UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

October 7, 2014 at 2:00 p.m.

1.	11-39000-C-13 ULC-1	MARK ALVAREZ AND DAWN LARKINS Julie B. Gustavson	MOTION TO INCUR DEBT 9-4-14 [54]

Final Ruling: No appearance at the October 7, 2014 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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to purchase a 2013 Hyundai Sonata with 25,646 miles. The total purchase price will be $20,638.93, and the down payment amount is set at $4,500.00. The amount to be financed is $16,138.93 at 4.40% APR over 60 months which equates to $300.70 per month.

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

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

Debtors Mark Dominic Alvarez and Dawn Louise Larkins ("Debtors") reported an interest in three vehicles in their bankruptcy case. The first vehicle is a 2005 Saturn Vue with approximately 87,000 miles, the second vehicle is a 2005 Chrysler PT Cruiser with approximately 143,447 miles, and a 2002 Oldsmobile Alero with approximately 95,320 miles. Before the bankruptcy case was filed, the Debtors gave their son the 2002 Oldsmobile Alero for his use in attending school, as transportation for work, and other personal uses. The Debtors did not transfer title before the date of filing.

Debtors state that on August 2012, the vehicle's transmission gave out and has remained unrepaired. On August 9, 2014, the Debtors were involved in a vehicle accident with their 2005 Chrysler PT Cruiser. The Debtors received two insurance checks in the total amount of $4,636.05 they still have the check on-hand, and desire to use the funds as a down payment to replace their 2005 Chrysler PT Cruiser. Exhibit 1, Dckt. No. 57. As a result of the auto accident, the Debtors currently wish to purchase a replacement vehicle. The Debtors have settled on a used 2013 Hyundai Sonata with 25,646 miles.

The Chapter 13 Trustee filed a statement of non-opposition on September 8, 2014 to Debtors' Motion to Incur Debt.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, 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 Incur Debt 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 Mark Dominic Alvarez and Dawn Louise Larkins, Debtors, are authorized to incur debt pursuant to the terms of the Auto Financing Agreement, Exhibit 2, Dckt. 57.

2. 14-27907-C-13 ROBERT/CARLA JAYE — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Diana J. Cavanaugh — 9-10-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on September 10, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors are over median income (Dkct. No. 1, Form B22c) and are proposing plan payments of $670.00 for 60 months with a 100% dividend to unsecured claim holders, but no interest rate is proposed to unsecured claim holders and unsecured claims are not being paid immediately.

Form B22C reflects monthly disposable income on Line #59 of $1,796.92. Schedule J lists the Debtors' monthly net income on Line #23c as $1,533.78. $863.78 of the Debtors' projected monthly net income is not committed to the plan payment or any expense, where the plan payment is only $670.00.

DEBTOR'S RESPONSE

Debtors contend that the plan, which proposes payment of 100% of unsecured claims in sixty months, is their best effort at least for the next six months. Debtor husband holds seasonal employment as a laborer with Ghilotti Bros. Inc., and thus, has a variable income. His income decreases during rainy season.

The gross income listed on Schedule I for debtor husband was the average gross income earned for the 1/1/14 to 6/30/14 period. Due to the drought, Debtor did not lose as much income as he usually does. Debtors are concerned that they will struggle with paying $1,533.78 per month. They may not have enough money for monthly living expenses during the upcoming rainy season.

Debtors propose an alternative plan, under which they will make payments in the amount of $670.00 per month for the next six months. Beginning 4/25/15, Debtors will pay $1,000.00 per month for the remaining length of the plan.

DISCUSSION

The court's decision is to sustain the Objection to Confirmation. The court finds Debtors' explanation regarding variable income persuasive, but before it can confirm a plan and find that Debtors' can afford the payments, it requires further verification of income. A review of Debtors' Statement of Financial Affairs Item 1 suggests that the Debtor husband's income decreases during the second half of the year (comparing the income for the first half of 2014 with the income for the entirely to 2013 suggests that the second half of the year produces less income). A review of Debtor husband's pay advices for the entirety of 2013, supporting Debtors' declaration would provide the court with greater confidence in the feasibility and good faith efforts of the Debtors. At this time, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

3. 14-20008-C-13 TISHA KRAMER MOTION TO CONFIRM PLAN
SJS-2 Scott M. Johnson 8-25-14 [60]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2014. By the court's calculation, 44 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of $165.00 for 36 months with a 1% dividend to unsecured creditors.

2. Debtor's Declaration, Dckt. No. 62, indicates that the Debtor's mother is contributing $1,400.00. This income is not listed on Schedule I, thus not all disposable income is being contributed into the plan.

3. On August 25, 2014, Debtor amended Schedule I to show that she is now working for OS Restaurant Services, as a Server, making $1,767.46 gross per month and taking home approximately $1,363.64. Debtor is working as a server in a restaurant, but she does not

indicate where the restaurant is located, the hours she is working, or the tips she received as a server. Debtor's declaration only says she "found a job." Debtor may not be reporting all income.

4. Debtor has only paid $320.00 in plan payments since this case commenced on January 1, 2014, where the original plan proposed $160.00 per month, Dckt. No. 6. Debtor's Schedule I went from unemployed for three months with both anticipated unemployment income of $600.00 and anticipated employment income of $1,400 (Dckt. No. 1, page 23), to employed for three months as of June 1, 2014 with an income of $1,767.46. Dckt. No. 58.

5. In May 2014, a second amended plan was filed, Dckt. No. 43, which called for the debtor to pay $160.00 per month for 36 months and cured the already delinquent debt. Debtor never made a payment under that proposed plan. In support of the plan filed on May 12, 2014, Debtor filed a Declaration of Sharon Kramer signed by the Debtor (Dckt. No. 37, page 2), which said that Debtor's mother was willing to contribute to the Debtor $1,400 per month to assist the debtor in plan payment and living expenses. Debtor has not explained why she has not made the payments called for under the plan or what she has done with any payments her mother has contributed toward her support. Debtor has not indicated in her declaration how she is going to approach the plan differently in the future.

DEBTOR'S SUPPLEMENTAL DECLARATION

On October 2, 2014, Debtor filed a supplemental declaration. In the declaration, she asserts the following:

1. The plan represents the best terms she can offer to the court.

2. After a review of her schedules, Debtor affirms that:

   a. Her average monthly net income is $1,363.64.
   b. Her average monthly expenses are $1,196.00.

3. Debtor's net disposable income is $167.64 and she proposes a $165.00 Chapter 13 payment.

4. Since the filing of the original plan, Debtor obtained employment and filed an amended Schedule I reflecting the new employer and income. Debtor states that she filed recent pay advices showing her current income as an exhibit.

5. Debtor made the following changes to her budget to afford the slight increase in Chapter 13 plan payments:

   a. Reduction of $34,00 for no longer contributing to water/sewer/garbage utility bill.
   b. Increased food and housekeeping budget by $10.00. The previous amount of $100.00 was insufficient.

6. Debtor declares she is current on her Chapter 13 plan payments.

DISCUSSION

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

Deficient Declaration

The supplemental declaration offered by the Debtor states that it is under penalty of perjury and states " . . . I have actual knowledge of the statements contained herein except those based upon information and belief." This could be read two ways. The first is that "whatever I have said is true, to the extent that I have any knowledge about what I am talking about." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Counsel for Debtor is advised to update his declaration forms to be in unqualified compliance with § 1746, as the next time this court, or other judges sitting in this District, may well find the declaration to be insufficient and deny the motion without prejudice and without a hearing.

Review of Declaration

Even if the declaration presented competent, admissible evidence, it does not provide sufficient grounds for the court to grant the pending Motion.

First, Debtor does not address what happened to her mother's monthly assistance of $1,400.00. Debtor included this amount in her declaration with the Motion to Confirm (Dkt. 62), but does not address the issue in the supplemental declaration (note: the declaration submitted with the Motion to Confirm is similarly deficient under 28 U.S.C. § 1746.)

Debtor states she is current on plan payments pursuant to the terms of the Second Amended Plan. The Trustee's records reflect that Debtor's original plan proposed $160.00 payments per month. Debtor increased the plan payment starting September 25, 2014 to $165.00. Debtor was unemployed from January through May 2014, but began earning income in June 2014. From the months of June through September 2014 Debtor was employed and should have contributed at least $645.00. The Trustee's records reflect that, to date, Debtor has made $320.00 in plan payments. Debtor is not current.

Finally, Debtor does not provide more details on her employment, as requested by the Trustee. Debtor stated that she attached pay advices as exhibits; however, no such documents appear on the docket. Debtor needs to provide this information before the court will consider confirming a plan.

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

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

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

4. 14-29214-C-13 CLEVELAND BELLARD MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 9-15-14 [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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2014. By the court's calculation, 23 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.

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 11-49432-A-13J) was dismissed on July 7, 2014 after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. JPJ-5, Dckt. 61, 7/7/2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the

Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. He states that he paid almost $40,000 towards his previous case. However, he missed his May 2014 payment because he had unusual expenses for food, utilities, gasoline, and other things when his three college age children came home from summer break. When the Trustee filed a Notice of Default and Application to Dismiss case, the Debtor was unable to cure his default within the required 30 days, and the case was dismissed.

Under the current case, Debtor plans to pay off the mortgage on his residence and his property taxes. The plan provides for refinancing of Debtor's mortgage, if necessary to pay off the loan within the proposed 5 year plan period. Debtor is certain that he will be able to refinance his mortgage during the term of the proposed plan because real estate values have been going up, and Debtor already has equity in his house, which he did not have during his previous case. Debtor predicts that he will successfully complete his current plan because i) the loan balance is now lower than that during his previous case, and ii) his plan payments are lower.

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.

5. 13-34319-C-13 LOUIS/NAOMI MALOTT MOTION TO LEASE AN AUTOMOBILE
TOG-2 Thomas O. Gillis 9-17-14 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 17, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Lease an Automobile is denied without prejudice.

The motion seeks permission to enter into a lease agreement with Ford Motor Credit for a 2014 Ford F-150 Truck. Debtors assert that at the time of filing, they were leasing a 2012 Ford F-150 from Ford Motor Credit (Sch. G, Dkt. 1). The lease expired and Debtors have decided it is in their best interest to enter into a lease for a 2014 Ford F-150. Debtors state they require reliable transportation for medical visits and treatment.

Debtors seek authority to enter into a similar lease. Payments on the lease for the 2012 Lease were $440.00 per month. Payments for the 2014 lease will be $450.31. Further, Debtors assert they can afford the $3,000 down payment. Debtors state that their income is substantially the same as it was at the time they filed their petition and the increase of $10.31 is affordable by Debtors.

