UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 7, 2014 at 3:00 p.m.

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1. 14-28302-E-13 SHEILA RAY — **MOTION TO VALUE COLLATERAL OF**
MMM-1 Mohammad Mokarram — **HSBC BANK USA, N.A.**
9-23-14 [17]

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, HSBC Bank USA, N.A., parties requesting special notice, and Office of the United States Trustee on September 23, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Sheila Ray ("Debtor") to value the secured claim of HSBC Bank USA, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6900 23rd Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $299,812.000. Creditor's second deed of trust secures a claim with a balance of approximately $65,453.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Bank USA, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 6900 23rd Street, Sacramento, 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 $220,000.00 and is encumbered by a senior lien securing a claim in the amount of $299,812.00, which exceeds the value of the Property which is subject to Creditor's lien.

2. 11-35409-E-13 JAY/CHRISTINA JUNG — OBJECTION TO CLAIM OF JAY JUNG, CLAIM NUMBER 8
NLE-1 Eric Schwab — 8-18-14 [84]

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, Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Proof of Claim Number 8 of Jay Jung is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Trustee") requests that the court disallow the claim of Jay Jung ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $30,000.00. Trustee asserts that:

1. The claim appears signed by "Sung Soon Bok," who was listed on Schedule F as "Sun Bok Sung" with a $30,000.00 unsecured claim for a loan. Dckt. 1, Schedule F, pg.26.

2. The claim has no attachments to prove the personal loan occurred, the address of the claim on Schedule F, and the claim is the Debtor's residence.

3. The name of the creditor box on the proof of claim is filled out with the name "Jay Jung," who is one of the Debtors.

4. Schedule I discloses two adult daughters as dependents and Schedule J shows a $400.00 expense for "Contributions to Mother-in-Law (two)." Dckt. 1, Schedule I, pg. 30; Dckt. 1, Schedule J, pg. 32.

5. The Trustee is not certain who filed this proof of claim, what their relationship is with the Debtor, if any, and what evidence they can provide to show that they have a personal loan with the Debtor with an outstanding balance of $30,000.00.

No responses or objections have been filed in connection with the Trustee's objection to claim.

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

Here, the proof of claim provides no information on the terms of the personal loan, who is actually the holder of the debt, when the loan was commenced, nor any other details that would permit the court to discern the validity of the claim. The mere fact that the Debtor is listed as the creditor raises serious concerns on the validity of this claim. Without more details or clarification on the terms and details of this "Personal Loan" or being able to discern who the true creditor is, the court disallows the claim in its entirety.

Based on the evidence before the court, the creditor's claim is

disallowed in its entirety. 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 Jay Jung, as listed on the Proof of Claim No. 8, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of Jay Jung, as listed on the Proof of Claim, is sustained and the claim is disallowed in its entirety.

3. 14-26411-E-13 WINONA EDMONSON — MOTION TO CONFIRM PLAN
JMC-2 Joseph Canning — 8-21-14 [37]

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

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

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

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

4. 14-23416-E-13 MARIO/CHRISTINE BORREGO
DPC-1 Mark A. Wolff

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
5-21-14 [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 May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value for Capital One Auto Finance, which was set to be heard the same date as this Objection on June 24, 2014.

JUNE 14, 2014 HEARING

The court continued the hearing on the instant Objection as well as the Motion to Value in order to allow the parties to obtain appraisals of the Vehicle and file their final hearing pleadings to 3:00 p.m. on August 2014.

AUGUST 5, 2014 HEARING

At the August 5, 2014, the court denied without prejudice Debtor's Motion to Value the vehicle, Though Creditor had not properly authenticate the N.A.D.A. Official Used Car Guide exhibit in order for the court to consider it as evidence, the court found that there is no entity known as Capital One Auto Finance. Such entity was merged into Capital One, National Association. However, that entity was not named in the Motion to Value or served.

For the instant Objection, the court continued the hearing to 3:00 p.m. on October 7, 2014 to afford Capital One, National Association to assert a claim in this case and have a claim valued pursuant to 11 U.S.C. § 506(a).

DISCUSSION

The court having denied without prejudice the Motion to Value the Vehicle and the fact Capital One, National Association has not appeared to have asserted a claim in the case to have valued pursuant to 11 U.S.C. § 506(a), the plan cannot be confirmed. Therefore, the court sustains the Trustee's objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 to confirmation the Plan is sustained and the plan is not confirmed.

