filed on October 5, 2011 and the only creditor provided to receive further disbursements is the Creditor for the mortgage. Under the confirmed plan, Wells Fargo Home Mortgage is classified as a Class 1 claim with monthly contract installment payments of $1,900.00. The plan provides that if the loan modification is declined, the claim including any arrearages of Wells Fargo Home Mortgage shall be satisfied by the way of surrender of the property (which is Class 3 treatment under the confirmed Plan), with the qualification that entry of the order confirming the plan shall not modify the automatic stay (as it would normally for Class 3 claims).

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

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

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

Creditor's Claim

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

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

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

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

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

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

DEBTOR'S RESPONSE

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

CREDITOR'S OPPOSITION

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

FN.1. The court notes that the Opposition states that the Creditor's attorneys are from the firm of Pite Duncan, LLP in the upper right hand corner of the pleading. However, Pite Duncan, LLP has merged with another firm to become "Aldridge Pite, LLP." While the correct firm name is listed at the signature page, pursuant to Local Bankr. R. 2017-1(b)(2)(B), the correct name must be present in the upper left hand corner.

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

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

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

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

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

SEPTEMBER 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 6, 2015. Dckt. 153. Supplemental responses were ordered to be served and filed on or before September 22, 2015.

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

To date, only the Debtor has filed a reply.

DEBTOR'S REPLY

The Debtor filed a reply on September 29, 2015. Dckt. 161.

The Debtor first addresses the Additional Provision 7.02, Number 4 and states that the language unequivocally states that if the loan modification is denied, the Debtor would surrender the home.

The Debtor next addresses the "mandatory, 'shall,' surrender treatment of Creditor's claim upon denial of loan modification." After reviewing case law as to 11 U.S.C. § 1325(a)(5)(c)'s use of "surrender," the Debtor states that "surrender" in the context of the instant case is that the Debtor agreed to make the collateral available to the secured creditor. Specifically, the Debtor states that he would "cede his possessory rights in the collateral-within 30 days of the filing of the notice of intention to surrender possession of the collateral." The Debtor asserts that § 521(a)(2) does not suggests that the secured creditor is required to accept possession of the vehicle at the end of the 30-day period.

As to the plan language view of "surrender," the Debtor argues that case law, specifically *Arsenault v. JPMorgan Chase Bank, N.A. (In re Arsenault*), 456 B.R. 627 (Bankr. SD Ga. 2011), states that, under state law, a mortgage lender cannot be compelled to initiate foreclosure. The Debtor points out that, as in this case, the mortgage holder is accepting adequate protection payments and the Debtor is in compliance with their confirmed plan.

The Debtor requests that the Objection be continued to allow the Debtor to process a new loan modification in light of the above arguments.

DISCUSSION

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

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

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

Under the terms of the confirmed plan, the Debtor was making a plan

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

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

The additional provision appears to be one that pre-dates the "Ensminger Additional Provisions" which was worked out between creditors and debtors attorneys. Here, the plan language of the Additional Provision provides that upon the June 3, 2013 rejection of the loan modification, the Plan provides that the property is "surrendered" as a Class 3 claim. Thus, no further payments are provided to be paid to Wells Fargo Bank, N.A. since June 3, 2013.

However, neither Wells Fargo Bank, N.A. nor Debtor notified Trustee of the loan modification rejection and that no further payments were to be made to Wells Fargo Bank, N.A.

The Plan as confirmed, and allowed to be confirmed by Wells Fargo Bank, N.A., expressly provides that though it is a Class 3 claim, the automatic stay is not terminated. Wells Fargo Bank, N.A. has failed to seek relief from the automatic stay, instead electing to collect monthly payments from the Trustee which are not provided for in the confirmed Plan.

Considering the potential significant litigation which might ensure concerning the post-denial of the loan modification conduct of Debtor and Wells Fargo Bank, N.A., the court continues the hearing to 3:00 p.m. on November 17, 2015. Any supplemental papers shall be filed and served on or before November 3, 2015. Any replies or oppositions shall be filed and served on or before November 17, 2015.

The court continues the hearing to allow the parties to determine whether there is a proper, non-litigation resolution of this situation which may be agreed to by the Debtor, Trustee, and Wells Fargo Bank, N.A. Possibly, Debtor and Wells Fargo Bank, N.A. might work out a modification which can be approved as part of the existing plan or a modified plan. Wells Fargo Bank, N.A. and the Trustee may make arrangements to disgorge the monies received by Wells Fargo Bank, N.A. since June 3, 2013. Possibly Wells Fargo Bank, N.A. may present an argument that under the confirmed Plan that after the rejection of the loan modification the plain language of the confirmed Plan does not provide for Class 3 surrender treatment (without the automatic modification of the automatic say), but some post-June 3, 2013 payments are provided for in the confirmed Plan. Debtor may show the court some good faith grounds for why they did not notify the Trustee of the modification direction to avoid having monies diverted to a creditor who was not entitled to receive them under the confirmed Plan.

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

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

The Objection to Notice of Mortgage Payment Change filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is continued the hearing to 3:00 p.m. on November 17, 2015. Supplemental responses shall be served and filed on or before November 3, 2015. Any replies shall be filed and served on or before November 10, 2015.

27. 11-25546-E-13 CESAR/PACITA RAVENA — MOTION TO MODIFY PLAN
RAC-6 Richard Chan — 8-24-15 [88]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 15-25446-E-13 DONALD MAH — **OBJECTION TO DISCHARGE BY DAVID P. CUSICK**
DPC-2 Ronald Holland — **9-1-15 [35]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector"), filed the instant Objection to Debtor's Discharge on September 1, 2015. Dckt. 35.

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

The Debtor filed a Chapter 7 bankruptcy case on May 24, 2013. Case No. 13-27150. The Debtor received a discharge on August 21, 2013. Case No. 13-27150, Dckt. 40.

The instant case was filed under Chapter 13 on July 8, 2015.

The Debtor filed a non-opposition on September 3, 2015. Dckt. 39.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 21, 2013, which is less than four-years preceding the date of the filing of the instant case. Case No. 13-27150, Dckt. 40. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-25446), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.]

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-25446, the case shall be closed without the entry of a discharge.

29. 15-24448-E-13 JESSICA/JOVITO TABAYOYONG MOTION TO CONFIRM PLAN
RS-1 Richard Sturdevant 8-24-15 [27]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

30. 15-24950-E-13 IAIN/DINEEN FRASER — MOTION TO CONFIRM PLAN
TAG-1 Ted Greene — 8-18-15 [27]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

Chapter 13 Plan filed on August 18, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

31. 11-42659-E-13 GARAY/KAREN HARPER
SDB-5 W. Scott de Bie
MOTION FOR ORDER DIRECTING DISBURSEMENT OF PROCEEDS
9-1-15 [148]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion for Order Directing Disbursement of Proceeds 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 for Order Directing Disbursement of Proceeds is granted.

Garay H. Harper and Karen L. Harper ("Debtors") filed the instant Motion for Order Directing Disbursement of Proceeds on September 1, 2015. Dckt. 148. The Debtors seek an Order directing that the balance of Karen Harper's personal injury settlement funds, in the amount of $57,857.59, be released to the Debtors.

The Debtor's assert that when they filed their petition, on September 20, 2011, they disclosed, as an asset, a pending claim for personal injury damages against Camp Richardson Resort, Inc. Dba the beacon Bar and Grill and Unigard Insurance Company.

Debtor's assert that the injury claim arose from a fall in 2009, experienced by Co-Debtor, Karen Harper, causing substantial injuries and for which she has received extensive medical treatment. This court approved, on or about April 1, 2015, a settlement agreement resolving the claims. As part of the settlement, after attorney fees and a payment of costs and medical service liens were accounted for, the Debtors were to receive $67,857.59. $10,000 of this sum was previously ordered released to Debtors. The balance of $57,857.59 was ordered held in the trust account of Debtors' state court counsel, until further order of this court.

Debtor's note that Co-Debtor's, Karen Harper, fall resulted in a continuing disability, resulting in reduced income, ability to perform work-related duties, concentration, ability to stand and sit in one position for long periods of time, etc. Debtors have claimed the settlement proceeds exempt under California Code of Civil Procedure 703.140(b)(10)(C), (D), (E). Debtor's note that despite the claims of Mr. Garay Harper, in the personal injury case, the settlement was paid exclusively because and for the injuries and damages suffered by Mrs. Karen Harper; as set out in Exhibit A, Dckt. 152.

David P. Cusick, the Chapter 13 Trustee, filed a non-opposition on September 8, 2015.