In support of their Motion, Debtors offer the Declaration of Luis

Malott, that testifies to the following under penalty of perjury:

A. At the time of filing Debtors were leasing a 2012 Ford F-150 from Ford Motor Credit.

B. The 2012 lease expired and Debtors decided it was in their best interest to enter a lease for a 2014 Ford Truck. Debtors require reliable transportation for hospital visits related to back treatment and parental dialysis.

C. Debtors plan on replacing the 2012 Truck with a 2014 Truck of similar design.

D. Debtors declare they can afford the $3,000 down-payment and the monthly lease payments of $450.31.

E. Debtors have investigated other lease prices and have concluded that this lease meets their budget and need.

F. The proposed lease agreement is attached as Exhibit A, Docket. 30.

G. Debtor receives social security benefits and the family income is substantially the same as it was when the petition was filed.

H. Debtor's prior lease cost $440.00 per month. The payment of the proposed lease is $450.31. The increase of $10.31 is affordable.

REVIEW OF SCHEDULES AND CONFIRMED PLAN

Debtor is not employed and receives social security disability. Co-Debtor is employed as an Office Assistant. Debtors do not have any dependents. Debtors' Chapter 13 plan was confirmed on February 13, 2014 with monthly payments of $600.00 for thirty-six (36) months.

Debtors disclosed the 2012 Ford lease on Schedule G as an unexpired lease. Debtors' Schedule J included an "Auto" Installment payment of $440.00 per month for the lease. Other vehicles scheduled by the Debtors includes a 2008 Toyota Rav4 (Sch. B, Dkt. 1), payments for which are provided for in Class 2 of the plan at $408.00 per month.

Debtors do not list the 2012 Lease with Ford Motor Credit in section 3.02 of the plan. Section 3.02 states that any unexpired lease not listed in the section is rejected upon confirmation of the plan. As a result of not listing the 2012 Lease, the contract was rejected on February 13, 2014.

DISCUSSION

The court is hesitant to grant the current Motion without further testimony from the Debtors concerning the judgment involved in entering a lease contract for a vehicle costing $450.00 per month, an amount greater than the monthly car payment being made on the Toyota Rav4.

Debtors' declaration states that they need the vehicle to transport Debtor and Debtor's mother to different medical appointments and treatment centers. The court does believe that Debtors need a second car for this purpose, as it is likely that co-Debtor is using the current Toyota Rav4 to

drive back and forth to work. The court is not convinced that a $450.00 lease of a Ford F-150 Truck is in the Debtors' best interest. Debtors' declare that the vehicle is solely for commuting purposes, to and from medical appointments. A monthly payment of $450.00 is substantial, standing alone, and seems particularly unnecessary for a commuting vehicle. Outside of the monthly lease payment, the cost of gas for such a vehicle is substantial, especially if the vehicle is used for in-town commuting.

The court is also curious as to why Debtors did not assume the 2012 Lease Agreement in their confirmed Chapter 13 plan. As previously mentioned, the lease was not included in section 3.02 and upon confirmation the court considered the lease rejected. Debtors provided no time line as to the expiration of the 2012 lease. Did Debtors continue making payments on the rejected contract or did the expiration date of the lease coincide with the confirmation of the plan and, if so, how did Debtor's manage without a leased vehicle for the past eight (8) months?

Finally, Debtors did not explain how they were able to afford a $3,000.00 down payment when their monthly disposable income is committed to plan payments.

The court is amendable to Debtors entering into a lease agreement for a second vehicle. However, the court is not convinced that a Ford F-150 Truck at $450.00 reflects Debtors' best efforts. Further evidence may convince the court otherwise; however, without such evidence, the court does not find it appropriate to grant the Motion.

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 Lease an Automobile 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 Enter into a Lease Agreement is denied without prejudice.

6. 13-24532-C-13 HENRY/DEBBIE MAZUR MOTION TO MODIFY PLAN
LBG-2 Lucas B. Garcia 8-20-14 [105]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Confirm the Modified Plan and set an evidentiary for [date] at [time].

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

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

1. Trustee contends that Debtors' income and expenses are disputed material facts that require an evidentiary hearing to determine.

   Debtors are the 100% owners of Med Dent Construction, Inc. Debtors filed their case on April 2, 2013 and initially proposed a plan with payments of $150.00 per month. Debtors later amended the plan, calling for an additional payment of $159.12 directly by the Debtors to the second deed of trust

holder.

Trustee opposed confirmation of the next two plans and Debtors obtained confirmation of a plan which was originally proposed at $150 per month via stipulation (Dkt. 86), to an increase in payments of $1,750.00. Debtors made one payment of $1,750 and then filed a motion to modify to reduce the payments of $200. After that motion was denied, the present motion was filed proposed to reduce the payments to $200.

2. Trustee is not certain that Debtors have the ability to make the proposed plan payments. 11 U.S.C. § 1325(a)(6). Debtors' Amended Schedule I (Dkt. 91) shows a net monthly income of $3,100.17. Debtors' Amended Schedule J (Dkt. 104) shows monthly expenses of $2,895.56. Debtor Henry Mazur has net income consisting of $721.17 from his business as a contractor, $805.00 in social security, and $851.30 in monthly income due to expenses paid by the business. Net income for Debtor Debbie Mazur consists of $722.70 as a home health provider.

Trustee is uncertain of how Henry Mazur calculated a monthly net business income since the Business Income and Expense Statement filed concurrently with Amended Schedule J reflects gross business income for the past year of $0.00, a future gross business income of $1,830.20, and $3,800.35 in estimated future expenses, for an estimated average net monthly income of ($1,970.15). Trustee is also uncertain what personal expenses are paid by the business that Henry Mazur claims as income on Schedule I.

Debtor filed Spreadsheets and Bank Statements for personal and business expense accounts dating January 2014 through May 2014. Trustee notes that Debtors include in their personal spreadsheets for the months of January through March, the monthly mortgage payment of $1,605.61; however, when comparing this expense with bank statements for the same period, the mortgage payment appears to have been paid through the business account.

The Motion states that counsel required a "by-hand" accounting; however, the spreadsheets and bank statements do not support the statement. If Debtors are now paying the mortgage out of the personal account and not the business account, bank statements for the months of June through September should have been submitted to support this claim.

On April 21, 2014, Debtors agreed to increase their plan payment from $150.00 to $1,750, commencing May 25, 2014 as Debtors' business was paying the ongoing mortgage payment directly. Debtor filed an Amended Schedule J removing the mortgage payments and allowing for the increased plan payment.

Trustee points out that Debtors' plan was confirmed on May 27, 2014 and, less than one month later, on June 23, 2014, Debtors filed a proposed modified plan again claiming that

the mortgage is paid through their personal expenses and places the mortgage back on Schedule J. The present proposed modified plan appears to make the same claim and, just as before, includes identical spreadsheets and bank statements that do not support the Debtors' claim. Debtors' Motion includes a statement that Debtors cannot afford the "demanded stipulation" from the previous confirmation.

Debtors' declaration does not assist the Trustee in determining whether Debtors can afford the plan payments. The declaration does not explain multiple changes regarding individual expenses.

3. Trustee asserts that Debtors' plan was not proposed in good faith. 11 U.S.C. § 1325(a)(3). Debtors' business checking account for the months provided reflects $10,304.55 in deposits, or a monthly average of $2,060.91. Debtors' Schedule I states that expenses are shown using the May expenses at what the minimum costs is to keep the business operating when business is slow. The Trustee is confused as to what expenses are shown on Schedule I that represent minimum business costs for the month of May. The only expense listed is in the form of income in the amount of $851.30, which the Trustee believes to be personal expenses paid by the business, although Debtor has not provided what these funds encompass.

Debtors' Schedule J includes a $159.12 per month payment for Debtors' second mortgage. Debtors stipulated to this monthly payment as a resolution to Debtors' opposed Motion to Value regarding their second deed of trust. Wells Fargo Bank, N.A. and Debtors agreed that the secured value of the second deed of trust is $15,000 with interest accruing at 5%. The parties further agreed that Debtors would pay directly $159.12, commencing September 15, 2013. (Dkt. 43). In reviewing Debtors' exhibits, the monthly payment for the second deed of trust is absent. Debtors' business and personal bank statements do not appear to include any type of payment to Wells Fargo, N.A. for the second deed of trust. Further, Debtors' proposed modified plan no longer includes the second deed of trust in Class 4 despite Schedule J continuing to budget for the payment.

For the reasons outlined by the Trustee, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. Further, per the Trustee's suggestion, the court will issue an order setting an evidentiary hearing for [date] at [time] to resolve the discrepancies in Debtors' income and expenses.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having

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

IT IS ORDERED that an evidentiary hearing is set for [date] at [time] for the court to make findings of fact concerning Debtors' income and expenses.

7. 12-41433-C-13 RICHARD FRANKLIN — OBJECTION TO CLAIM OF TERRI FRANKLIN, CLAIM NUMBER 1
SCG-3 Sally C. Gonzales — 8-18-14 [55]

Final Ruling: No appearance at the October 7, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 18, 2014. Forty-four 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.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claim of Terri Franklin is sustained and the claim is allowed as a secured claim of $0.00 and a general unsecured claim of $75,500.

Richard Douglas Franklin, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Terri Franklin ("Creditor"), Proof of Claim No. 1-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $75,500. Objector asserts that the Claim asserted was secured by property commonly known as 6230 Peasant Grove Road, Pleasant Grove, California and on March 14, 2013, the court entered an order valuing the property at $265,000, rendering the claimant's second deed of trust secured in the amount of $0.00 with the balance of the claim general unsecured to be paid through the confirmed bankruptcy plan.

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).

A review of the court's docket confirms that on March 14, 2013, the court entered a civil minute order valuing property commonly known as 6230 Peasant Grove Road, Pleasant Grove, California at $265,000 and that this valuation resulted in Terri Franklin's secured claim being valued at $0.00. See Civil Minute Order, ECF 41. Claimant has not filed an amended proof of claim or any opposition to the relief requested in Debtor's Objection.

Based on the evidence before the court, the creditor's claim is disallowed as a secured claim of $75,500 and allowed as a secured claim in the amount of $0.00 and a general unsecured claim of $75,500. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Terri Franklin, Creditor filed in this case by Richard Douglas Franklin, 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 1-2 of Terri Franklin is sustained and the claim is disallowed as a secured claim of $75,500 and allowed as a secured claim of $0.00 and a general unsecured claim of $75,500.