5.	14-24616-E-13 JGD-3	**NICOLE GOLDEN AND STEPHEN ALTER** **John Downing**	**CONTINUED MOTION TO CONFIRM PLAN** **7-8-14 [35]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Nicole Golden and Stephen Alter ("Debtor") filed the instant motion on July 1, 2014 seeking to confirm their First Amended Chapter 13 Plan.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an objection on August 6, 2014, arguing that the First Amended Chapter 13 Plan cannot be confirmed because: (1) Debtor is delinquent in plan payments; (2) the Debtor did not file the First Amended Chapter 13 Plan in good faith or in Debtor's best efforts; and (3) Debtor failed to properly complete the required Statement of Financial Affairs of the petition.

The Chapter 13 Trustee alleges that, under 11 U.S.C. §1325(a)(6), the First Amended Chapter 13 Plan cannot be confirmed because the Debtor cannot

make payments under the Plan's terms. At the time of the objection, the Chapter 13 Trustee states that the Debtor is $2,140.00 delinquent in plan payments. As of September 25, 2014, the plan payments are to increase by $200.00. Due to the delinquencies in the Plan, the Trustee objects to the confirmation of the Plan.

The Chapter 13 Trustee argues that the plan should not be confirmed under 11 U.S.C. §1325(a)(3) because the Debtor is over the median income on Form B22C, the Statement of Current Monthly Income. The Opposition does not state the significance of this contention.

Lastly, the Chapter 13 Trustee argues that the Plan cannot be confirmed because Debtor did not complete the Statement of Financial Affairs. Specifically, Debtor fails to list Wells Fargo under the "Payments to Creditors" section of the Statement of Financial Affairs while the Plan lists Wells Fargo is listed in Class 4 of the Plan. Furthermore, Debtor failed to list any information under "Property held for another person" on Statement of Financial Affairs concerning the 2013 Highlander in the Debtor's hold or control. The Chapter 13 Trustee argues that, under 11 U.S.C. §1325(a)(6), the plan should not be confirmed because the Debtor failed to properly complete the Statement of Financial Affairs.

U.S. BANK NATIONAL ASSOCIATION'S OBJECTION

U.S. Bank National Association, as Trustee for Banc of America Funding Corporation, Mortgage Pass-Through Certificates, Series 2006-G ("Creditor") filed an objection on August 8, 2014, arguing that the Plan cannot be confirmed because the Plan does not provide for the full value of Creditor's claim and does not promptly cure Creditor's pre-petition arrears.

Creditor argues that under 11 U.S.C. §§ 1325(a)(5)(B)(ii) the Plan cannot be confirmed because the plan fails to provide for the payment of Debtor's pre-petition arrears on Creditor's secured claim in the amount of $5,399.88.

Creditor argues that under 11 U.S.C. §§ 1322(b)(5) the Plan cannot be confirmed because the Plan does not provide to cure any of Debtor's pre-petition arrears on Creditor's secured claim in the amount of $5,399.88.

AUGUST 26, 2014 HEARING

At the August 26, 2014 hearing, the court overruled U.S. Bank National Association, as Trustee's, opposition, specifically stating that the court is making no determination as to whether a pre-petition arreage exists.

As to the motion, the court continued the hearing to 3:00 p.m. on October 7, 2014. Because the Debtor failed to properly serve the Internal Revenue Service, pursuant to Local Bankruptcy Rule 2002-1, the court ordered that on or before September 2, 2014, service of the pleadings on the Internal Revenue Service. The court ordered that the service period for the Internal Revenue Service (which has already been served at one of the three required addresses) is shortened for the October 7, 2014 hearing.

PROOF OF SERVICE - SEPTEMBER 22, 2014

On September 22, 2014, *20 days after the court ordered deadline to properly serve the Internal Revenue Service*, Debtor filed a Notice of Continued Hearing and Certificate of Proof of Service, stating that the Debtor's served all three required addresses for the Internal Revenue Service. Service of the Notice of the Continued hearing and service on the Internal Revenue Service was not made until September 22, 2014 – fifteen (15) days before the hearing date.