DISCUSSION

On April 1, 2015, the court granted the Motion to Approve Settlement. Dckt 134. The court authorized $10,000.00 to be disbursed to the Debtor and applied to the exemptions claimed.

On June 9, 2015, the court granted the Debtor's Motion for Compensation, authorizing the payment of fees incurred by the attorneys in the settlement in the total amount of $80,000.00 and $12,558.24 in expenses. Dckt. 145.

The remaining amount of the settlement proceeds is $57,857.59 which is being currently held in a trust account of Debtor's state court counsel.

Now that the fees, expenses, and settlement have been approved and paid, the Debtor is bringing the instant Motion, as instructed by the court, to have the remaining settlement funds released to the Debtor.

A review of Debtor's Schedule C shows that the Debtor has fully exempted the $67,857.59. Dckt. 100.

Therefore, for cause, the Motion is granted and the Debtor's state court counsel is authorized to release the remaining exempted settlement funds of $57,857.59 to Debtor.

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

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

The Motion for Order Directing Disbursement of Proceeds filed by Gary and Karen Harper ("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 Debtor's state court counsel is authorized to release the remaining exempted settlement funds of $57,857.59 to Debtor.

32. 14-20159-E-13 ROSIE MOORE — MOTION TO MODIFY PLAN
RHM-3 Robert McConnell — 8-25-15 [71]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Rosie Moore ("Debtor") filed the instant Motion to Confirm the Modified Plan on August 25, 2015. Dckt. 71.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 21, 2015. Dckt. 85. The Trustee objects on the following grounds:

1. The Debtor’s additional provisions in the plan proposes plan payment of $365.00 beginning September 2015 for the remainder of the plan, but does not indicate what Debtor has paid to date under the confirmed plan. The Debtor in the Motion states that she has paid $6,205.06 as of the date of the Motion. The Trustee’s records reflect that, through August 2015, the Debtor actually paid in $6,276.99. The Trustee states he has no opposition if the order confirming included language stating that through August 2015, Debtor paid a total of $6,276.99 to the Trustee with payments of $365.00 per month beginning September 2015.

2. The Trustee asserts that the Debtor’s declaration fails to adequately explain the numerous changes regarding her individual expenses.

	March 11, 2014 Expenses	**August 25, 2015 Expenses**	**Difference**
Food/Housekeeping	$150.00	$200.00	$50.00
Personal Care	$40.00	$0.00	<$40.00>
Transportation	$195.00	$250.00	$55.00
Entertainment/recreation	$71.20	$196.00	$124.00
Life Insurance	$33.66	$98.05	$64.39
Vehicle Insurance	$100.00	$100.48	$0.48

The Trustee states that, while the food and vehicle increases appear reasonable, Debtor has provided no explanation for the other adjustments, namely a $124.80 increase in entertainment/recreation.

DISCUSSION

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

The Trustee’s objections are well-taken. While the first objection can easily be corrected in the order confirming. The first is that the payments into the Plan as of the modification being confirmed total $6276.99 through August 2015.

It is always troubling to the court when any person makes one statement of facts under penalty of perjury, and then files a subsequent statement under penalty of perjury in which the facts are different, and the person makes no effort to explain a basis for the difference. When such conflicting statements under penalty of perjury are ignored by the witness, it creates the appearance that such testimony is intentionally false.

Here, while the Trustee objects based on the lack of any effort by Debtor to educate the court and parties in interest how the testimony under

penalty of perjury could change, he is willing to observe that some of the changes would appear to be reasonable. However, he questions how the recreation expense is just increased $71.20 to $124.80. While not huge in amount, it creates the appearance that the numbers on Amended Schedule J are merely made up to yield a bottom line number of $365.00 to support a contention that this is all of the projected disposable income of Debtor.

On Amended Schedule I Debtor's monthly income is $1,594.03. Dckt. 79. Amended Schedule J expenses total $1,229.03. *Id.* A recreation expense of $196, in light of the income and the other expenses is not unreasonable, in and of itself. If any explanation had been provided, the Trustee most likely would not have been compelled to object.

If the court were to deny the motion and make the Debtor file a new motion, Debtor's counsel (who failed to prepare a sufficient declaration) would have to duplicate his efforts and file a new motion, effectively reducing any legal fees to be subsequently awarded by the court to have a significantly lower effective hourly rate. Such delay might well cause the Debtor significant emotional distress, fearing that Debtor and counsel could not confirm a modified plan.

Rather than cause the court, Chapter 13 Trustee, U.S. Trustee, and other parties in interest unnecessarily waste time and resources in having to re-review a new motion (thereby penalizing the court and parties in interest), the court overrules the objection and confirms the Plan.

However, if counsel should seek to be allowed additional fees for substantial and unanticipated legal work in connection with the present Motion, the court will take into account the failure to provide such basic information in Debtor's declaration in considering the time expended by counsel for which compensation sought and the appropriate hourly rate for counsel who prepared a declaration which failed to include this basic necessary information. The court is confident that the Chapter 13 Trustee, U.S. Trustee, and other parties in interest would appropriately respond to any such motion to bring these factors before the court.

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 25, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

33. 15-24761-E-13 CHRISTOPHER/GLEE WOODYARD MOTION TO CONFIRM PLAN
OAG-1 Oliver Greene 8-20-15 [21]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Christopher Woodyard Jr. and Glee Woodyard ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 20, 2015. Dckt. 21.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 15, 2015. DCkt. 30. The Trustee objects on the on the ground of unfair discrimination to unsecured creditors. The Trustee asserts that the Debtor is proposing to pay the full amount of GM Financial's secured claim of $12,733.00 for a 2007 Honda Accord in Class 2A of the plan. The Debtor has listed the value of this auto in the amount of $9,843.00 on Schedule D. However, the Debtor has failed to file a motion to value collateral. The Debtor is proposing a 0% dividend to unsecured creditors. According to the amended claim filed by GM Financial on July 16, 2015, Proof of Claim No.1, the auto contract was entered into on September 6, 2010 more than 910 days prior to filing the instant case.

DEBTOR'S RESPONSE

The Debtor filed a response on September 28, 2015. Dckt. 33. The Debtor states that the Debtor will file a Motion to Value the Collateral of GM Financial as to the 2007 Honda Accord.

DISCUSSION

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

A review of the docket shows that the Debtor filed a Motion to Value Collateral of GM Financial on September 29, 2015. Dckt. 35. The Motion is set for hearing at 3:00 p.m. on October 27, 2015.

Given the fact that the Trustee's only objection is to the failure of the Debtor valuing the collateral of GM Financial, the court continues the hearing to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Motion to Value Collateral of GM Financial.

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

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

34. 13-34164-E-13 ANGELINA ROBINSON MOTION TO MODIFY PLAN
RS-1 Mark Alonso 8-25-15 [125]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

Angelina Robinson ("Debtor") filed the instant Motion to Confirm the Modified Plan on August 25, 2015. DCkt. 125.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on September 22, 2015. Dckt. 137. The Trustee responds by stating that the Proof of Service of the Motion and plan does not include service to the United States Attorney, for the Internal Revenue Service, nor to the United States Department of Justice.

The Internal Revenue Service has filed Proof of Claim No. 11 on March 13, 2014. The claim was amended March 18, 2014 and again on September 10, 2015. As the Internal Revenue Service has been notified of the filing and has filed a claim, the Trustee asks this be considered.

The Trustee states that the modified plan provides for the Internal Revenue Service's claim as filed.

DISCUSSION

Failure to Properly Serve Internal Revenue Service

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

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

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

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

. . .

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

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

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

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

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

Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of

Address filed by that governmental entity.

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

However, in light of the Trustee's response which correctly indicates that the Internal Revenue Service has properly filed a Proof of Claim No. 11 which is fully provided for in the proposed plan and the fact that the Debtor served one of the three necessary addresses for the Internal Revenue Service, the court waives this service failure. However, the Debtor and Debtor's counsel shall be more cognizant in the future of the necessary service and notice requirements.

Plan Confirmation

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

After reviewing the proposed plan, the response of the Trustee, and the court's waiver of the notice defect, the plan provides for the Internal Revenue Service claims as well as other creditors.

Therefore, with no pending objections and the court's own review of the proposed plan, 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 25, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-32167-E-13 SHELDON MCRAY **MOTION TO MODIFY PLAN**
MKC-3 Marty Courson **8-26-15 [60]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 26, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

36. 10-40469-E-13 BRETT ROBINSON
MAC-6 Marc Caraska

MOTION TO REOPEN CHAPTER 13 BANKRUPTCY CASE
9-21-15 [122]

CLOSED: 09/17/2015
DEBTOR DISMISSED: 06/29/2015

Tentative Ruling: The Motion to Reopen Chapter 13 Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 21, 2015. By the court's calculation, 15 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 grant the Motion to Reopen Chapter 13 Bankruptcy Case.