8. 14-27936-C-13 DPC-1 — RANDY RICHARDSON AND JACQUELYN, Peter L. Cianchetta — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, 9-10-14 [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 and Debtor's Attorney on September 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan based on the following:

The Debtors did not appear and be examined at the First Meeting of Creditors held on September 4, 2014. Debtors are required to attend the meeting under 11 U.S.C. §343. Moreover, Debtors have failed to present any evidence to the Court as to why they did not appear.

Debtors did not meet the requirements of 11 U.S.C. §343 and have not provided a response to the Trustee's objection concerning their failure to appear at the First Meeting of Creditors. Under the circumstances, the Trustee does not have enough information to assess whether the plan is feasible. The Plan does not comply with 11 U.S.C. § 1325(a)(1). The objection is sustained and the Plan is not confirmed.

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

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

9.	11-47937-C-13 RAC-4	KARY/CHODI HOUSTON Richard A. Chan	MOTION TO MODIFY PLAN 8-28-14 [78]

Final Ruling: The Debtor having filed a Notice of Withdrawal on October 1, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

10.	14-24246-C-13 SAC-2	CARL ASMUS AND JODI CAMPISI ASMUS Scott A. CoBen	CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 5-14-14 [21]

Final Ruling: On September 18, 2014, Carl Asmus and Jodi Campisi-Asmus ("Debtors") and J.P. Morgan Chase Bank, N.A. ("Creditor"_) filed a joint stipulation agreeing that the Motion to Value the secured claim of Creditor is to be withdrawn. There being no prejudice to involved parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, the court removes this Motion from the calendar.

11. 12-28651-C-13 ALEJANDRO/TISHIA SALAIS MOTION TO INCUR DEBT
PGM-5 Peter G. Macaluso 9-9-14 [103]

Tentative Ruling: The Motion to Incur Debt 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, and Office of the United States Trustee on September 9, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.

This motion seeks permission to incur debt for the purchase of a business formerly known as Thai ChiPino Restaurant, located at 1850 Del Paso Road, Suite 4, Sacramento, California. Debtors propose to enter an agreement for a retirement loan not to exceed $50,000 and anticipate repayments of $422.08 biweekly at 3.75% interest for a five-year term.

Debtors' Motion offers the following:

A. Debtors' case was filed on May 3, 2012 and a plan was confirmed on December 20, 2012.

B. Debtor's confirmed plan is for a term of sixty (60) months with a 0% dividend to unsecured creditors. The current plan payment is $445.00 per month.

C. Debtors' propose to take out a retirement loan, not to exceed $50,000 that will be paid back over a five year term through payments of $422.08 biweekly at 3.25% interest.

D. Debtor request authority to enter the loan agreement for the

purcahse of an existing restaurant and equipment, which they intend to convert into a taqueria to be named "Salsa's Taqueria."

The "Asset Purchase Agreement" is attached as Exhibit A, Docket #107, and includes the following additional information:

A. Purchase price is $19,000.

B. The purchase is contingent on the written consent of the landlord of the property to sublease the existing premises to the Debtors.

C. Buyer and Seller (Debtors) shall pay equally any fee charged by the Landlord in relation to the sublease.

D. Estimated closing date for the Sale is September 30, 2014.

The Addendum to the Purchase Agreement states the following:

A. Rent shall be prorated as change of possession, with Debtors responsible for rest as of change of possession date.

B. The Security Deposit currently on account between landlord and Seller is $7,000. If Debtors pay rent timely for the durante of the sublease, then Seller will assign the security deposit to Debtors, without reimbursement, at the termination of the sublease.

C. Seller is released from all obligation for the lease as of the expiration of the current term.

D. The sale is contingent on Debtors obtaining bankruptcy court approval for Debtor Alejandro Salais to use retirement funds to purchase and operate the restaurant.

A "Proposed Profit & Loss Statement" is included with the Asset Purchase Agreement, and contains the following proposed monthly income and expenses:

Income

A. Gross Receipts or Sales $50,000

Expenses

A. Business Lease $6,300
B. Salaries & Wages $19,000
C. Equipment Lease Payments $300
D. Secured Debt Payments $1,000
E. Supplies (groceries) $15,500
F. Utilities $1,500
G. Travel and Entertainment $2,500
H. Liability Insurance $500
I. **TOTAL EXPENSES $44,800**

NET INCOME: $5,200

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee provides the following in response to Debtors' Motion to Incur Debt:

A. Debtors are in month twenty-eight (28) of a sixty (60) month plan that proposes to pay 0% to unsecured creditors. The plan proposes surrender of real property located at 258 Santiago, Avenue, Sacramento, California and retention of Debtors' residence located at 27 Skarda Court, Sacramento, California. The plan proposes valuing the secured claim of the second deed of trust holder against Debtors' residence at $0.00. The Motion to Value this secured claim was granted on August 20, 2012 (Dkt. 42). The plan further proposed to pay a secured debt to Nissan Motor for a 2008 Versa automobile. No proof of claim appears in the court record for the Nissan debt an not payments have been made to the creditor by the Trustee.

B. Debtors are current on plan payments with the current payment being $415.00 per month. Debtors were delinquent once on the January 2014 payment. The delinquency was cured the following month.

C. Debtors' Schedule B (Dkt. 85) lists at Item 12: "retirement - Husband" at a value of $50,000 and "spouse retirement" at a value of $45,000.

D. Trustee does not oppose the Motion, but is not certain that the purchase of a business, where Debtors are less than halfway through a sixty (60) month 0% plan, is in the best interest of the estate.

DEBTORS' RESPONSE TO TRUSTEE

Debtors respond to the Trustee's concern and assert that the use of the $50,000 from the 401K account is the use of an exempt asset that revested in the Debtors at the time of confirmation. The asset would be exempt whether or not Debtors were in a Chapter 7 plan or a Chapter 13 plan paying 0% to unsecured creditors.

Debtors further offer the argument that a successful business venture could result in increased disposable income, which would be a benefit to the estate.

Debtors assert that the loan repayment will not affect Debtors' ability to comply with the plan, because the liability will be covered by the business income. Further, the purchase of the business will not adversely affect creditors because it will not alter the plan payments not the terms of the plan.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2010 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c), requires that the motion list or summarize all material provisions of the proposed credit agreement,

"including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A).

The court is satisfied that Debtors have presented a record with sufficient information concerning the material provisions of the agreement.

In light of the Trustee's stated concern, the court seriously reviewed the record to ensure Debtors considered the likelihood of success of their business and presented evidence on steps taken to promote a successful venture. The court is satisfied that Debtors presented sufficient evidence that they are making decisions that promote the success of the future business. First, in Debtors' declaration, they state that their daughter-in-law, Elisa Valle Salais, will be the restaurant manager. Elisa currently manages La Fiesta Taqueria in Folsom, California and has been a manager for four years. Debtors are confident in her success. Debtors further declare that they have "several other family members" currently working in similar restaurants who will come and work at their family restaurant. Debtors also reference relationships their son, Alex, has with various organizations and local businesses. Debtors assert that these relationships could provide numerous catering opportunities for the business. See Decl. of Alejandro Salais and Tishia Salais, ECF 105.

Second, Debtors submitted the Declaration of Elisa Valle Salais, their daughter-in-law who will manage the restaurant. Dkt. 106. Ms. Valle Salais declares that she and her "team" have the experience necessary to operate the taqueria. She describes the restaurant as a "full service taqueria providing breakfast lunch ad dinner" with catering options. The menu will be American and Mexican, with liquor sales, pending application approval.

Third, the court noticed in the Asset Purchase Agreement, at paragraph 15, that Sellers, Scott & Lamduan McArthur, will individually provide Debtors with five hours of training concerning operation of the business.

Finally, the court understands that Debtors are using exempt retirement assets to effectuate the purchase, start-up the restaurant, and promote the business. These are not assets available for distribution to creditors and the business venture, as proposed, does not adversely affect creditors. However, as with any business proposal, there are risks involved; however, the court is assured by the evidence presented that Debtors' are making decisions reflecting sound business judgment.

The court will grant the Motion to Incur Debt and permit the Debtors to enter into a retirement loan agreement for an amount not to exceed $50,000.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by 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 to Incur Debt is granted and Debtors are permitted to borrow against Alejandro Salais' retirement account in an amount not to exceed $50,000.

12. 14-21752-C-13 SCOTT MILES MOTION TO SELL
LBG-11 Lucas B. Garcia 9-23-14 [181]

Final Ruling: The Debtor having filed a Notice of Withdrawal on October 1, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

13. 13-35659-C-13 GLENN CARNAHAN
DPC-1 Lucas B. Garcia
Thru #14

CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS
8-21-14 [88]

Tentative Ruling: The Motion to Dismiss 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, and Office of the United States Trustee on August 21, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor filed his case on December 13, 2013 and has yet to confirm a plan. Debtor's Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtor has not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

PRIOR HEARING

The court held a prior hearing on the Motion on September 10, 2014. At that hearing, Debtor opposed the Motion on the basis that an Amended Plan was filed on August 21, 2014 and set for hearing on October 7, 2014. The court continued the Motion to Dismiss to be heard in conjunction with the Motion to

Confirm the Amended Plan.

Discussion

With regard to the Amended Plan and Motion to Confirm the Amended Plan filed on August 21, 2014, the court is denying the Motion on the basis that Debtor has not demonstrated sufficient ability to make proposed plan payments and that the plan does not reflect Debtor's best efforts. 11 U.S.C. §§ 1325(a)96) & (b). Debtor's ongoing inability to confirm a Chapter 13 plan and because previous plans were denied on similar grounds as the plan filed on August 21, 2014, Debtor is causing unreasonable delay that is prejudicial to creditors and the court finds cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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 Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

14. 13-35659-C-13 GLENN CARNAHAN MOTION TO CONFIRM PLAN
LBG-6 Lucas B. Garcia 8-21-14 [96]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the plan based on the following:

1. Debtor cannot make the payments required under the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan increases the payments from $1,550 per month to $1,760 per month in the ninth month of the plan. Debtor has not demonstrated how it had the ability to maintain this increase. Debtor filed an Amended Schedule J on February 7, 2014, which shows a negative projected disposable income of $308.84 per month.

   Debtor's declaration in support of the Motion touches on potential future income, but does not state a specific amount of income to be contributed into the plan. The declaration references assistance from Debtor's sister and Debtor submitted a declaration from his sister, indicating her willingness to assist. Neither declaration states the Debtor's sister's ability to help the Debtor financially.