DISCUSSION

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

Upon review of the motion, oppositions, and supporting document, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed. Debtor is delinquent on payments. Debtor has not properly completed required forms. Finally, Debtor did not provide for or cure pre-petition arrears in the Plan. There have been no further pleadings or responses filed to explain or justify the delinquencies outlined by the Trustee in his opposition.

Furthermore, the court is concerned with the blatant and unreasonable failure of Debtor and Debtor's Counsel to follow the directions of a court order. The Debtor and Debtor's Counsel appear to have willfully and unapologetically failed to serve the Internal Revenue Service by the September 2, 2014 deadline that was ordered by the court. The court cannot help but question the Debtor's ability to perform properly under any plans term when they cannot follow a simple deadline.

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.

6. 14-27117-E-13 ANTHONY/GWENDOLYN LAND MOTION TO CONFIRM PLAN
SJS-1 Scott Johnson 8-25-14 [26]

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 Debtors, 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, 43 days' notice was provided. 42 days' notice is required.

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

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

Anthony and Gwendolyn Land ("Debtors") filed the instant Motion to Confirm the First Amended Plan on August 25, 2014. Dckt. 26.

MOTION

In support, the Debtors state that the plan has been amended to increase the monthly administrative expenses pursuant to Section 2.07. Debtors' Chapter 13 Plan has also been amended to increase the amount claimed by secured creditor GM Financial and the monthly dividend paid thereon in Class 2A based upon the creditor's Proof of Claim, Claim 6-1. Debtors' Chapter 13 Plan has also been amended to decrease the amount claimed by the secured creditor Wells Fargo Dealer Services and the monthly dividend paid thereon in Class 2A based upon the creditor's Proof of Claim, Claim 1-1. Additionally, Debtors state the plan has been amended to correct the priority creditor Internal Revenue Service in Class 5 based upon its Proof of Claim, Claim 7-1.

Debtors state that while the proposed plan does not cause a change in the plan payments, the Debtors are supplementing both Schedules I and J to more accurately reflect their monthly income and expenses. The Debtors state that they will also file an amended Form B22C based upon the Chapter 13 Trustee's objections and other factors. These supplemented and amendments forms and schedules were filed on August 25, 2014. Dckt. 23 and 24.

TRUSTEE'S OBJECTION

David Cusick, Chapter 13 Trustee, filed an objection to the instant motion on September 16, 2014. Dckt. 41. The Trustee objects to confirmation as the plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). In support, the Trustee states:

1. The Debtors' Amended Schedule I reduces the gross income for Debtor 1 by $737.10 (from $2,713.64 to $2,976.54) and Debtor 2 gross income was reduced by $786.11 (from $3,820.71 to $3,034.60) for a total gross income reduction of $1,523.21.

2. Based upon the Trustee's calculation of the Debtors' Employee Statements (Exhibits A and B) the Debtors' original Schedule I reflects the correct gross income of $3,713.64 and $3,820.71. The Trustee's calculations were based on the average of the 6 months of paystubs received by each of the Debtors. Trustee states that after reviewing the supplemental declarations of the Debtors (Dckt. 32 and 35), both Debtors state that prior to the January 1, 2014 pay advice, neither Mr. Or Mrs. Land had received a pay advice since November 26, 2013.

   However, in Mr. Land's Declaration, he states that the income for January is not representative of their average income but later on states that they are paid on a monthly basis. Trustee argues that it does not appear the Debtors income was accurately reduced. Rather, the original Schedule I correctly reflects the Debtors' average monthly income.

3. The Debtors have decreased certain expenses, as evidenced in the chart below:

	Original Schedule J	**Supplemented Schedule J (August 25, 2014)**	**Difference**
6a. Electricity, heat, natural gas	$370.00	$250.00	($120.00)
6c. Telephone	$665.00	$228.00	($437.00)
7. Food	$900.00	$545.00	($355.00)
9. Clothing, laundry	$300.00	$100.00	($200.00)
10. Personal Care	$215.00	$150.00	($65.00)

11. Medical-Dental	$450.00	$110.00	($340.00)
12. Transportation	$500.00	$300.00	($200.00)
13. Entertainment	$150.00	$50.00	($100.00)

The Declaration of Debtors (Dckt. 28) states in part that the budget was adjusted to accommodate certain decreases and erroneously overstated expenses in the original schedules. The Debtors have not provided the court with documentary evidence such as bills or receipts to prove these expenses, where these expenses were discovered at the same time the Debtors reduced their income. Throughout the changes to Debtors' income and expenses, the plan payment has remained unchanged at $425.00 per month for 60 months.