Debtor seeks to reopen his Chapter 13 Bankruptcy, filed July 31, 2010. Debtor states that on June 24, 2015 the court ordered dismissal of the case due to unpaid plan payments in the amount of $2,242.60.

TRUSTEE'S OPPOSITION

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 29, 2015. Dckt. 131. While the Trustee notes that he is not opposed to a hearing on this matter, Trustee notes that the motion is incomplete. As such, the Trustee objects on the following grounds:

1. The Trustee's Motion to Dismiss, Dckt. 106, was filed on May 21, 2015. The Notice of Hearing on the Motion stated that a response was required by June 10, 2015. Dckt. 107. However, Debtor failed to file a response.

2. The instant Motion fails to cite any legal authority. Confusion as to the form of relief being sought arises from the apparent request for two different forms of relief by the Debtor. The Trustee notes that the caption of the motion states "Amended Declaration in Support of Motion to Reopen Case," while Debtor's declaration appears to be asking the court to vacate the dismissal.

3. Trustee alleges that the Debtor is currently delinquent $2,804.96. That September is month 62 of the Debtors 60 month plan. And, that the last payment of $625.00 received by the Trustee was on May 28, 2015.

4. Trustee notes that the Debtors declaration states that he maintained current on plan payments, until May 11, 2015. However, Trustee asserts that the debtor has a long history of missing payments, and then catching them up, as evidenced in the Trustee's motion to dismiss.

5. Additionally, the Trustee asserts that the Debtor fails to provide evidence of travel dates to Texas, or of the expenses related to the travels and custody issues. Based on the Debtor's declaration, it is not clear to the Trustee if there are any remaining costs associated with the custody issues, or if the debtors budget can afford to maintain the somewhat modest plan payment given the added member of the household and his condition.

6. Debtor fails to state how he will cure the delinquency.

DISCUSSION

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

A. On July 31, 2010, Debtor filed a Voluntary Petition under Chapter 13

B. The Meeting of Creditors was noticed for and held on March 26, 2010.

C. On June 24, 2015 the Court ordered the case to be dismissed due to unpaid plan payments in the amount of $2,242.60.

D. WHEREFORE, Debtor respectfully requests that the court reopen his case so he may complete his chapter 13 plan.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the case was dismissed and the Debtor would like it reopened. This is not sufficient.

The Trustee's objections all support the conclusion that the Motion is facially insufficient for any relief to be granted. The Debtor remains delinquent, does not provide any evidence of ability to cure and remain current, nor does the Debtor provide any substantive argument that the court could even remotely construe into grounds for reopening the case and vacating the dismissal of the case. FN.1

FN.1. The comment on vacating the dismissal is an example of the court having to presume what the Debtor actually is seeking in the Motion since it plainly fails to comply with Fed. R. Bankr. P. 9013.

This is clearly a very sad state of affairs. Debtor commenced this case five years ago. At the time the motion to dismiss was filed, Debtor was almost four months in arrears. Civil Minutes, Dckt. 110. Debtor offered no opposition to the Motion, indicating to the court, the Trustee, and parties in interest that he was "folding his tent" and moving on outside of bankruptcy.

Motion Does Not Seek To Vacate the Dismissal

The present Motion merely requests that the court "reopen" the bankruptcy case. Reopening the bankruptcy case does not vacate the dismissal. Though the file is reopened, the case remains dismissed.

The scant pleading may be the reason that Debtor appears not to appreciate the difference between "reopening" the case and vacating a dismissal.

The court grants the Motion to reopen the case. Debtor will next have to come with a proper motion (complying with Fed. R. Bank. P. 9013), a separate points and authorities, and competent, properly authenticated evidence. As counsel for Debtor knows, absent compelling circumstances (such as the debtor and debtor's counsel were hospitalized and unable to respond to the motion to dismiss), the court considers the unnecessary cost and expense caused by a debtor or debtor's counsel ignoring a motion to dismiss. Generally, the court has computed that a Chapter 13 Trustee has his counsel expend four to eight hours of time of otherwise unnecessary time in having to address motions to vacate dismissals when debtors or debtor's counsel fail to respond to a motion to dismiss. At a discounted hourly rate of $250.00, that represents $1,000 to $1,500 of expense that the court requires to be reimbursed as a conditional of vacating a dismissal.

A motion to vacate the dismissal should prudently address this expense and what extraordinary grounds exist that the court should not order the Debtor or counsel to reimburse the Trustee for the wasted time and effort caused by Debtor's or counsel's failure to respond to the motion to dismiss.

The Motion is granted and the case is reopened.

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 Reopen Chapter 13 Bankruptcy Case filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the case is reopened.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve a motion to vacate the dismissal of the case (Order, Dckt. 112) on or before October 20, 2015.

37. 14-25069-E-13 KENNETH/RENETTE JOHNSON MOTION TO MODIFY PLAN
RJ-2 Richard Jare 9-1-15 [79]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Kenneth and Renette Johnson ("Debtor") filed the instant Motion to Confirm the Modified Plan on September 1, 2015. Dckt. 79.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 21, 2015. Dckt. 86. The Trustee objects on the following grounds:

1. The Debtor is delinquent in the amount of $200.00 under the terms of the proposed plan. According to the proposed plan, payments of $26,250.00 have become due. The Debtor has paid a total of $26,050.00 with the last payment posted on September 2, 2015 in the amount of $2,050.00

2. Section 6.12 of the plan provides:

Section 6.12 - Additional Provisions for Section 4.02(b). The disbursement Dividends are based upon a trustee compensation of 6.5%. In the event the trustee compensation rate increases, the trustee is entitled to inform the debtors of an automatic corresponding plan payment increase.

The Trustee opposes this provision in that the Debtor appears to require the Trustee to contact the Debtor for an increase to occur in Trustee compensation which appears contrary to the statute.

3. Section 6.10 and 6.11 of Debtor's modified plan are not clear to the Trustee. Arguably they appear to provide that the Debtor will pay $367.00 per month to student loan debts while general unsecured claims receive 0%. The Trustee objects to the plan as unfairly discriminating in favor of student loan debtors and against general unsecured claims. In the event that the plan calls for arrears to be paid by the Trustee, it is not clear how the plan can defer payments to the student loans when arrears have accrued – the long term debt is not being maintained under 11 U.S.C. § 1325(a)(5).

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's first objection is that the Debtor is $200.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, it appears misleading that the additional provision requires that the Trustee to not only contact the Debtor of such, but also to *sua sponte* increase the plan payments accordingly. This is facially inappropriate as it suggests that the Trustee, in his fiduciary capacity, can alter the terms of a confirmed plan, without any need for confirmation hearing. This improper provision is an individual ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to the Trustee's third objection, the Trustee is incorrect in stating that the general unsecured creditors are receiving 0%. According to the plan, the Class 7 claimants will receive a 100% dividend. While the language in the proposed plan is dense, the court reads that the plan as stating that, while there may be a delay to the Class 7 claimants, the will receive 100% of their claim and the student loan will just be paid separately due to the nature of the loan. Therefore, the Trustee's third objection in overruled.

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

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

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

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

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

38. 15-26469-E-13 LAURIE STEFANELLI — MOTION TO EXTEND AUTOMATIC STAY
ET-1 Matthew Eason — 8-14-15 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2015. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Laurie Marie Stefanelli ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-21209) was dismissed on February 2, 2015, after Debtor failed to make plan payments, and 21 alleged errors of Debtor's prior counsel. *See* Order, Bankr. E.D. Cal. No. 14-21209, Dckt. 112; Dckt. 22. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

SEPTEMBER 1, 2015 HEARING

At the hearing, the court granted the motion on an interim basis, through and including October 30, 2015. Dckt. 21. The court ordered that Debtor shall file a supplement to the existing Motion (not an amended motion)which states with particularity all of the grounds upon which the relief is actually based. Debtor shall provide a supplemental declaration testifying to actual facts, from which the court may then make factual findings and the necessary legal conclusions to enter a final order granting or denying the motion. The supplemental pleadings were ordered to be filed and served on the Chapter 13 Trustee and U.S. Trustee on or before September 14, 2015. Replies to the supplemental pleadings were ordered to be filed and served on or before September 21, 2015. The final hearing on the Motion shall be conducted at 3:00 p.m. on October 20, 2015.

DEBTOR'S SUPPLEMENT

The Debtor filed a supplement to the Motion on September 9, 2015. Dckt. 22. The Debtor, now stating with particularity, the grounds for extending the automatic stay. The supplement extensively goes over a myriad of errors the Debtor's prior counsel made which led to the first case being dismissed, including the Debtor's prior counsel not responding to substantive motions, failing to provide for all creditors in multiple plan attempts, failing to use docket control numbers, and failing to appear at hearings.