2. The plan is not Debtor's best effort. 11 U.S.C. § 1325(b).

Debtor filed an amended Schedule I on February 7, 2014 and deleted anticipated business income of $3,194 without explanation.

SUPPLEMENTAL DECLARATION OF DEBTOR

Debtor declares the following additional information:

1. Debtor's sister has not provided any income support. She is prepared to be a safety net and not regular support.

2. Debtor's business has recently "signed it [*sic*] first deal that will start to generate revenue." Debtor requests time to make a full analysis of the agreement to determine how much revenue will be available to support the business and how much will be available for salary payments.

DISCUSSION

The court's decision is to deny confirmation of the Debtor's plan. Debtor has not demonstrated that the plan is financially feasible. Debtor's overall financial situation seems to be constantly shifting and under those types of circumstances it is difficult to rely on Debtor's statements of feasibility and ability to make plan payments.

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

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

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

The Motion to Confirm the 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.

15. 14-25959-C-13 AARON/LASHAWN TURNER MOTION TO CONFIRM PLAN
SDH-1 Scott D. Hughes 8-19-14 [32]

Final Ruling: No appearance at the October 7, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will

submit the proposed order to the court.

16. 11-46968-C-13 PABLO MANZO MOTION TO SELL
CJY-4 Christian J. Younger 9-11-14 [63]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 11, 2014. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

The Motion to Sell Property is granted.

Debtors seek an order approving the short sale of real property commonly known as 2390 Talon Drive, Shingle Springs, California.

When Debtor commenced his Chapter 13 bankruptcy, he was in the process of divorcing his former spouse. In the marital settlement agreement, the subject property was granted to Debtor's former spouse (Exh. A, Dkt. 71). The grant deed was executed prior to Debtor's bankruptcy filing and Debtor was unaware the deed had not been recorded when the case was filed. The property was listed on Schedule F and the transfer was listed on the Statement of Financial Affairs as a transfer. The grant deed has since been recorded. See Decl. of Pablo Manzo, ECF 65.

The prospective buyer made an offer to purchase the property at $435,000.00 (Exh. A). The property is encumbered by two deeds of trust. The first deed of trust is held by Wells Fargo Bank, N.A. and serviced by Ocwen

Loan Servicing, LLC and totals approximately $180,000. Ocwen Loan Servicing, LLC provided a letter agreeing to the short sale (Exh. A, Dkt. 66); however, Wells Fargo Bank, N.A. will not provide an approval letter until the court approves the short sale. See Decl. of Pablo Manzo, 1, ln. 5, ECF 65. Debtor holds a second deed of trust solely in his name. The sale will provide a maximum payment of $8,500 to the second deed of trust.

CHAPTER 13 TRUSTEE

On September 16, 2014, the Chapter 13 Trustee filed a statement not opposing the relief requested.

DISCUSSION

The Bankruptcy Code permits the trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell 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 Sell is granted and Debtor is authorized, pursuant to 11 U.S.C. § 363(b), to sell to Buyer the property located at 2390 Talon Drive, Shingle Springs, California for no less than $435,000.

17.	14-28668-C-13 NBC-1 **Thru #18**	PLEASANT/SUSAN BREWER Eamonn Foster	MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC. 9-12-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 12, 2014. Fourteen days' notice is required. That requirement was met.

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

The hearing on the Motion to Value secured claim of Americredit Financial Services, Inc., dba GM Financial, "Creditor," is set for evidentiary hearing [date] at [time]. .

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of 2006 Kia Sorrento LX. The Debtor seeks to value the property at a replacement value of $4,000.00 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).

In 2005, Congress added a paragraph to the Bankruptcy Code providing that, for the purposes of section 1325(a)(5):

> section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase

> money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day [period] preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

This new language, which follows section 1325(a)(9), is not designated by a letter or number and often is referred to as the "hanging paragraph." 4 COLLIER ON BANKRUPTCY ¶ 506.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Here, the Debtor has not provided, in either the Motion, Declaration, or attached exhibits, information concerning whether the lien on the vehicle's title secures a purchase-money loan and whether the loan was incurred 910-days prior to the filing of the petition. However, on October 1, 2014, the Creditor filed an Opposition stating that it entered into a Retail Installment Sale Contract with Debtor on November 13, 2009. This confirms for the court that it is appropriate for it to proceed and consider altering the Creditor's interest in the secured portion of its claim.

CREDITOR'S OPPOSITION

Creditor opposes the Motion on the grounds that the proposed value of $4,000 is insufficient. Creditor presented the court with a NADA Guide printout supporting its contention that the vehicle should be valued at $6,850.00. Creditor offered the Declaration of Berit Williams to authenticate the NADA Guide pursuant to Fed. R. Evid. 901.

DISCUSSION

The court must make a determination on the value of a particular piece of collateral based on the evidence presented to the court.

Pursuant to Fed. R. Evid. 701, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. It is common practice in the Ninth Circuit for the court to take a Debtors' opinion of value as evidence of an asset's value. Here, the Debtors offer an opinion and values the vehicle at $4,000.00. See Decl. of Pleasant Brownlow Brewer, Jr. And Susan Kaye Brewer, 1, ECF 18.

From the Creditor, the court was presented an authenticated printout from the NADA website, listing various values for the vehicle depending on differing sales options. The creditor chose the value of $6,850 based on the NADA Guide. The court recognizes the NADA Guide as a "market report" that is excepted from the Rule Against Hearsay under Fed. R. Evid. 803(17).

The court's decision is to set the matter for an evidentiary hearing

on a date and at a time convenient for the court and the parties. The court is presented with conflicting evidence on an issue of fact and an evidentiary hearing will permit the court to assess competent evidence in determining the value of the subject collateral and secured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minute hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is set for an evidentiary hearing on **[date]** at **[time].**

18. 14-28668-C-13 PLEASANT/SUSAN BREWER — MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE
NBC-2 Eamonn Foster — 9-12-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 12, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Credit Acceptance Corporation, "Creditor," is denied without prejudice.

SERVICE & CREDITOR IDENTIFICATION ISSUE

Debtor is requesting the court alter the legal rights of an entity named "Credit Acceptance." A search for the name "Credit Acceptance" turns up no specific results on either the FDIC website or the California Secretary of State Business Entity Search. Rather, an entity fully entitled "Credit Acceptance Corporation" appears on the California Secretary of State Search with a corporate address matching the address included on the Proof of Claim. The court is left to logically infer that Debtor intends on determining the secured claim of Credit Acceptance Corporation and not the named entity, "Credit Acceptance."

A second issue is the form of service. Debtor lists on the Certificate of Service (Dkt. 25) that Credit Acceptance Corporation was

served at the following email address: tevans1@creditacceptance.com. Debtor likely pulled this address from the Proof of Claim where it was included with other contact information (Claim No. 1). Pursuant to the California Secretary of State Business Entity Search, the following addresses are appropriate for service of process on Credit Acceptance Corporation:

25505 W 12 Mile Road
Southfield, MI 48034

2710 Gateway Oaks Drive, Ste 150N
Sacramento, CA 95833

The Proof of Claim filed by Credit Acceptance Corporation lists the above referenced Michigan address as the "address where notices should be sent." There is no indication that Creditor requested service to be issued via email and the court does not find service on an individual at the listed email address to be sufficient service on the Corporation as a separate entity.

PLEADING ISSUE

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of 2003 Ford Ranger Regular Cab XL. The Debtor seeks to value the property at a replacement value of $1,600.00 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).

In 2005, Congress added a paragraph to the Bankruptcy Code providing that, for the purposes of section 1325(a)(5):

> section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day [period] preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

This new language, which follows section 1325(a)(9), is not designated by a letter or number and often is referred to as the "hanging paragraph." 4 COLLIER ON BANKRUPTCY ¶ 506.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Here, the Debtor has not provided, in either the Motion, Declaration, or attached exhibits, information concerning whether the lien on the vehicle's title secures a purchase-money loan and whether the loan was incurred 910-days prior to the filing of the petition. Without this information, the court cannot determine whether it is appropriate to alter the legal rights of the subject creditor.

The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by 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 denied without prejudice.

19.	14-27476-C-13 APN-1	EDUARDO/MARIE ORTEGA Michael David Croddy	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 9-11-14 [44]

Continued to November 18, 2014 at 2:00 p.m.

20. 14-27883-C-13 STEPHAN/JAMIE SANTISTEVAN OBJECTION TO CONFIRMATION OF
DPC-1 David P. Ritzinger PLAN BY DAVID CUSICK
Thru #22 9-10-14 [32]

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 onSeptember 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to continue the hearing on the Objection to November 18, 2014 at 2:00 p.m.

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

1. At the First Meeting of Creditors, Debtors admitted they have not filed all tax returns during the four-year period preceding the filing of the petition. See 11 U.S.C. §§ 1308 & 1325(a)(9).

2. The plan does not reflect the Debtors' best efforts under 11 U.S.C. § 1325(b):

   a. Debtors are over the median income and propose plan payments of $3,760 for 58 months with a 0% dividend to unsecured creditors.

b. The plan proposes to retain rental property located at 127 Loma Vista, Vallejo, California. The Class 1 claims lists the ongoing mortgage payment as $2,110 with an arrears dividend of $841.12. The monthly dividend for the Second Deed of Trust in Class 2 is $515.73 per month. The total mortgage and arrear payments are $3,467.85.

Currently, Debtors receive $1,000 per month in rental income, creating a negative cash flow of ($2,467.85). Schedule J states that Debtors expect rental income to increase from $1,000 to $2,400 following the completion of repairs to the property; however, no declaration as to the status or cost of the repairs appears to have been submitted. Debtors' retention of this property is not a reflection of Debtors making best efforts a confirming a feasible. chapter 13 plan of reorganization.

3. The plan relies on the pending Motions to Value the secured claims of Ally Bank and Umpqua Bank.

4. Sections 2.06, 5.01, and 6 of the plan contain the following: "Error! Reference source not found." Information required in these sections is missing.

5. Debtors are not entitled to receive a discharge in this case. 11 U.S.C. § 1328(f). Debtors filed a Chapter 7 bankruptcy on April 14, 2013 and received a discharge on July 29, 2013 (Case No. 13-25096). Debtors' plan does not state they are waiving a discharge in this case.

The Chapter 13 Trustee requests the court continue the hearing on the Objection to November 18, 2014 at 2:00 p.m., to be heard after the continued First Meeting of Creditors set for October 30, 2014 at 10:30 a.m.