4. Amended Form 22C, filed August 25, 2014 (Dckt. 22) lists $191.47 on line 59. The amended form also shows a reduction of $177.47 on Column B, page 1 (Spouse's Income) and a reduction of $1,064.79 on page 9 (Gross income for January 2014). The Debtors' original Form 22C (Dckt. 1, pg. 1 and 9 respectively) listed Column B as $3,820.71 and $6,893.85, respectively. The Trustee argues that it is unclear how the income listed was calculated by the Debtors and the Trustee is not certain if the monthly net income of $429.06, listed on Schedule J, line 23 is accurate, based on the analysis of the Debtors' paystubs above.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor Gwendolyn Land testifies that when originally computing her six month average income was for the months January 2014 through June 2014. However, the January checks, totaling $6,893.85 included her wages for December 2014 ($6,893.85, January 1, 2014 check). Declaration, Dckt. 35. Original Form 22C, Statement of Current Income, stated this Debtor's average monthly income to be $3,820.71. Dckt. 1 at 50.

Total Used to Compute Co-Debtor (Spouses) Income	Form 22C, Dckt. 1.		Actual Income for Months of January - June 2014
January	$6,893.85		$3,470.46
February	$3,191.79		$3,191.79
March	$3,248.95		$3,248.95
April	$3,348.98		$3,348.98
May	$3,206.08		$3,206.08
June	$3,034.60		$3,034.60

Total For Six Months	$22,924.25		$19,500.86
Average for Six Months	$3,820.71		$3,250.14

The Trustee is correct, and Debtor corroborates that the January 2014 pay stubs reflect $6,893.85 in income, but Debtor also testifies that this include her December earnings, which were paid on January 1, 2014 by her employer. The court accepts this correction, which results in the six month pre-petition average being $3,250.14 for debtor Gwendolyn Land.

Debtor Anthony Land provides the same testimony as to the miscomputation of his "current monthly income" for Form 22C. (Both Debtors are employed by the Elk Grove School District, so the same misstatement of income for the six months prior to the commencement of the case is not as unusual as it would seem for two debtors.) Declaration, Dckt. 32. In his Declaration, Anthony Land states the following as an accurate statement of his monthly income and average for the period January 2014 - June 2014.

Total Used to Compute Debtor Income	Form 22C, Dckt. 1.		Actual Income for Months of January - June 2014
January	$6,740.64		$3,470.46
February	$3,123.65		$3,123.65
March	$3,263.75		$3,263.75
April	$3,326.80		$3,326.80
May	$3,850.45		$3,850.45
June	$2,976.54		$2,976.54
Total For Six Months	$23,281.83		$20,011.65
Average for Six Months	$3,880.31		$3,335.28

Thus, based on the Testimony, it is asserted that Debtor's average monthly income is $3,335.28 and Co-Debtor Spouse's monthly income is $3,250.14, for combined monthly gross monthly income of $6,585.42.

However, on Amended Schedule I Debtors now state that their monthly income averages to be only $6,011.14 – which is ($574.38) less than what they averaged for the first half of 2014. Dckt. 23. On Amended Schedule I, a new deduction is listed – Insurance totaling ($718.62) a month. Between the miscalculation of average monthly income, decreasing the amount below the six month average, and a new deduction, Debtors decrease their "Combined Monthly Income" by almost $2,000.00 a month.

These changes are not explained, but the court notes that in reviewing Amended Schedule J and Original Schedule J, even with a ($2,000.00) a month decrease in monthly income, Debtors are able to adjust their expenses (which they stated under penalty of perjury on Original Schedule J) so that they can still achieve Monthly Net Income of only $428.06 to fund the Plan. Neither Debtor offers any explanation for this reduction in expenses of exactly the amount to achieve the bottom line number which they stated existed when they formerly signed Schedule J under penalty of perjury.