The supplement alleges that the Debtor and new counsel have proposed a plan that will result in substantial payments to creditors but the stay needs to stay in effect in order to ensure that the assets of the estate are not depleted through creditors seizing assets without the automatic stay protecting them.

APPLICABLE LAW

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

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

1. Why was the previous plan filed?

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

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

DISCUSSION

Here, as discussed supra, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as relying on counsel that was not familiar with practice in the Eastern District of California. Dckt. 23 ¶ 3. Debtor promises that, after retaining new counsel, Debtor will be able to propose and confirm a plan that will result in "significant assets being paid to unsecured creditors, and keeping my home." *Id.*

Significantly, Trustee filed a nonopposition on September 16, 2015.

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 in light of the supplemental paper filed by the Debtor stating with particularity the grounds to justify the extension of 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.

39. 15-24672-E-13 ROBIN BUGBEE **MOTION TO CONFIRM PLAN**
SLH-1 Seth Hanson **8-14-15 [24]**

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required..

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

40. 15-26372-E-13 DPR-1 **HUBERT/SIOBHAN EVANS** **David Ritzinger** **MOTION TO VALUE COLLATERAL OF ASSET BACKED RECEIVABLES, LLC 9-3-15 [14]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Pooling and Servicing Agreement Dated as of June 1, 2006 Securitized Asset Backed Receivables LLC Trust 2006-FR2 Mortgage Pass-Through Certificates, Series 2006-FR2 ("Creditor"), which claim is serviced by Ocwen Loan Servicing, LLC. is denied without prejudice.

The Motion to Value filed by Hubert Evans and Siobhan Marie Evans

("Debtor") is to value the secured claim of Pooling and Servicing Agreement Dated as of June 1, 2006 Securitized Asset Backed Receivables LLC Trust 2006-FR2 Mortgage Pass-Through Certificates, Series 2006-FR2 ("Creditor"), which claim is serviced by Ocwen Loan Servicing, LLC. Dckt. 16 ¶ 2. The Motion is accompanied by Debtor's declaration. Dckt. 16. Debtor is the owner of the subject real property commonly known as 184 Greenwich Circle, Vacaville, California, APN: 0135-181-360 ("Property"). Debtor seeks to value the Property at a fair market value of $365,000.00 as of the petition filing date. *Id.* at ¶ 5. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Pooling and Servicing Agreement Dated as of June 1, 2006 Securitized Asset Backed Receivables LLC Trust 2006-FR2 Mortgage Pass-Through Certificates, Series 2006-FR2, which claim is serviced by Ocwen Loan Servicing, LLC." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors. FN.1.

FN.1. It appears that the name "Pooling and Servicing Agreement Dated as of June 1, 2006 Securitized Asset Backed Receivables LLC Trust 2006-FR2 Mortgage Pass-Through Certificates, Series 2006-FR2, which claim is serviced by Ocwen

Loan Servicing, LLC" may be a made-up name, an admission that Debtor has no idea who the creditor is and seeks an order valuing that unidentified creditor in absentia. The court cannot fathom that an "Agreement Dated June 1, 2006" is a legal entity. Further, the court does not understand what is an "LLC Trust."

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

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

The Debtor has not presented any evidence of an actual creditor nor have there been any proofs of claim filed indicating this lien. Debtor provides no testimony as to the identity of the creditor. Debtor does not provide copies of any billing statements, notices, or tax statements provided by creditor.

Based on the foregoing, the valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Hubert Evans and Siobhan Marie Evans ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

41. 15-26372-E-13 HUBERT/SIOBHAN EVANS — MOTION TO VALUE COLLATERAL OF CHASE AUTO FINANCE CORPORATION
DPR-2 David Ritzinger — 9-3-15 [19]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Chase Auto Finance Corporation, a subsidiary of JPMorgan Chase Bank, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $7,715.00.

The Motion filed by Hubert Evans and Siobhan Marie Evans ("Debtor") to value the secured claim of Chase Auto Finance Corporation, a subsidiary of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Dodge Avenger Mainstreet 4D Sedan ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $7,715.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in October 18, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,412.00. Dckt. 1 Schedule D. FN1. 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 $7,715.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and

11 U.S.C. § 506(a) is granted.

FN.1. The court notes that Debtor's motion does not provide evidence of the secured claim held by Chase Auto Finance Corporation, a subsidiary of JPMorgan Chase Bank, N.A. This deficiency violates both LBR 9014-1(d)(1) and (d)(7) as a failure to state with particularity and a failure to present evidence establishing the factual allegations and demonstrating that the movant is entitled to the relief requested. However, the court waives this defect because the Creditor did not oppose the motion and because the information is available from Debtor's Schedule D, filed August 11, 2015. Dckt. 1 p. 20.

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 Hubert Evans and Siobhan Marie Evans ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2011 Dodge Avenger Mainstreet 4D Sedan ("Vehicle") is determined to be a secured claim in the amount of $7,715.00, 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 $7,715.00 and is encumbered by liens securing claims which exceed the value of the asset.

42. 15-27273-E-13 MANUEL/LORI GARCIA — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter Macaluso — 9-22-15 [8]

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

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

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

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

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

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

The Motion to Extend the Automatic Stay is granted.

Manuel Brian Garcia and Lori Lee Garcia ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-24103) was dismissed on June 8, 2015, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 15-24103, Dckt. 12. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The

subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the previous plan was filed due to financial hardship, resulting from:

> "numerous thefts in our business that had not been fully compensated for, and for which we have supporting police reports and insurance claims. Along with overhead expenses increasing and sales down, our income was affected. We have also had increased medical expenses, which were not in our budget."

Dckt. 10 ¶ 10. Debtor asserts that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as various communication problems with their prior counsel at Hughes Financial Law. *Id.* at ¶ 11, 12. Debtor now has new counsel, and wishes to pursue bankruptcy to "reorganize our debts, keep our home, reduce our debt, and pay our creditors to the best of our ability." *Id.* at ¶ 14, 15.

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.

43. 14-20775-E-13 WALTER/PAMELA MERRITT — MOTION TO MODIFY PLAN
KE-1 Karen Ehler — 8-20-15 [34]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

Walter D. Merritt and Pamela A. Merritt ("Debtors") filed the instant Motion to Confirm the Modified Plan on August 20, 2015. Dckt. 34.

TRUSTEE'S OBJECTIONS

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 21, 2015. Dckt. 52. The Trustee objects on the following grounds:

1. Debtor's plan payments as proposed under the modified plan do not incorporate annual tax refunds from the Internal Revenue Service and the Franchise Tax Board. Such requirement is pursuant to the Court's Order Approving Stipulation between Debtors and Trustee, Dckt. 22, filed May 27, 2014, where Debtor's are to endorse and turn over any income tax refund checks received during the term of the plan. The Trustee notes that the Debtors turned over their 2013 returns, totaling $3,169.00, and applied them to the Debtor's case in May of 2014. The Trustee has yet to receive the Debtor's 2014 tax returns, despite the Trustee's efforts in contacting the Debtor's attorney to obtain them.

2. The Trustee asserts that in *In re Voller*, 154 BR 5, 8 (U.S. District Court MA 1993), the court found that "[p]arties to a bankruptcy have a legal right to rely on the docket as the official record of the case." However, the electronic docket does not reflect the Debtor's plan as having been filed. Trustee asserts that the Debtor's failed to properly file the plan, and mistakenly filed the plan as Exhibit A, Dckt. 38, in support of the instant Motion.

3. The Trustee notes that a Motion to Dismiss was filed on August 11, 2015, Dckt. 28, for overextension due to Debtor's plan taking 91 months to complete as opposed to the 60 months proposed. The overextension appeared to be due to the plan paying 60.09% to unsecured creditors. Debtor's Declaration indicates that they did not anticipate Wells Fargo filing claims for their grandson's student loans, which they co-signed. Although Debtor's grandson is making the payments, Debtor's will continue to pay a portion of the unsecured claims ahead of schedule through the plan. Debtor's modified plan proposes a reduction in the percentage to unsecured creditors from no less than 60.09% to no less than 39%.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a declaration on September 28, 2015. Dckt. 56. The Debtor states that they have sent the 2014 state and federal income tax returns to the Trustee. The Debtor also state that the refund of $410.00 has been mailed to the Trustee.

The Debtor concede that the Stipulation requires the turn over of the Debtor's state and federal income tax refunds to the Trustee.

DISCUSSION

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

The Trustee's objections are well-taken.