The court notes that Debtors have set for hearing Motions to Value the secured claims of Ally Bank and Umpqua Bank and the court is prepared to grant both motions. This part of the Trustee's Objection is overruled and the remaining elements of the Objection will be considered at a continued hearing on November 18, 2014 at 2:00 p.m. per the Trustee's request.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection is continued to November 18, 2014 at 2:00 p.m.

21. 14-27883-C-13 STEPHAN/JAMIE SANTISTEVAN MOTION TO VALUE COLLATERAL OF
DPR-1 David P. Ritzinger ALLY BANK
9-8-14 [22]

Final Ruling: No appearance at the October 7, 2014 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, respondent creditor, and Office of the United States Trustee on September 8, 2014. Twenty-eight 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 Ally Bank, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 127 Loma Vista, Vallejo, California. The Debtor seeks to value the property at a fair market value of $334,500 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 first deed of trust secures a loan with a balance of approximately $307,342.41. A second deed of trust secures a loan with a balance of approximately $220,339.00. A third deed of turst secures a loan with a balance of approximately $142,082.32. Ally Bank's deed of trust secures a loan with a balance of approximately $27,157.59. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Ally Bank secured by a junior deed of trust recorded against the real property commonly known as 127 Loma Vista, Vallejo, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $334,500 and is encumbered by senior liens securing claims which exceed the value of the Property.

22. 14-27883-C-13 DPR-2 | STEPHAN/JAMIE SANTISTEVAN
David P. Ritzinger | MOTION TO VALUE COLLATERAL OF UMPQUA BANK
9-8-14 [27]

Final Ruling: No appearance at the October 7, 2014 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, respondent creditor, and Office of the United States Trustee on September 8, 2014. Twenty-eight 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 Umpqua Bank, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 127 Loma Vista, Vallejo, California. The Debtor seeks to value the property at a fair market value of $334,500 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 first deed of trust secures a loan with a balance of approximately $307,342.41. A second deed of trust secures a loan with a balance of approximately $220,339.00. Umpqua Bank's deed of trust secures a loan with a balance of approximately $142,082.32. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Umpqua Bank secured by a junior deed of trust recorded against the real property commonly known as 127 Loma Vista, Vallejo, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $334,500 and is encumbered by senior liens securing claims which exceed the value of the Property.

23. 14-25784-C-13 MARK/ROBIN KARTHAUSER — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
APN-1 Lucas B. Garcia 8-15-14 [32]
Thru #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 and Debtor's Attorney on August 15, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Creditor and Debtors entered into a SmartFit Home Equity Account Agreement on February 6, 2006, for the principal sum of $199,000. The Agreement was secured by a Deed of Trust on 5645 Sandy Road, Loomis, California.

2. Creditor objects to the proposed monthly plan payments to creditor of $716.20. The actual monthly payments due and owing on Debtors' account is variable.

3. Creditor further objects on the basis that once Debtor's obligation to Creditor for a loan securing the Second Deed of Trust has been properly scheduled for repayment, Debtors

cannot feasible complete the plan as proposed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Debtors list Creditor in Class 4 under plan, but appear to attempt to modify the monthly payment due and owing. 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 xxxx 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.

24. 14-25784-C-13 MARK/ROBIN KARTHAUSER — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Lucas B. Garcia — 7-10-14 [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 July 10, 2014. Fourteen 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 sustain the Objection.

The Chapter 13 Trustee opposed confirmation of the Plan on three grounds. First, it appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor lists a deduction of $126.50 for life insurance on Line #32 of Form B22C; however, the Debtor does not list an expense for life insurance on Schedule J.

Second, it appeared that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of $235.00 for 60 months with a 14% dividend to unsecured creditors, which totals $11,296.00. Form B22C reflects income of $2,340.00, according to page 8 of Form B22C, this income is from pig and goat farming. Debtor has listed negative $433.00 on Schedule I, which appears to be from the Pig and Goat Farming and reflects a livestock trailer, 12 pigs, and 12 goats on Schedule B. Debtor has not provided an attachment to Schedule I to

show Debtor's gross income and expenses from this business.

Third, it appeared that the Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total $16,278.00, but the Debtor is proposing a 14% dividend to the unsecured claim holders, which totals $11,296.00. The following assets are non-exempt: cash, a checking account, a 1999 Chevrolet Silverado, a 2006 Chevrolet Cobalt, a 1974 John Deere Tractor, pigs and goats, and a 2007 Chevrolet Malibu not fully exempt on Schedule C.

RESPONSE BY DEBTORS

The Debtors responded by stating that:

1. The Trustee has raised in the objection the fact that Debtors failed to provide a $126.50 payment of life insurance. Debtors have amended their Schedule J and filed the amendment on July 11, 2014.

2. The Trustee has raised in the objection the fact that Debtors failed to provide an attachment to Schedule J showing gross income and expenses from the business. Debtors amended their Schedule J and filed the amendment on July 11, 2014. The Opposition states that this was a software oversight that Counsel's office has corrected the error for future matters.

3. The Trustee has raised in the objection the fact that the plan fails the Chapter 7 liquidation analysis. Debtors believe that the Trustee is failing to account for cost of sale and Trustee percentage that would be taken in a Chapter 7 liquidation. Furthermore, Debtors believe the Trustee is using incorrect, gross numbers for the calculations.

PRIOR HEARING

The court heard the Objection on August 5, 2014 and set a briefing schedule for Debtors to file supplemental opposition. The court continued the hearing to October 7, 2014 at 2:00 p.m. Debtors were directed to filed and serve their opposition on or before September 17, 2014 and relies, if any, were due by September 24, 2014. The supplemental opposition and relies are incorporated below.

DEBTOR'S SUPPLEMENTAL RESPONSE

Debtors respond with a copy of a Liquidation Analysis performed by Bestcase.

Debtors posit that the following non-exempt asset values have been determined by using either Kelley Blue Book and/or Debtors' personal knowledge:

Asset	Non-Exempt Value
Cash on hand	$3.00
Checking account balance	$825
1999 Chevrolet Silverado	$4,000

2007 Chevrolet Malibu	$5,300
2006 Chevrolet Cobalt	$1,500
1974 John Deer Tractor	$100
12 Pigs	$3,600
12 goats	$1,200
TOTAL	**$16,528**

Debtors estimate the Trustee fee based on the unexempt asset total to be $2,046.53, leaving $14,481.47. Debtors request the court consider that the Chevrolet Cobalt is no longer operable and in need of $5,570 worth of work to fix. Based on this analysis, Debtors suggest they should pay 13.84% dividend.

CHAPTER 13 TRUSTEE'S RESPONSE

Trustee responds with the following:

1. The hearing date on Debtors' response is August 5, 2014, when it should state October 7, 2014. Pursuant to Local Bankr. R. 9014-1(d)(2), the date of and time of the hearing is required in the notice and the courtroom in which the hearing will be held. This implies the date on the reply should be the future date.

2. The reply did not address the Objection of Wells Fargo Bank, N.A. which asserts that the Class 4 debt has variable payments, is currently interest only, and will become principal and interest payments after February 2, 2016.

3. Debtor cannot make payments based on the project disposable net income listed on Amended Schedule J. Disposable net income is $111.39; however, Debtors' plan payment is $235.00 for sixty (60) months.

4. In the event Debtors maintain they can increase future payments to provide for the increased payment that will be due to Wells Fargo Bank, N.A.'s second deed of trust, the Trustee objects because this extra source of income is undisclosed and may be available now to pay more to unsecured creditors.

5. Trustee asserts that the plan still fails Chapter 7 Liquidation analysis. The initial objection by the Trustee stated that non-exempt assets totaled $16,278 and deducting Chapter 7 trustee fees of $2,046.53, left $14,231.47 of non-exempt equity. Debtors were proposing a 14% dividend, which totaled $11,296.

   Regarding the Chevrolet Cobalt, Trustee questions why Debtors anticipate the court to looking to the current value of the vehicle as opposed to the value at the date of filing, which is the value that should control.

Now, Debtors propose paying a 13.84% dividend, despite the non-exempt equity being $14,481.47. This is still an insufficient dividend.

DEBTOR'S RESPONSE TO TRUSTEE

Debtors respond to the Trustee's supplemental objection:

1. Debtors have entered a Stipulation with Wells Fargo Bank, N.A. regarding the second deed of trust.

2. In response to Trustee's concern about Debtors affording the plan payment, Debtors state that their income varies with the season and some months are higher than others, allowing them to save during the higher months.

3. In response to the Trustee's objection to liquidation analysis, Debtors assert that the Trustee is not considering that a chapter 7 Trustee would not be able to sell the inoperable Chevrolet Cobalt for a reasonable price.

DISCUSSION

The court's decision is to sustain the objection and not confirm the plan.

First, Debtors have not uploaded a Stipulation with Wells Fargo Bank, N.A., concerning the second deed of trust and the Creditor's Objection remains outstanding.

Second, on the date of filing, Debtors listed the value of the Chevrolet Cobalt at $4,150. This figure was reasserted in the Amended Schedule C filed July 11, 2014. Debtors state in their Motion that the engine of the Cobalt died the weekend of July 12, 2014, which is why the value is now reduced to $1,500, based on the repairs needed. Debtors did not submit declarations testifying to the engine incident or estimates concerning the needed repairs. Debtors also did not include evidence concerning their fluctuating income. If Debtors' anticipate the court confirming a plan based on variable income, they should present the court with evidence supporting the income asserted, correlating with the proposed plan payments.

As for the liquidation analysis, the court understands the status of Debtors' nonexempt equity in relevant assets to be as follows, based on a review of the most recent Schedules:

Asset	Value	Exemption	Non-Exempt Equity
Cash on hand	$3.00	N/A	$3.00
Checking Account	$855	N/A	$825

Chevrolet Silverado	$4,000	N/A	$4,000
Chevrolet Malibu	$5,300	$2,300 under C.C.P. § 704.010	$3,000
Chevrolet Cobalt	$4,150	N/A	$4,150
John Dder Tractor	$100	N/A	$100
12 Pigs at $300	$3,600	N/A	$3,600
12 goats at $100	$1,200	N/A	$1,200
TOTAL			**$16,878**

Debtors' response adjusts the value of the Chevrolet Cobalt based on the engine issues and reduces the non-exempt equity in it to $1,500. Debtors did not file an Amended Schedule B or a Declaration attesting to the change. The only evidence the court has is the Amended Schedule B signed under penalty of perjury and filed on July 11, 2014 (Dkt. 25).