The Debtors' failure to address this reduction renders their declarations and Amended Schedules I and J (as well as other statements they have purported to make under penalty of perjury) not credible. While the court could understand the mistake with the January 2014 pay stubs, there is nothing presented to the court as to how the Debtors in good faith stated they had a $370.00 power expense, a $665.00 telephone expense a $900.00 food expense, a $300.00 clothing expense, a $215.00 personal care expense, a $450.00 medical-dental expense, and a $500.00 transportation expense. Instead, the evidence demonstrates that the expenses, and statements under penalty of perjury by the Debtors on Original Schedule J were fabrications (whether by Debtors or by Counsel) to mislead the court, Chapter 13 Trustee, Creditors, U.S. Trustee, and other parties in interest to prevent Debtors from properly funding their plan when they believed their projected disposable income was significantly greater.

After review of the motion, the supplemental forms and schedules, and the Trustee's objections, the court finds that the proposed plan is not in the Debtors' best efforts and is not confirmable. It may possibly be that Amended Schedule is accurate, but that does not "rehabilitate" the Debtors' from their prior grossly inaccurate statement of expenses. In addition to not being feasible, this plan has not been presented or prosecuted in good faith.

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.

7. 14-27118-E-13 MELVYN/RITA LIBMAN MOTION TO CONFIRM PLAN
SJS-2 Scott Johnson 8-20-14 [33]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Melvyn and Rita Libman ("Debtors") filed the instant Motion to Confirm First Amended Plan on August 20, 2014. Dckt. 33. The proposed amended plan lessens the term of the plan from 60 months to 36 months, pursuant to 11 U.S.C. § 1325(b)(4). Debtors have also increased the administrative expense in Section 2.07 from $33.86 to $100.00. Debtors have also amended their Chapter 13 Plan to properly provide for the claim of Ally Financial based upon its proof of claim.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 20, 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.

8. 11-24420-E-13 PGM-4 | **FRANK SCHRODEK AND JOANNE DE LA TORRE** | **CONTINUED MOTION TO MODIFY PLAN 7-30-14 [109]**
Peter Macaluso

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2014. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The court's decision is to denied the Motion to Modify Chapter 13 Plan.

Frank Schrodek and Joanne De La Torre ("Debtors") filed the Motion to Modify Chapter 13 Plan After Confirmation on July 30, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

DEBTORS' MOTION

Debtors move to modify their Chapter 13 plan. Due to Debtors' recent medical issues, they were not able to keep current on their plan payments. The modified plan would reduce monthly payments to $100.00 over 24 months to complete the 60-month maximum repayment period. The plan also provides that Debtors will pay a lump sum of $2,025.00. Debtors state that they have proposed this modification in good faith. Debtors also state that the modification will not modify rights of any secured creditors, but will modify the rights of unsecured creditors by increasing their dividend to 3.5%.

TRUSTEE'S OPPOSITION

The Trustee has filed opposition to this motion. The Trustee objects to the treatment of P-Fund, Inc., which was treated as a Class 2 creditor in the confirmed plan. The modified plan treats P-Fund, Inc. as a Class 2 and as a Class 4 creditor, the latter in which the creditor would be paid through the sale of a truck. The court denied Debtors' motion to sell that truck on June 30, 2014 and required that the sale proceeds be deposited with the Trustee. Furthermore, the Trustee has no knowledge of the Debtors commencing a proceeding against P-Fund, Inc. to recover the unauthorized disbursement as ordered by the court. It appears the Debtors are merely trying to modify their plan to, in effect, authorize the sale which was denied by the court.

The Trustee also objects to the modified plan because the Trustee is unsure that the debtors will continue to be able to pay. In the supplemental Schedules I & J submitted with Debtors' motion, income and expenses changed from previously filed schedules without an explanation from Debtors as to why the changes have occurred. The supplemental Schedule I does not reflect $77.28 in pension income from Central States which appears to be received monthly per bank statements. Additionally, it appears debtor 2's social security income is $1,003.00 per month per the bank statements and not $939.00 as reported. The supplemental Schedule J reports $610.09 for a mortgage payment that infers it includes taxes and insurance as lines 4a and 4b are $0.00. A Notice of Mortgage Payment Change was filed with the court on June 17, 2014 which states this amount is principal and interest only. The Trustee notes the following changes from the previous Schedule filed April 8, 2014:

1. Food and housekeeping supplies increased $50.00.

2. Medical and dental expenses increased $16.00

3. Entertainment increased $15.00

4. Debtor do not report any vehicle insurance on line 15c.

Trustee alleges that the Declaration filed by the Debtors indicates additional attorney fees of $1,700.00 will be requested. No pending motion for additional fees has been filed.