To the Trustee's second objection, the Debtor subsequently filed the proposed modified plan as a separate document. Dckt. 55. Therefore, the objection is overruled.

As to the Trustee's first objection, the order confirming can state that "The Debtors shall endorse and turn over to the Chapter 13 Trustee any income tax refund checks received from the Internal Revenue Service or the

Franchise Tax Board during the term of the Plan. These amounts shall be treated as additional payments into the debtor's Plan." Dckt. 22.

Lastly, the Trustee's third objection appears to be more of a note to the court rather than an actual objection to the plan. The proposed plan reduced the amount of the dividend to unsecured creditors and appears to be able to be completed within the 60 months as proposed.

Therefore, after the amendments to be stated in the order confirming, 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 September 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, with the addition of
>
> > "The Debtors shall endorse and turn over to the Chapter 13 Trustee any income tax refund checks received from the Internal Revenue Service or the Franchise Tax Board during the term of the Plan. These amounts shall be treated as additional payments into the debtor's 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.

44. 15-26180-E-13 MYRNA MCDONALD
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-9-15 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 9, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Myrna Marie McDonald ("Debtor") filed a petition for Chapter 13 relief and accompanying Plan on August 3, 2015. Dckt. 1, 5. David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtor failed to attend the 341 meeting scheduled on September 3, 2015; the meeting has been continued to October 29, 2015, at 11:00 a.m.;

2. Debtor did not provide Trustee paystubs with proof of income for the 60 days prior to bankruptcy petition;

3. Debtor failed to provide Trustee with a tax transcript or copy

of Debtor's Federal Income Tax Return for 2014;

4. Debtor did not file all tax returns in 2014, as shown in Proof of Claim #2 filed by the Franchise Tax Board.

Dckt. 16, 18.

DISCUSSION

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). However, Trustee notes that the meeting has been continued to October 29, 2015, at 11:00 a.m.

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

The Debtor has failed to timely provide the Trustee with tax returns or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This document is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting the tax return, 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 Myrna Marie McDonald 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.

45. 15-26082-E-13 NICHOLAS RIGHTER
DPC-1 Brian Turner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-10-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Nicholas Adam Righter ("Debtor") filed a petition for Chapter 13 relief with accompanying Plan on July 31, 2015. Dckt. 1, 5. David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtor's plan is not Debtor's best efforts because Debtor is above-median income and proposes to pay $485.65 per month for 100% dividend to unsecured creditors; if Debtor applied a monthly net income of $841.04, as shown on Schedule J, Debtor's plan would be complete in approximately 35 months;

2. Debtor did not commence plan payments as is delinquent by $485.65, which is one payment of the plan.

Dckt. 15.

The Trustee's objections are well-taken.

Trustee's first objection is that the plan does not reflect Debtor's best efforts. The Debtor is an above-median income debtor with disposable net income of $841.04 a month. The Debtor is only proposing plan payments of $485.65 per month for 60 months. This is improper as Debtor's best efforts. If the Debtor was to commit the full amount of the Debtor's disposable income, the plan, as the Trustee states, would complete in approximately 45 months. Pursuant to 11 U.S.C. § 1325(b), the proposed plan, based on the excess disposable income, is not the Debtor's best efforts.

The basis for the Trustee's second objection is that the Debtor is $485.65 delinquent in plan payments, which represents one month of the $485.65 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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 Nicholas Adam Righter ("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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

46. 14-23385-E-13 MICHELE WILLIAMS **MOTION TO MODIFY PLAN**
PGM-5 Peter Macaluso **8-21-15 [93]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Michele Williams ("Debtor") filed the instant Motion to Confirm the Modified Plan on August 21, 2015. Dckt. 93.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 22, 2015. Dckt. 112. The Trustee objects on the following grounds:

1. The plan does not provide Wells Fargo Bank adequate protection where the plan purports to provide adequate protection payments. The Debtor proposes in Section 6.03 an adequate protection payment of $1,698.01 per month which is to be applied first to the post-petition interest accruing on this claim and then principal, or as specified in a loan modification. The section indicates that the Debtor is in the process of applying for a modification.

a. The Debtor's supplemental Schedule J (Dckt. 96) makes no provision for property taxes of insurance. Section 6.03 makes no provision that property taxes or insurance are included in the adequate protection payment. According to the most recent Notice of Mortgage Payment Change filed June 24, 2015, escrow amounts included in the payment totaled $663.21. If the Debtor intends the adequate protection payment to include escrow, $1,034.80 is the amount of the payment available for interest and principal payment.

b. Wells Fargo Bank has filed Proof of Claim No. 701 which provides a secured claim of $403,795.48 at a 2.675% variable interest rate. While the plan proposes a payment of $1,698.01 as an adequate protection payment, the Debtor provides no evidence as to why this is adequate protection. The Trustee believes that the burden is on the Debtor.

2. The Debtor provides no explanation of changes in income or expenses. The Debtor reports monthly income of $5,883.89. Dckt. 81 and 96. The Debtor has previously reported income of $5,477.00 (Dckt. 66) and income of $5,841.07 at the time of filing (Dckt. 1.). The Debtor's monthly expenses have increased from $2,945.61 at the time of filing to $3,453.01 currently, an increase of $507.40 without explanation.

The Declaration discloses the Debtor has an unemployed son who lives with her and a daughter who is college. In addition, the Declaration reports the song's daughter is with them 50% of the time and that her mother lives with her 50% of the time. The proposed plan includes in Class 2 a 2006 Land Rover Range Rover with a monthly dividend of $250.00, which the Debtor states is for the use of her motion. There is a pending Motion for Relief for this vehicle. The Debtor also states she is working on a loan modification but provided no evidence of such.

3. The plan is not proposed in good faith. The Trustee previously raised these objection in the prior two proposed plans (DCN PGM-3 and PGM-4). The Debtor appears to repeatedly propose a plan with insufficient evidence to confirm it and then request more time to present evidence that should have been filed with the original motion.

DEBTOR'S REPLY

The Debtor filed a reply on September 29, 2015. Dckt. 118. The Reply is Debtor's counsel's arguments, for which no declarations or other evidence has been presented. However, the Reply purports to argue facts for which no evidence is presented.

The Debtor's Reply argues:

1. The Debtor's income for applicable purposes of this bankruptcy is $5,883.89, which pursuant to a 31% payment would result in a $1,764.90 mortgage payment. The Debtor's plan proposes to pay an on-going payment of $1,698.01, which is $66.89 less. The Debtor's adequate protection payment was based on a then $5,477.48. The Debtor has

proposed an adequate protection payment of 31% or $1,698.01, which is in line with the provisions of the HAMP program

2. The Debtor's property tax and insurance will be part of the payment pursuant to the proposed loan modification and the plan will be amended for this provision, if necessary. As the present escrow is included in the mortgage payment, any set aside by the Debtor is more likely to become disposable income as there is no payee of such funds until completion of the loan modification process.

3. In this instance, the guidelines referred to may state "gross" but seem to process the mathematics based on the after taxes deductions in determining what is "31%" for proof of adequate protection payments.

4. The Debtor is awaiting confirmation from the mortgage creditor and will notify the Trustee and the court of any denial within 14 days in which case the Debtor will modify the plan accordingly.

DISCUSSION

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

The Debtor has, once again, failed to provide sufficient evidence and argument to justify confirming the plan. In fact, the civil minutes from the Debtor's previous attempt at confirming a plan summarizes, once again, the court's repeated concerns with the Debtor, Debtor's counsel, and the proposed plans.

The court notes that this is not the Debtor's first (or second or third) pending bankruptcy case since 2009. Debtor filed, in pro se, a Chapter 13 case on September 23, 2009, which was dismissed on November 10, 2009. 09-40428. Debtor then filed, in pro se, a Chapter 7 case on February 12, 2010. 10-2333. In that case she received her discharge on July 30, 2010.

Debtor commenced a Chapter 13 case, in pro se, on September 9, 2011. 11-41829. On November 28, 2011, Debtor's counsel in this case substituted in and represented Debtor in the 2011 case. Debtor confirmed a plan in the 2011 case. 11-41829; Order filed January 31, 2012, Dckt. 61. By February 2012, one moth later, Debtor filed a motion to modify the confirmed plan. *Id.*; Dckt. 72. Confirmation of the modified plan was denied.

A second modified plan was confirmed by the court on June 25, 2012. *Id.*; Order, Dckt. 100. By September 2012, the Chapter 13 Trustee filed a notice of default in plan payments by Debtor. *Id.*; Dckt. 102. This begat the Debtor filing a third modified plan and motion to confirm on October 12, 2012. *Id.*; Dckts. 108, 104. The court confirmed the Debtor's third modified plan on December 20, 2012. *Id.*; Order, Dckt. 113.