The court also takes issue with the exemption claimed in the Chevrolet Malibu. Schedule C (Dkt. 25). Not only is the exemption not reflected in Debtors' calculation of non-exempt equity, but the exempt amount is excessive. Debtors claim an exemption of $2,900 pursuant to Cal. Code. Civ. P. § 704.010; however, this section of the C.C.P. limits exemptions for motor vehicles to $2,300. The court incorporated the correct exemption limit into the above table.

As it stands, the inconsistences in the value of Debtors' non-exempt equity and the improperly claimed exemption render the court unable to conduct an adequate Chapter 7 liquidation analysis, let alone consider confirming the Chapter 13 plan.

The plan does not comply with 11 U.S.C. §§ 1322 & 1325 and is not confirmed.

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 sustained and the plan is not confirmed.

25. 14-27884-C-13 DPC-1 KENNETH CARPENTER AND NANCY GRIMALDY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK

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, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan because The plan relies on the Motion to value the secured claim of Travis Credit Union, listed in Class 2B. If the Motion is not granted, Debtors cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

To date, Debtors have not filed a Motion to Value the secured claim of Travis Credit Union. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

26.	14-27884-C-13 JDM-1	KENNETH CARPENTER AND NANCY GRIMALDY David P. Ritzinger	OBJECTION TO CONFIRMATION OF PLAN BY TRAVIS CREDIT UNION 9-4-14 [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 Debtor and Debtor's Attorney on September 4, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Travis Credit Union ("Creditor") opposes confirmation of the Plan on the basis that the value of the collateral is greater than the amount stated by Debtor in the proposed plan. Creditor holds a claim of $17,033.48 secured by a lien in a 2005 Chevrolet Silverado.

Pursuant to 11 U.S.C. § 1325(a)(5), as a condition to confirmation of the plan, the plan must provide that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim . . .." Debtors' proposed plan sets a value upon the collateral which is less than its replacement value.

Debtors' plan proposes to value Creditor's security interest in the

collateral at $12,860. Creditor believes the replacement value of the collateral is $17,972.

Debtor has not yet filed a Motion to Value the secured claim of Creditor. 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 Travis Credit Union 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 confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

27. 14-25187-C-13 JME-3 **Thru #28**

ANTHONY/CLARISE SIMMS
Julius M. Engel

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
8-26-14 [36]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on August 26, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value Collateral 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-rsrespondent 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 Collateral is set for an evidentiary hearing on [date] at [time].

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2006 Ford Explorer XLT Sport Utility. The Debtors seek to value the property at a replacement value of $7,646.00 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 on April 2, 2011, more than 910 days prior to the filing of the petition, with a balance of approximately $11,353.86. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

CREDITOR'S OPPOSITION

Americredit Financial Services, Inc dba GM Financial("Creditor") objects to the valuation offered by Debtors. Creditor disputes the value and argues that Debtors' opinion on value is based on a Kelley Blue Book "Private Party Value - Fair Condition" figure, which is the incorrect standard. Creditor offers the court a NADA Guide, which references a 2006 Ford Explorer and suggests a retail value of $10,400.00.

Creditor provided the Declaration of Berit Williams to authenticate the NADA Guide. See Decl. of Berit Williams, 2, ln. 5, ECF 56.

DISCUSSION

The court must make a determination on the value of a particular piece of collateral based on the evidence presented to the court.

Pursuant to Fed. R. Evid. 701, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. It is common practice in the Ninth Circuit for the court to take a Debtors' opinion of value as evidence of an asset's value. Here, the Debtors offer an opinion and values the vehicle at $7,646.00. See Decl. of Gentry & Maria Long, 2, ln. 9, ECF 28.

From the Creditor, the court was presented an authenticated printout from the NADA website, listing various values for the vehicle depending on differing sales options. The creditor chose the value of $10,400 based on the NADA Guide. The court recognizes the NADA Guide as a "market report" that is excepted from the Rule Against Hearsay under Fed. R. Evid. 803(17). The court.

The court's decision is to set the matter for an evidentiary hearing on a date and at a time convenient for the court and the parties. The court is presented with conflicting evidence on an issue of fact and an evidentiary hearing will permit the court to assess competent evidence in determining the value of the subject collateral and secured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by 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 hearing on Motion is set for an evidentiary hearing on **[date]** at [**time**].

28. 14-25187-C-13 ANTHONY/CLARISE SIMMS MOTION TO CONFIRM PLAN
JME-4 Julius M. Engel 8-26-14 [40]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 26, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee objects to confirmation of the plan based on the following:

1. Debtors are $3,505 delinquent in plan payments to the Trustee to date and the next scheduled payment of $3,153.00 is due on September 25, 2014. Debtor has paid $5,954.00 into the plan to date.

2. Debtors' plan relies on the pending Motion to Value the secured claim of Americredit Financial Services. If the Motion is not granted, Debtors cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

3. Trustee cannot determine if Debtors can make payments under the plan. 11 U.S.C. § 1325(a)(6). On Line 13 of Amended Schedule I (Dkt. 32), Debtors state that "stepped payments allow debtors time to adjust for the fact that husband recently had diminished income and therefore they need to catch up on closthing and expenses for various supplies.

Also, Husband's income might not be a full check for the next few months." Debtors then submitted Amended Schedule J and decreased the following expenses without explanation:

a. Electricity, hear, natural gase was $340 and was decreased to $240.
b. Personal care products and services were $100 and was decreased to $60
c. Transportation expenses were $455 and were decreased to $420.

4. Unsecured creditors mat not have received reasonable notice where according to Trustee's calculations the plan will pay all creditors 100%, although the Debtor is proposing a 0% dividend to unsecured creditors.

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

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

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

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

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

29. 14-27989-C-13 GENTRY/MARIA LONG — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Peter G. Macaluso 9-10-14 [36]
Thru #31

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, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan based on the following:

1. The plan relies on pending Motions to Value the collateral of Wells Fargo Bank, N.A. If these Motions are not granted, the Debtors cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

2. The plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' plan proposes payments of $385.00 per month for 60 months. Section 2.15 of the plan proposes to pay not less than a 0% dividend to unsecured creditors, with unsecured claims totaling $28,803.00. Debtors are below median income, according to Form B22C. (Dkt. 1).

a. Debtors did not report all income. The 2012 Federal Tax Return provided to the Trustee states that Debtors received a refund of $7,036 fro the IRS and $720 from the FTB. The 2013 Federal Tax Return provided to the Trustee states that Debtors received a refund of $5,697 from the IRS and a refund of $722 from the FTB. Debtors have not proposed to pay any future tax refunds into their plan.

The Motions to Value collateral are being set for evidentiary hearing on an undetermined date in the future. Debtors have not provided a response to the Trustee's objection concerning the tax refund income. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

30. 14-27989-C-13 GENTRY/MARIA LONG — MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso — WELLS FARGO BANK, N.A.
9-8-14 [26]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on September 8, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value Collateral 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-rsrespondent 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 Collateral is set for an evidentiary hearing on [date] at [time].

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2004 Infinit G35. The Debtors seek to value the property at a replacement value of $5,625.00 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). Debtors declare that repairs are needed for the tires, brakes, and transmission, totaling $2,00 to $2,500.

The lien on the vehicle's title secures a purchase-money loan incurred in September 26, 2012, more than 910 days prior to the filing of the petition, with a balance of approximately $8,494.19. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A. ("Creditor") objects to the valuation offered by Debtors and argues that the property is currently believed to have a retail, replacement value to Debtors of $9,075. Creditor offers an automated NADA Guide photocopy to support its valuation.

DISCUSSION

The court must make a determination on the value of a particular piece of collateral based on the evidence presented to the court.

Pursuant to Fed. R. Evid. 701, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. It is common practice in the Ninth Circuit for the court to take a Debtors' opinion of value as evidence of an asset's value. Here, the Debtors offer an opinion and values the vehicle at $5,625.00. See Decl. of Gentry & Maria Long, 2, ln. 9, ECF 28.

The court finds that Debtors' opinion is undermined; however, because their declaration speaks to needed repairs and incorporates repair costs of $2,000 to $2,500 into their valuation. Debtors did not include exhibits supporting the costs of repair and do not testify to their experience in car mechanics to such an extent that the court can rely on their opinion on the cost of repair.

From the Creditor, the court was presented an unauthenticated printout from the NADA website, listing various values for the vehicle depending on differing sales options. Federal Rule of Evidence 901 provides various ways for Creditor to authenticate the NADA Guide and creditor chose none of them.

The court's decision is to set the matter for an evidentiary hearing on a date and at a time convenient for the court and the parties. The court cannot resolve the evidentiary issue on the current record, but is of the understanding that there may be material issues of fact that are better resolved at an evidentiary hearing where parties can submit competent and admissible evidence for the court to review and consider.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on Motion is set for an evidentiary hearing on **[date]** at [**time**].

31.	14-27989-C-13 PGM-3	GENTRY/MARIA LONG Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-8-14 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on September 8, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value Collateral 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-rsrespondent 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 Collateral is set for an evidentiary hearing on [date] at [time].

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2007 Chrysler 300. The Debtors seek to value the property at a replacement value of $8,872.00 as of the petition filing date. Debtors further declare that items in need of repair include tires, shocks, and brakes and that it would cost between $2,000 and $2,500 to make the needed repaires. 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). Debtors did not submit exhibits of estimates for the repairs needed to be completed on the vehicle.

The lien on the vehicle's title secures a purchase-money loan incurred in September 26, 2012, more than 910 days prior to the filing of the petition, with a balance of approximately $12,223.51. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-

collateralized.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A. ("Creditor") objects to the valuation offered by Debtors and argues that the property is currently believed to have a retail, replacement value to Debtors of $12,351.49. Creditor offers an automated NADA Guide photocopy to support its valuation.

DISCUSSION

The court must make a determination on the value of a particular piece of collateral based on the evidence presented to the court.

Pursuant to Fed. R. Evid. 701, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. It is common practice in the Ninth Circuit for the court to take a Debtors' opinion of value as evidence of an asset's value. Here, the Debtors offer an opinion and values the vehicle at $8,872. See Decl. of Gentry & Maria Long, 2, ln. 9, ECF 33.

The court finds that Debtors' opinion is undermined; however, because their declaration speaks to needed repairs and incorporates repair costs of $2,000 to $2,500 into their valuation. Debtors did not include exhibits supporting the costs of repair and do not testify to their experience in car mechanics to such an extent that the court can rely on their opinion on the cost of repair.

From the Creditor, the court was presented an unauthenticated printout from the NADA website, listing various values for the vehicle depending on differing sales options. Federal Rule of Evidence 901 provides various ways for Creditor to authenticate the NADA Guide and creditor chose none of them.