In August 2013, the Chapter 13 Trustee filed a notice of default in plan payments for June and July 2013. *Id.*; Dckt. 114. The Debtor responded, filing a fourth modified plan and motion to confirm. *Id.*; Dckts. 116, 117. The court confirmed the Fourth Modified Plan by order filed on November 1, 2013. *Id.*; Dckt. 129. By January 2014, the Chapter 13 Trustee had filed another notice of default, identifying defaults for three months. *Id.*; Dckt. 130. The case was then dismissed by order filed on March 24, 2014.

Debtor commenced the current case on April 1, 2014 (just seven days after dismissal of the prior Chapter 13 case in which there were multiple plan payment defaults and modified plans). The court confirmed the Debtor's Chapter 13 Plan in this case by order filed on June 18, 2014. Dckt. 56. In December 2014 the Chapter 13 filed a Notice of Default in this case in plan payments. Dckt. 61. The confirmed Plan required Debtor to make payments of $2,895.00 a month for forty-two months, and then the payments stepping up to $2,985.00 and then to $3,065.00 a month. The Debtor had defaulted in the November and December 2014 payments. (The court notes from the Trustee's report of payment in the Notice, that the Debtor consistently ran one month in arrears with her plan payments.)

In seeking the various modifications, the Debtor has some routine and some extraordinary emergencies which have arisen. Each of these has derailed the Debtor in performing what she had promised. While the court is sympathetic to consumers dealing with everyday real life struggles, the Debtor and her counsel have demonstrated that the Debtor is not a credible witness with respect to her finances. It appears that Debtor and her counsel create whatever plan is the Debtor's dream, not one based on financial reality.

Debtor's response has been to file an amended plan in this case. Since commencing her Chapter 13 case in 2011, the Debtor has confirmed five plans spanning three years – with the Debtor defaulting on all of them. The current proposed plan promises that the Debtor will make monthly payments going forward of $2,430.00.00 a month for six months, and then stepping up the payments to $2,525.00 and then to $2,610.00, the same exact proposed step up payments from the Debtor's previously failed proposed plan (Dckt. 82).

The Trustee's objection concerning the adequate protection payment is well-taken. A review of the proposed plan and the supplemental pleadings show that the Debtor has not explained or provided information as to how the proposed adequate protection payments are sufficient. The Debtor, in her reply, merely states "this is proper" without any evidence or citations to justify the Debtor's calculation. The objection by the Trustee, however, should not have come as a surprise given the fact that the Trustee raised the same exact objection on the Debtor's last attempt to confirm a modified plan. The Debtor still has not provide any evidence that this amount, however, actually does protect the creditor, outside of merely saying "it does." The court cannot determine, based on the information provided, if the proposed payments is sufficient.

On Schedule A Debtor lists the her residence having a value of $316,000.00 and Wells Fargo Bank, N.A. having a secured claim well in excess of that amount. While the Debtor and Trustee discuss the principal and interest payments on the variable interest rate loan that Debtor admits she has to modify, the simple fact is that reducing the debt to the value of the property yields a payment (for a person with a good credit score) may yield a loan payment unreachable for Debtor.

While the supplemental declaration filed by the Debtor (Dckt. 73) for the prior Motion to Confirm provided some explanations for changes in circumstances that led to an increase in expenses, including the health of her child and the damage to her home following the earthquake in August 2014, it does not address the feasibility of the Debtor to proceed in the good faith performance of the Chapter 13 Plan nor was it provided for in connection with the instant Motion.

Going back to the “explanations” for the extraordinary events which cause defaults under prior plans, this Debtor has testified:

a. Declaration in Support of Fourth Modified Plan, 11-41-829, Dckt. 119.

> “I have had several changes/problems that have arose which now require me to further modify my Chapter 13 Plan. These factors include; I missed payments because of three family incidents that recently occurred - my son was caught in a crossfire and was shot, my mom just went through a medical procedure and my daughter went back to the east coast for college - I have proof of all incidents and I am the "rock" of my family - the only one EVERYBODY depends on and needs. If I can place the missed payments on the end that would be great as I don't want to jeopardize having this case dismissed.”

b. Declaration in Support of Third Modified Plan, 11-41-829, Dckt. 106.

> “I have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I have incurred unexpected expenses on the rental property that was originally included in the plan however, I ended up surrendering the property. I incurred unexpected expenses related to getting my daughter off to college on the East Coast.”
>
> “I filed for protection under the bankruptcy code because I originally had a rental property and was having trouble with the tenants paying. There was also a death in my immediate family and loss of income from a family member.”

c. Declaration in Support of Second Modified Plan, 11-41-829, Dckt. 91.

> “ have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I am Surrendering the real property currently in class one located at 8805 Scarlino Court, Vallejo CA.”

Debtor’s plan requires her to make payments for two vehicles. One is a 2006 Land Rover, to repay a $12,000 debt. This vehicle is now 9 years old, and it is likely that the next extraordinary event explaining a default is that there has been a major vehicle expense. The Debtor is also choosing to pay for a 2009 Dodge Charger. While repeatedly defaulting in her Chapter 13 Plan, it is “necessary” for this Debtor to be paying for two cars.

The Debtor has not shown that yet another modification of a Chapter 13 Plan will result in a feasible plan that can be performed. While the Debtor may desire to have a plan, she has shown that she cannot perform the plan. It is concerning to the court that both Debtor and Debtor’s counsel have not addressed these concerns as they have been on notice of such inadequacies in

the proposed plans for awhile.

The Debtor states that there is a pending application for a modification, but no evidence has been presented that such application has taken place. Once again, the Debtor appears to be trying to "force" the proposed plan to confirmation by continually filing a nearly identical plan without providing sufficient explanation to changes in expenses, legitimate argument to justify the adequate protection payment, nor the necessity of certain expenses, namely the mother's car.

Finally, the proposed adequate protection payment based on 31% of Debtor's income bears no relationship to what a plausible modified loan payment would be for Debtor. Just because Debtor can only afford to pay $1,698.01 a month for a payment doesn't mean that it is adequate for the secured claim. Proof of Claim No. 7 states as of the commencement of this case the secured claim was $403,795.48. When the case was filed, Debtor stated the property had a value of $316,000.00. Schedule A, Dckt. 1.

If the Creditor were to modify the loan to capitalize all of the pre-petition arrearage, waive the post-petition arrearage and reamortize the obligation over 30 years at 3.5% interest per annum (as if Debtor had a high credit score and had placed a 20% down payment, not 100% financing), the monthly principal and interest payment alone would be $1,813.22. FN.1.

FN.1. All of the loan amortization calculations were made using the Microsoft Excel Simple Loan Calculator.

If the Creditor were even more generous and write off $50,000 of the pre-petition debt (though no evidence of such a possibility is provided), in addition to waiving the post-petition defaults, a $353,795.48 principal balance would require a $1,588.70 principal and interest monthly payment. Debtor is still unable to make this discounted payment, and fund the necessary property taxes and insurance.

Debtor has had multiple opportunities to perform a plan and has failed. Debtor has failed to provide the court with credible evidence that she can perform the current Plan.

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

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

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

47. 14-23385-E-13 MICHELE WILLIAMS
JHW-1 Peter Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-21-15 [99]

LAND ROVER CAPITAL GROUP VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Michele Angelique Williams ("Debtor") commenced this bankruptcy case on April 1, 2014. Dckt. 1. Land Rover Capital Group ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Landrover RS Sport, VIN ending in 7984 (the "Vehicle"). The moving party has provided the Declarations of Tina Gritte and Jennifer Wang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant filed the instant Motion for Relief on August 21, 2015. Dckt. 99. Movant asserts that Debtor is delinquent under the confirmed plan. Dckt. 99,

¶ 6. The Wang Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $7,510.00 in post-petition payments past due. Movant requests that this court terminate the automatic stay so Movant may pursue its claim under nonbankruptcy law. Movant also requests this court to waive the 14-day stay.

TRUSTEE'S RESPONSE

David Cusick, as Chapter 13 Trustee, filed a response on September 8, 2015. Dckt. 107. Trustee asserts that Debtor is delinquent $7,975.00 under the confirmed plan in payments to Movant. However, under the proposed third modified plan, Debtor is current.

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 8, 2015. Dckt. 110. Debtor asserts that the Debtor filed a modified plan and Motion to Confirm for October 6, 2015. A review of the court's docket shows the modified plan and Motion to Confirm were both filed August 21, 2015. Dckt. 93, 97. Debtor also asserts that Creditor received a payment on August 31, 2015, and that Debtor's proposed modified plan creditor will receive monthly payments of $250 per month. Dckt. 110. Debtor requests that the court continue the motion until the hearing scheduled October 6, 2015 to decide the Motion to Confirm.