The court's decision is to set the matter for an evidentiary hearing on a date and at a time convenient for the court and the parties. The court cannot resolve the evidentiary issue on the current record, but is of the understanding that there may be material issues of fact that are better resolved at an evidentiary hearing where parties can submit competent and admissible evidence for the court to review and consider.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on

Motion is set for an evidentiary hearing on **[date]** at [**time**].

32. 14-27990-C-13 PAUL LEVERETT OBJECTION TO CONFIRMATION OF
DPC-1 Mohammad M. Mokarram PLAN BY DAVID CUSICK
Thru #33 9-10-14 [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 onSeptember 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan because Debtor did not appear at the First Meeting of Creditors held on September 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The Meeting was continued to October 30, 2014.

By not appearing at the Meeting of Creditors, Debtor has placed the Trustee in a tricky position because now he lacks sufficient information to determine whether the proposed plan is feasible. The Trustee has requested the Objection be continued until November 18, 2014; however, the court is sustaining a simultaneous objection filed by creditor Wells Fargo Bank, N.A. and perceives no utility in maintaining the Trustee's objection on the court's calendar if an amended plan will be required to include Wells Fargo Bank, N.A.'s secured claim.

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

objection is sustained and the Plan is not confirmed.

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

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

33. 14-27990-C-13 PAUL LEVERETT
PD-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
9-11-14 [19]

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 xxxx, <year>. Fourteen 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 sustain the Objection.

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

1. Movant's claim is evidenced by a promissory note executed by Debtor in the original sum of $53,200. Dkt. 21.

2. The Note is secured by a mortgage encumbering real property known as 64 Pershing Drive, Rochester, New York.

3. Movant is in the process of finalizing its proof of claim for this matter and estimates that its total secured claim is in the approximate amount of $72,942.47 and that its pre-petition arrearage claim is in the approximate amount of $26,500.19.

4. Debotor's proposed plan does not provide for the full value

of creditor's claim. 11 U.S.C. § 1325(a)(5).

DISCUSSION

11 U.S.C. § 1325(a)(5) requires a debtor's Chapter 13 plan to distribute at least the allowed amount of a creditor's secured claim. Here, the debtor's plan does not properly provide for Movant's claim because it does not cure the pre-petition arrears or suggest there will be a surrender of the collateral property. Debtor's plan completely disregards the obligation due to Movant and Debtor does not list the property on his schedules.

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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

34. 14-23393-C-13 JOSEFINA MEZA
RMD-1 Michael David Croddy

MOTION TO RESTRICT PUBLIC ACCESS TO CLAIM #6
9-4-14 [36]

Final Ruling: No appearance at the October 7, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 4, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Restrict Public Access to Claim #6 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 Restrict Public Access to Claim #6 is granted.

Pursuant to 11 U.S.C. § 107(c)(1)(A) and Fed. R. Bankr. R. 9037(d), Ocwen Loan Servicing, LLC ("Movant") moves the court for a protective order restricting public access to filed documents containing personal data identifiers for the Debtor's financial account numbers. Movant further requests the court authorize the redaction of personal data identifiers from these documents and direct the clerk of the court to restrict public access to these documents.

On June 11, 2014, Movant filed Proof of Claim 6-1. In Part 3, Page 3 of 27, Movant inadvertently failed to redact the account identifier in the top right portion of the document. Debtor's financial account number is sensitive and private and public disclosure of the identifiers creates a risk of identity theft to Debtor and her property.

DISCUSSION

11 U.S.C. § 107(c)(1)(A) provides that the court may, for cause, protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

> (A) Any means of identification contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

Further, pursuant to Fed. R. Bankr. P. 9037(d), for cause, the court may by order in a case under the Code: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

In the instant matter, the court finds sufficient cause to issue a protective order restricting public access to filed documents containing personal data identifiers for the Debtor's financial account numbers and authorizes the redaction of personal data identifiers from these documents and direct the clerk of the court to restrict public access to these documents. 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 Restrict Public Access to Claim #6 filed by 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 Motion is granted and Movant is authorized and instructed to file amended versions of the documents identifies in the motion with the personal identifiers redacted.
>
> **IT IS FURTHER ORDERED** that the clerk of the court is hereby directed to restrict public access to the originally filed documents identified in the motion in order to keep the personal data identifiers confidentially disclosed in the original documents.

35. 14-21694-C-13 RACHEL TORRES
PLC-3 Peter L. Cianchetta

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
9-9-14 [33]

Tentative Ruling: The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges has been set for hearing on the notice required by Local Bankruptcy Rules 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 Objection and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 9, 2014. Twenty-eight days' notice is required. That requirement was met.

The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges 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 Objection 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 sustain the Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges.

Debtor objects to the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Nationstar Mortgage, LLC. The Notice asserts the following due: $450.00 for Larry E. Johnson to prepare a Proof of Claim and $225.00 of attorneys' fees incurred on April 14, 2014.

Debtor objects to the Notice on the basis that the debt owed to Nationstar Mortgage LLC is a Class 4 debt, approved as such in Debtor's Chapter 13 Plan, and; therefore, no proof of claim was necessary. Debtor argues that there is no provision in the Note or Deed of Trust authorizing a fee for preparation of a Proof of Claim. Debtor urges that the fee is not reasonable or necessary and not supported by time and expense records, in violation of 11 U.S.C. § 506(b) and FRBP 2016(a).

This Objection is a Contested Matter objecting to the claim being asserted in this bankruptcy case by Nationstar Mortgage, LLC. Federal Rule

of Bankruptcy Procedure 3002.1(e) sets the procedure to object to any post-petition fee, expense, or charge asserted to be part of the cure of any default for a claim in the bankruptcy case. Jurisdiction for this Objection exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Contested Matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The Objection states with particularity the following groups upon which it is based:

A. The bankruptcy case was filed on February 21, 2014 and a Chapter 13 plan was confirmed on May 27, 2014.

B. On July 22, 2014, Nationstar Mortgage, LLC filed a Notice of Postpetition Mortgage Fees, Expenses and Charges, claiming $450.00 for Proof of Claim preparation and $225.00 for attorneys' fees.

C. Nationstar Mortgage, LLC is provided for in Class 4 of the confirmed plan.

D. The Promissory Note related to the subject debt provides for payment of collection charges when the not is in default (page 7).

E. The Note is not in default, per the Nationstar Mortgage, LLC Proof of Claim.

To support the Objection, Debtor provided a declaration. Dkt 36. Debtor states, under penalty of perjury, the following:

A. The Note and Deed of Trust connected to Nationstar Mortgage, LLC's proof of claim only allow the creditor to charge fees if Debtor is in default.

B. Debtor has not been in default on this debt, either pre- or postpetition.

Debtor's counsel provided a declaration, which includes a billing statement for attorneys' fees sought to be recovered from Nationstar Mortgage, LLC. Attorney Declaration, Dkt. 35 In the Declaration, counsel provides the following testimony under penalty of perjury:

A. Counsel is duly admitted to practice before all courts in California and in the Eastern District of California.

B. Counsel has extensive experience in bankruptcy and debtor/creditor law.

C. Counsel's regular hourly rate is $325.00 per hour, the regular rate for counsel's law clerks is $250.00 per hour., and the hourly rate for counsel's paralegal is $175.00 per hour.

D. Counsel does not hold an interest adverse to the estate,

Trustee, or the debtor and does not have connections, other than state, with the debtor, creditors or any other party in interest, their respective attorneys and accountants, the U.S. Trustee or employee of the Office of the U.S. Trustee and he is a disinterested person within the meaning of 11 U.S.C. § § 327(a), 1103(a) and Fed. R. Bankr. P. 2014(a).

E. Counsel attached his firm's billing as Exhibit C to Docket 37. The billing shows total fees of $2,600 in connection with the Objection to the Notice (including 2 hours of anticipated additional time) and $17.28 in costs associated with the Objection.

REVIEW OF NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES

The court has reviewed the Notice filed on July 22, 2014, filed by Nationstar Mortgage, LLC. The information in the Notice is summarized as follows:

A. Itemized expense for "Attorney fees" incurred on April 17, 2014 in the amount of $225.00.

B. Itemized expense for "Bankruptcy/Proof of claim fees" incurred on April 25, 2014 in the amount of $425.00.

DISCUSSION

Though Nationstar Mortgage, LLC has been served with this Objection and provided sufficient notice, it has not filed any reply.

As to Debtor's Objection to Creditor's preparation of a Proof of Claim, the court does not find convincing the argument that the proof of claim preparation was unnecessary given Debtor's placement of Creditor in Class 4 of the plan. Debtor filed this Chapter 13 bankruptcy, implicating the rights of the subject Creditor, who filed a proof of claim in a effort to ensure their fair treatment in the case. Debtor cannot now state that Creditor's efforts to protect its interests, jeopardized by Debtor's filing, were excessive. The court finds that the filing of the proof of claim was reasonable under the circumstances. Preparation of the proof of claim likely required a review of Debtor's bankruptcy document filings, including the proposed plan, as well as the mortgage documents and payment history between Debtor and Creditor. Based on the court's experience, the $425.00 associated with the Proof of Claim preparation is excessive and the court reduces the amount allowed to $200.00.

Debtor also objects to $225.00 in attorney' fees included in the Notice of Post-Petition Fees, Expenses, and Charges. A review of the contract between Debtor and Creditor discloses that Creditor has the right to be paid back for costs and expenses expended in enforcing the Promissory Note if Debtor defaults to such an extent that Debtor is required to pay the amount due immediately in full. Debtor is correct in asserting that she was not in such a state of default that the entire amount due under the Note became immediately due in full.

Further, Fed. R. Bankr. P 2016(a) provides that an entity seeking reimbursement of necessary expenses from the estate shall file with the court an application setting forth a detailed statement of the services

rendered, time expended, and expenses incurred, and the amounts requested.

Here, it does not appear that attorneys' fees are proper based on the language of the Promissory Note. Further, even if there was grounds for some of the fees, the court cannot find a basis to support the awarding of the fees because Creditor did not comply with Fed. R. Bankr. P. 2016(a) and submit detailed billing information. Therefore, the court will strike entirely the request for $225.00.