SEPTEMBER 22, 2015 HEARING

At the hearing, court continued the hearing to 1:30 p.m. on October 6, 2015 to be heard in conjunction with the Motion to Confirm. Dckt. 115.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $36,256.65, as stated in the Gritte Declaration, while the value of the Vehicle is determined to be $12,000.00, as stated in Schedules B and D filed by Debtor.

On October 6, 2015, the court denied confirmation of the Debtor's third proposed modified plan. Therefore, the substantial delinquency under the confirmed plan still exists.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for

either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Land Rover Capital Group, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the 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 for Relief From the Automatic Stay filed by Land Rover Capital Group ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2006 Landrover RS Sport, VIN ending in 7984 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.
>
> No other or additional relief is granted.

48. 11-49386-E-13 CHRISTINA SCOTT MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 8-24-15 [65]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

49. 12-30588-E-13 DIANE/OSVALDO MALDONADO MOTION TO MODIFY PLAN
ET-8 Matthew Eason 8-24-15 [172]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2015. 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

Diane Marie Maldonado and Osvaldo Reene Maldonado ("Debtor") filed a petition for Chapter 13 relief and accompanying Plan on June 1, 2012. Dckt. 1, 5. Debtor filed an Amended Plan on July 5, 2012. Dckt. 19. Debtor filed a Second Amended Plan on August 6, 2012. Dckt. 30. The court confirmed the August 6, 2012 Plan on September 27, 2012. Dckt. 46. Debtor filed a Modified Plan on March 18, 2014, which was denied without prejudice on April 30, 2014. Dckt. 76, 89. Debtor filed a Modified Plan dated May 20, 2015, attached as an Exhibit to the Motion to Confirm; this Modified Plan was denied by the court on July 27, 2015. Dckt. 148, 151, 163.

Debtor filed a Modified Plan and accompanying Motion to Confirm on August 24, 2015. Dckt. 172, 176. Debtor asserts a number of expenses have changed in the three years since the August 6, 2012 Plan was approved, including:

1. approximately $7.00 decrease in mortgage payments;
2. a loan modification curing property tax arrears, giving the bankruptcy estate a refund of $1,911.11 from CL Raffety;
3. a change in monthly disposable income to $445.23;
4. a loan modification with Green Tree Servicing, curing the debts owed to CL Raffety in January 2014;

5. an increase in auto insurance from adding a third child to the plan;
6. a $65.00 increase in cell phone plan from adding the youngest child onto the plan;
7. incorporating the telephone costs into Debtor's cable/internet/landline accounting;
8. a $50.00 increase in water/sewage costs;
9. incorporating Debtor's homeowner's insurance into the mortgage payment;
10. a $100.00 increase in health insurance.

Dckt. 174 ¶ 4-9. Debtor declares, under penalty of perjury, that the new Modified Plan complies with the requirements of §§ 1322, 1325, and 1329. Dckt. 174.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on September 21, 2015. Dckt. 185. Trustee asserts two grounds for rejecting confirmation. First, that the plan is not Debtor's best efforts because taxes and insurance are not included in the mortgage payment, which may lead to $408.00 in additional disposable income. Second, that the Amended Schedules I and J are not filed using the official Form B6I and B6J, effective December 2013.

DISCUSSION

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

A review of the docket shows that the Debtor filed a new modified plan and accompanying Motion to Confirm on September 24, 2015. Dckt. 192 and 196. The hearing for the new proposed modified plan is set November 17, 2015.

In light of the Trustee's objections and the de facto withdrawal of the instant plan based on the Debtor filing a new proposed modified plan, the modified Plan filed on August 24, 2015 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.

50. 15-25788-E-13 CAMILLE GARRETT
DPC-1 Brian Turner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-2-15 [15]

Final Ruling: No appearance at the October 6, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on September 2, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on October 20, 2015.

David P. Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Collateral of Chrysler Capital.

The Trustee's objections are well-taken and the proposed plan does rely on the valuation of the collateral of Chrysler Capital.

A review of the docket shows that the Debtor filed a Motion to Value Secured Portion of Claim of Chrysler Capital and Avoid Nonpossessory Nonpurchase-Money Security Interest on September 22, 2015. Dckt. 20. The Motion is set for hearing on 3:00 p.m. on October 20, 2015.

In light of the Motion to Value Collateral being set for hearing, the instant Objection to Confirmation is continued to 3:00 p.m. on October 20, 2015 to be heard in conjunction with the Motion to Value Collateral.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to 3:00 p.m. on October 20, 2015 to be heard in

conjunction with the Motion to Value Collateral.

51. 11-38892-E-13 DAVID/DEBORAH WILLIAMSON
FF-2 Brian Turner
MOTION TO APPROVE NOMINATION OF DEBTOR'S REPRESENTATIVE
8-31-15 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

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

The Debtor filed for relief under Chapter 13 on August 1, 2011. On October 26, 2011, the Debtor's Chapter 13 Plan was confirmed. Dckt. 34. On May 29, 2015, Debtor David Williamson passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

The Joint Debtor requests authorization to be substituting in for the

deceased debtor as personal representative. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

A Notice of Death was filed separately on August 31, 2015. Dckt. 54.

TRUSTEE'S NON OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on September 22, 2015. Dckt. 61. The Trustee states that the Debtor is in month 49 of a 60 month confirmed plan. The Trustee calculate that the case will complete in November, 2015 to pay all creditors 100% of their filed and allowed claims. The Debtor is current under the plan.

The Trustee does note that there may be a modest life insurance policy as there was a life insurance expense of $64.00 listed on Schedule J. However, there is no policy listed on Schedule B or C. The Trustee is unable to determine who the policy belongs to.

DISCUSSION

Local Bankruptcy Rule 1016-1 deals specifically with the procedure upon the death or incapacity of a debtor during the pendency of a bankruptcy case. Specifically, the Local Rule provides:

> (a) Notice of Death. In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.
>
> The Notice of Death may be combined with the single motion permitted by paragraph (b) of this Rule. If so combined, the title to the motion and notice of motion shall be: "NOTICE OF DEATH AND MOTION FOR [state relief requested]." The death certificate (redacted as appropriate) shall be filed as an exhibit to such motion.
>
> (b) Single Motion for Omnibus Relief Upon Death of Debtor. When the debtor has died or has become incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P. 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:
>
> > (1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];

(2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bank. P. 1016];

(3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and

(4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

Here, Deborah Sue Williamson, the Surviving Debtor requests, the substitution of Deborah Sue Williamson as the personal representative for David Williamson, the Deceased Debtor.

Therefore, the Motion is granted and Deborah Sue Williamson is substituted in as the personal representative for the late David Williamson.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and that Deborah Sue Williamson, the surviving Debtor, is substituted in as the personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014, for David Williamson, the deceased Debtor.

Debtor Sue Williamson, as the personal representative, shall file a motion for continued administration of the case (Fed. R. Bankr. P. 1016) as to the rights and interests of David Williamson on or before October 30, 2015.

52. 15-25697-E-13 DONNA PALMER
NBC-1 Eamonn Foster

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
8-17-15 [19]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 17, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $9,500.00.

The Motion filed by Donna Lynn Palmer ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") on August 17, 2015. Dckt. 19. Debtor's Motion is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Kia Optima, VIN ending in 8430 ("Vehicle"). Dckt. 21. The Debtor seeks to value the Vehicle at a replacement value of $8,000.00 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). FN1. Debtor also asserts that Creditor holds a lien of approximately $11,114.47 against the car. Proof of Claim 1.

FN.1. Debtor provides two exhibits to corroborate Debtor's valuation: a KBB.com and Edmund's Report. Dckt. 22 Exhibits. A, C. However, Creditor properly objects to these reports coming in as evidence. Debtor has not provided the court with a basis for determining that the references to out of court statements from KBB.com or Edmunds Reports are admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Debtor, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17). Thus, Debtor's valuation is based on Debtor's lay person testimony. Fed. R. Evi. 701.

CREDITOR'S OPPOSITION

Creditor filed an opposition on September 21, 2015. Dckt. 28, 29. Creditor objects to the value of the car at $8,000.00, and instead asserts the correct value is $9,500.00. Dckt. 32 Ex. C.

Creditor properly authenticated a NADA Valuation report and demonstrated a hearsay exception allows the report to come into evidence. Fed. R. Evi. 801, 802, 901. The NADA Valuation report states that the clean retail is $9,500.00.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in July 24, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,114.47. Dckt. 28 ¶ 1; Dckt 21 ¶ 2; Dckt. 22 Ex. C. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized.