Finally, Debtor requests reasonably attorneys' fees be awarded to her under Cal. Civ. Code § 1717. California Code of Civil Procedure § 1717(a) provides that for any action on a contract in which the contract provides for attorneys' fees and costs to be awarded to one of the parties if they prevail, then the other party shall also be entitled to enforce that provision (even though not named) if such other party is the prevailing party. In this case, the Note evidencing the debt obligation provides a contractual attorneys' fees provisions. In the event of default, under the Not, Debtor is obligated to pay costs and expenses, including reasonable attorneys' fees. See Proof of Claim 1, 7. These provisions may be enforced by Debtor pursuant to California Civil Code § 1717. The Debtor is the prevailing party in this Contested Matter (the "action") and is entitled to recover reasonable attorneys' fees and expenses.

Unless authorized by statute or agreement, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

Here, Debtor is requesting $2,600 in fees and $17.28 in costs. Debtor's counsel incorporated into his fees two (2) hours for "review response, prepare rely, attend hearing, prepare order." The court is reducing this Task to thirty-minutes (.5) as there was no response filed to the Motion, no rely prepared by counsel, and the court will prepare the order. The court finds the remaining fees to be reasonable and awards

attorneys' fees of $2,112.50 and costs of $17.28.

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 Post-Petition Mortgage Fees, Expenses and Charges filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges is sustained and Nationstar Mortgage, LLC's post-petition charge of $425.00 for "Bankruptcy/Proof of claim fees" is reduced to $200.00 and the charge of $225.00 for "attorneys' fees" is reduced to $0.00.
>
> **IT IS FURTHER ORDERED** that Rachel Torres is awarded attorneys' fees of $2,112.50 and costs of $17.28 as the prevailing party pursuant to Cal. Cod. Civ. P. § 1717 against Nationstar Mortgage, LLC.

36. 14-27196-C-13 JENNIFER SALAZAR
HLG-1

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
8-12-14 [24]

Final Ruling: The parties having filed a Stipulation resolving the Motion on September 22, 2014, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

37. 14-27476-C-13 EDUARDO/MARIE ORTEGA — CONTINUED MOTION TO DISMISS CASE
MAS-1 Michael Croddy — 8-18-14 [20]

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on August 18, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 set an evidentiary hearing on the Motion to Dismiss for [date] at [time].

Creditor, Robert Guerra, seeks dismissal of Debtor's case. Creditor obtained a non-dischargable judgment against Debtors, currently valued at $125,000 (Case No. 97-01766 C.D. Cal.).

When Creditor began levying execution on Debtors' wages, Debtors filed a Chapter 13 petition (Case No. 12-38100). Debtors' initial plan sought to paid 0% to unsecured creditors and discharge Creditor's judgment. Debtors' filed an amended plan in response to Creditor's Objection which paid a 2% dividend to unsecured creditors and excepted Creditor's claim from discharge. Creditor again objected and filed a Motion to Dismiss on the grounds that Debtors were ineligible for Chapter 13 relief. Debtors opted to convert their case to Chapter 7 and received a discharge on June 25, 2013.

Creditor argues that Debtors filed the instant case in bad faith. Debtors are seeking to discharge non-dischargable debts and pay nothing to unsecured creditors. Creditor asserts that Debtors do not meet the eligibility requirements of 11 U.S.C. § 109(e).

Creditor argues that Debtors are attempting to retain their lavish

home and the primary purpose of the filing is to attempt to discharge the non-dischargeable debt due to Creditor.

DEBTORS' RESPONSE

In response, Debtors assert the following:

1. Debtors plan is proposed in good faith and is an effort to "catch-up" on the arrears on their home and to pay back taxes. Debtors tried to do this in the previous case; however, tax debts rendered them ineligible for Chapter 13 under 11 U.S.C. § 109(e). Debtors were able to discharge hundres of thousands of dollars in non-priority debts (including taxes) in a conversion to Chapter 7. The IRS now only has a claim for $15,094.94 (IRS Proof of Claim).

2. Debtor asserts that the debt limit issue is tricky in this case. Debtors presented the following three perspectives on the debt limit analysis relevant to 11 U.S.C. § 109(e).

   On Its Face Analysis
   On its face, Debtors filed this case with $589,763 in secured debt and $366,011.14 in unsecured debt.

   Debtors' secured debt section preliminarily treated Wells Fargo Bank, N.A.'s second deed of trust, in the amount of $130,567.37, as wholly secured due to the fact that it was secured with at least $46,030.70 in equity from Debtors' primary residence.

   Based on the claims filed, the current claims register lists $17,189.15 in secured debt and $258,315 in insecured debt, within the 11 U.S.C. § 109(e) limits.

   Pre-Filing Analysis
   Pre-filing estimates were $640,740.76 in secured debt, as to both debtors, and $312,299.88 in unsecured debt as to Debtor OR $345,340.77 in unsecured debt as to Joint Debtor.

   Debtors separated the amount of unsecured debt as to each Debtor because each Debtor is not liable for the separate debt of the other.

   No Monies Owed on Second/Third Mortgages to Wells Fargo Bank, N.A. Analysis
   If Debtors do not owe Wells Fargo Bank, N.A. for either of a second or third mortgage, total secured debt remains at $510,143 as to both debtors and $233,097 in unsecured debt as to the Debtor OR $266,138 in unsecured debt as to the Joint Debtor.

   Debtors assert documents relating to Wells Fargo Bank, N.A. evidence a writing off, reconveyance, and discharge of any deficiency balance (Exh. D, Exh. E) and display a zero balance currently owing. Counsel for Debtor states that he did not pinpoint to specific sections of the text, because "you need to read the full set of documents to get the larger picture

that the Debtors no longer owe Wells Fargo Bank, N.A. on either their 2nd/3rd mortgages."

CREDITOR'S RESPONSE

Creditor reiterates its bad faith argument. Creditor takes issue with Debtors eligibility arguments on the following basis:

1. Debtors submitted no evidence suggesting that the student loan debt is not a joint debt.

2. Debtors have filed a joint case and have submitted no authority for the proposition that separate debts owed by joint filing debts should be treated separately.

3. Debtors' statements that the Wells Fargo Bank, N.A.'s debts are no longer owed are made in contradiction to Debtors' Schedules that state the unsecured deficiency owed to Wells Fargo is in excess of $46,000.

DISCUSSION

The court's discussion will focus on bad faith and Chapter 13 eligibility.

Creditor's bad faith argument was recently gravely undermined by Debtors entering into a Stipulation with the Chapter 13 Trustee confirming that pursuant to 11 U.S.C. § 1328(f)(1), they are not eligible to receive a discharge in this case as they received a discharge under 11 U.S.C. § 727 in a previous Chapter 7 case.

Creditor argued that Debtors' case was filed in bad faith because the plan seeks to discharge non-dischargeable debts and pays nothing to unsecured creditors. While the proposed plan does offer a 0% dividend to unsecured creditors, the fact that Debtors entered into this Stipulation discredits Creditor's argument that Debtors pursued this Chapter 13 in an attempt to discharge non-dischargeable debts.

Further, Debtors state that their reason for proposing the Chapter 13 plan is to catch-up the arrears on their home and to pay back taxes. It is not uncommon for Debtors to discharge debts in a Chapter 7 plan and turnaround and file a Chapter 13 plan to continue the reorganization process. The court does not find that Debtors filed the plan to attempt to discharge the Creditor's non-dischargeable debt.

What remains an outstanding issue, and may be relevant to bad faith, is whether Debtors are eligible for Chapter 13 relief under 11 U.S.C. § 109(e).

11 U.S.C. § 109(e) provides that only an individual with regular income that owes, *on the date of filing*, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525 may be a Debtor under Chapter 13. (Emphasis added).

Debtors filed their case on July 22, 2014, without a summary of schedules or any schedules. A summary of schedules was filed on August 4,

2014, asserting total secured debts of $718,372.28 and total unsecured debts of $237,401.76, facially squarely within the debt limits. However, Debtors most recently stated in their opposition to the Motion to Dismiss that, on its face, Debtors filed this case with $589,763 in secured debt and $366,011.14 in unsecured debt. This would also be an amount within the debt limits.

Debts as presented on Debtors' schedules are as follows:

Secured Debts

1.	HOA Dues	$900.00
2.	Capital One Auto Loan	$13,700
3.	Ford Motor Auto Loan	$1.00 (surrendered)
4.	IRS	$1.00 (listed out of caution)
5.	2011 HOA Dues	$1.00
6.	Wells Fargo Bank, N.A. First DOT	$494,000
7.	Wells Fargo Bank, N.A. Second DOT	$130,567.37
8.	Wells Fargo Bank, N.A. Third DOT	$79,202.01
	TOTAL:	**$718,372.38**

Unsecured Debts

1.	Franchise Tax Board	$29,339.24
2.	Internal Revenue Service	$4,418.27
3.	American Student Assistance	$21,138.74
4.	Bay Area Credit Service	$13,081.90
5.	Cal Pacific Medical Center	$872.50
6.	CMRE Financial Services	$100.19
7.	Grant & Weber	$941.36
8.	ECMC	$38,000
9.	NCO Financial	$1,721.20
10.	Robert Guerra	$122,000
11.	St. Mary's Medical Center	$100.00
12.	Rocklin Pool & Spa	$2,556
13.	Sutter Health	$39.00
14.	Sutter Health	$1,635.41
	TOTAL	**$237,401.76** (note: the court removed the $1.00 notice only listings from the list above)

From the Claims Register, the court pulled the following secured and unsecured debts existing at the time the case was filed, some are updated amounts from debts lists on the Schedules:

Claim 1: Azurea I, LLC unsecured	$3,129.69
Claim 2: Capital One Auto Finance	$13,171.76
Claim 3: ECMC, unsecured	$75,880.31
Claim 4: ECMC, unsecured	$42,839.42
Claim 5: Robert Guerra	$125,388.49
Claim 6: Internal Revenue Service	$15,094.84

Further, the court is aware of the potential extinguishment of the lien of Wells Fargo, N.A. as it relates to the second deed of trust on Debtors' property. Debtors discussed this in their third debt equation analysis and an Objection to Confirmation (Dkt. 44) lodged by Wells Fargo Bank, N.A. confirms that a lien against the property the Debtors identified

as a second deed of trust was released due to a government program.

Overall, the court is left with a piecemeal, confusing, and sloppy presentation of the secured and unsecured debts that were existing at the time the case was filed. Because the court is faced with an issue of fact, namely, making a determination of the amount of debt, and because there are numerous figures with excessive supporting documentation, the court's decision is to set the matter for an evidentiary hearing. This will permit the court to make findings of fact concerning 11 U.S.C. § 109(e) eligibility with orderly presented, competent, and admissible evidence.

The court's decision is to set the matter for an evidentiary hearing on **[date]** at **[time]**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is set for an evidentiary hearing on [date] at [time].