11 U.S.C. § 506(a) contemplates that the value that should be used is the replacement value. The value may be adjusted according based on the quality of the vehicle or other evidence by the debtor. The Debtor has offered no evidence or justification as to why the court should not use the replacement value of $9,500.00 or reduce it based on the current condition of the Vehicle.

Without evidence as to the Vehicle being in such quality that it would justify a reduction of the "Clean Retail," the court adopts the valuation of the Creditor, based on the NADA Valuation Report, of the Vehicle at $9,500.00. The creditor's secured claim is determined to be in the amount of $9,500.00. *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 Donna Lynn Palmer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel,

and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2010 Kia Optima, VIN ending in 8430 ("Vehicle") is determined to be a secured claim in the amount of $9,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

53. 11-30298-E-13 BONIFACIO/ALICIA LOYOLA MOTION TO MODIFY PLAN
WW-2 Mark Wolff 8-26-15 [41]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2015. By the court's calculation, 38 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.

Bonifacio P. Loyola and Alicia Cabuena Loyola ("Debtor") filed a petition for Chapter 13 relief and accompanying Plan on April 26, 2011. Dckt.

1. David Cusick was appointed as Chapter 13 Trustee ("Trustee") on April 26, 2011. Dckt. 2. The April 26, 2011 Plan was confirmed on July 22, 2011. Dckt. 20.

DEBTOR'S MOTION TO CONFIRM FIRST MODIFIED PLAN

Debtor filed a First Modified Plan and Motion to Confirm on August 26, 2015. Dckt. 41, 43. Debtor moves to modify the plan because Alicia (joint-debtor) was injured and stopped working, reducing their income from $2,426.67 (Gross) and $2,025.68 (Net) to $1,559.98 from State Disability and worker's compensation. Dckt. 44 ¶ 3. This reduced Debtor's budget, and Debtor seeks to reduce payments from $600.00 per month to $500. *Id.*

TRUSTEE'S OPPOSITION

Trustee filed an opposition on September 21, 2015. Dckt. 54. Trustee objects on three grounds:

1. The First Modified Plan will be complete in 81 months, not 60 months as statutorily required; this increased time is due in part to the decrease in monthly payments and the increase in percentage to unsecured creditors.

2. Debtor's Proof of Service did not include the Debtor's Declaration; the copies mailed to Trustee only included the Motion, First Modified Plan, and Notice.

3. Debtor's First Modified Plan and Declaration do not contain the signatures of both Debtors, but rather only that of Bonifacio P. Loyola.

Dckt. 54, 55.

DISCUSSION

Trustee's objections are well-taken.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 81 months due to a concomitant decrease in monthly payments (from $600.00 to $500.00) and an increase in percentage provided for unsecured creditors (from 0% to 4%). These adjustments will force the Debtor to exceed the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

Debtor's Notice was insufficient to Trustee because a material document, the Declaration, was not provided to Trustee. Federal Rule of Bankruptcy Procedure § 2002 and Local Bankruptcy Rule § 9014-1(e) require that service of all documents filed in support of a motion shall be made on or before the date they are filed with the Court. Debtor failed to give Trustee the Declaration supporting Debtor's Motion to Confirm Modified Plan before filing it with the court. Dckt. 55 ¶ 3a.

Finally, the Plan does not comply with all provisions of this chapter and other applicable law due to Debtor's failure to provide both signatures on

the electronically filed Plan and Declaration. Dckt. 44; 11 U.S.C. § 1325(a)(1). Specifically, Local Bankr. R. 9004-1(c)(1)(B) outlines the requirements for electronic signature for non-registered users. This is further support that Trustee's objections should be sustained.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. However, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

54. 13-30998-E-13 RALPH SETTEMBRINO MOTION TO SELL
MET-4 Mary Ellen Terranella 9-7-15 [99]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Ralph Settembrino, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 36 Balboa Avenue, Vallejo, California

The proposed purchaser of the Property is Courtney Thomas and the terms of the sale are:

1. Sale price is $221,000.00.

2. The sale is a short sale and Well Fargo Home Mortgage has agreed to the terms of the short sale. The lender has authorized $10,000.00 in HAFA Incentives to the Movant.

3. Initial deposit by Buyer of $6,000.00

4. First loan of $100,000.00 with the remaining balance of $38,000.00

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on September 15, 2015.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. A review of the California Residential Purchase Agreement and Joint Escrow Instructions and the letter from Wells Fargo Home Mortgage indicate that the short sale of the Property is in the best interest of the estate, Debtor, and the creditors.

Furthermore, the Debtor requests that the 14-day stay period pursuant to Fed. R. Bankr. P. 6004(g) be waived due to the estimated scheduled sale time of October 9, 2015. The court finds that, in light of the short sale nature of the sale and for cause, the 14-day stay period is waived.

The court also authorizes Debtor to receive the $10,000.00 HAFA payment directly from escrow from the sales proceeds subject to creditor’s lien.

Therefore, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Ralph Settembrino, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Ralph Settembrino, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Courtney Thomas or nominee (“Buyer”), the Property commonly known as 36 Balboa Avenue, Vallejo, California (“Property”), on the following terms:
>
> 1. The Property shall be sold to Buyer for $221,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 103, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and

contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The 14-day stay period pursuant to Fed. R. Bankr. P. 6004(g) is waived for cause.

5. Debtor is authorized to receive the payment of $10,000.00 of the sales proceeds, directly from escrow, for the HAFA payment from Wells Fargo Bank, N.A.

55. 15-25998-E-13 DPC-1 KEVIN/ARLENE QUACKENBUSH Marc Caraska

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-9-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors have not commenced plan payments and are delinquent by $46.31, which represents one payment under the Plan.

2. Debtor's plan is not Debtor's best efforts. Trustee asserts the following deficiencies:

   a. Debtor claims to be below median income, but:

i. Debtor has not reported all income on Form 22C, Schedule I, and the Statement of Financial Affairs;

ii. Debtor only reports half of Arlene Quackenbush's income;

iii. Debtor's spouse only reports weekly gross monthly income at $558.80, while Trustee's review of paystubs for Arlene Quackenbush shows a gross income of $2,176.96 per month.

iv. At the 341 Meeting held on September 3, 2015, Debtor stated her income was paid weekly; Debtor's Schedule I shows a bi-weekly pay scale.

b. Debtor Kevin Quackenbush's paystubs show a deduction for Vacation C-7 which averages $89.09 per paystub; it is not clear if Debtor receives these funds back during the year.

c. On Debtor's Statement of Financial Affairs, under Question 1, Debtor did not provide a year-to-date income for 2015, and listed the joint income for Debtors as $1.00 for 2014, 2013, and 2012.

3. The Plan relies on a Motion to Value the secured claim of Webster Bank, which has not been filed. Thus, the Debtor's plan does not have sufficient monies to pay the claim in full.

4. Debtors have improperly classified two auto claims for Golden One Credit Union as Class 4, rather than Class 2 as provided under § 2.09.

5. Debtors failed to complete the Statement of Financial Affairs. In #1, Debtors report income of $1.00 for 2012, 2013, and 2014. In #3, Debtors report making no payments within the 90 days prior to filing, yet list 3 creditors in Class 4.

The Trustee's objections are well-taken.

The basis for the Trustee's first objection is that the Debtor did not commence plan payments and is $46.31 delinquent in plan payments, which represents one month of the $46.31 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Trustee's second and fifth objection is that the Debtor's payments do not reflect Debtor's best efforts under 11 U.S.C. § 1325(b) due to failure to fully disclose an accurate picture of the Debtor's financial reality. The omission of information on Schedules and Statement of Financial Affairs in conjunction with conflicting statements in the schedule and the Meeting of Creditors raises concerns over whether the finances purported by the Debtor in his papers are accurate representations of what the Debtor's actual income and

expenses are. The court will not confirm a plan when there are sufficient deficiencies in the finances reported by the Debtor.

Trustee's third objection is to Debtor's reliance on a Motion to Value Collateral that has not been filed. A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Webster Bank. Dckt. 1 § 2.09(d). After reviewing the court's docket, the Debtor has failed to file a Motion to Value the Collateral of Webster Bank. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

Trustee's fourth objection is an extension of its third. The plan fails to take into account Webster Bank's secured claim, and thus must run longer than the 36-month plan presented. Trustee asserts that the plan will run 60-months to accommodate Webster Bank's claim, which means the two auto claims for Golden One Credit Union will mature before the plan is completed. Thus, Golden One Credit Union's claims should be Class 2, not Class 4, to comply with the plan language.

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.