Lastly, the Trustee argues that the Debtors have incorrectly stated the monthly contract installment in Class 4 for Wells Fargo Bank is $696.84. The correct amount per the Notice of Mortgage Payment Change is $610.09.

DEBTORS' RESPONSE

Debtors filed a response to the Trustee's opposition. However, the response consists only of Debtor's counsel arguing about "facts," with no evidence of such "argued facts" having been presented. Debtor, and each of them, have refused or merely failed to provide that simple testimony under penalty of perjury in a declaration.

Debtors argue that P-Fund, Inc. has been paid in full and that Debtors are willing to comply with court orders in the future. Debtors also argue that the expense increases in their schedules are minimal and immaterial. Debtors state that the additional attorney's fees requested in the modified plan are in response to decisions Debtors made that incurred additional attorney time than was provided for in the original plan. Debtors also state that the Wells Fargo installment contract change results in $86.75 savings to the Debtor, until the next escrow analysis which could result in an increase. The Debtors state that such a temporal savings should be allowed to be retained, or in the alternative, increase the Debtors' payments by $85.00.

SEPTEMBER 9, 2014 HEARING

At the September 9, 2014 hearing, the court continued the hearing to 3:00 p.m. on October 7, 2014 to be heard in conjunction with the Motion for Compensation. Dckt. 126.

DISCUSSION

Here, the Debtors' plan does not provide for all of the disposable income. Specifically, the discrepancy in the Wells Fargo Bank's monthly payment in the Plan and the Notice of Mortgage Payment Change leaves $86.75 of disposable unaccounted for in the Plan.

The Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> [i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Because the Debtors have this excess money due to the change in mortgage payments, the Debtors' disposable income is not fully committed to the Plan and violated 11 U.S.C. § 1325(b)(1).

Debtor and counsel argue that P-Fund has been "properly" paid and therefore there is no reason to recover the monies which were paid (those monies were monies received by the estate for an unauthorized sale of assets). This is an "interesting argument," which basically states – "we did what we wanted to do, we paid the money to the creditor we wanted, we transferred assets to the friendly parties we wanted to, and hang what the law requires – we owe no fiduciary duty." This shows not only a disregard for the fiduciary duties of both debtors, but a disregard of both debtors' fiduciary duties by their counsel.

In substance, Debtor, and counsel, argue that Debtor, and both of them, are "sorry" they violated the Bankruptcy Code, they have apologized, so now ratify their violations and let them lower their plan payments.

Debtor's cavalier attitude toward fiduciary duties, for each of the two debtors, is shown by the present Motion. Notwithstanding the substantial breaches of fiduciary duties, the Motion is framed and the "evidence" presented as if it were merely a routine motion to modify due to a change in mortgage payments. No provision is made to rectify the improper sale of the vehicle, the improper payment of monies, and the improper diversion of monies (the net sales proceeds) by Debtor, and each of them. While the Plan has a lump sum $2,025 payment (apparently at the end of the plan), it is too little too late. As the court earlier addressed, this provision actually states, "we stole $2,025 from the estate, we're going to keep the $2,025, and if we pay the money back, at all, it will be years from now at no interest."

In light of the court's prior statements, if the Debtor, and each of them, were attempting to prosecute this case in good faith, they, and counsel, would not have tried to disguise this as a "routine" motion. Some of the court's earlier comments include,

> "This filing of the Amended Schedule C clearly demonstrates that neither the Debtors nor counsel appreciate the significance of making statements under penalty of perjury in this bankruptcy case. Rather, all three continue in their pursuit of saying anything and filing Liar Declarations to achieve their goals without regard to the Bankruptcy Code.
>
> The court notes that in this bankruptcy case the Debtors have done little other than pay the mortgage on the house they want to retain, pay their delinquent income taxes, and pay their attorney for assisting them in this case. No monies have been paid to creditors holding general unsecured claim or any creditors who would not have nondischargable claims. The court not retroactively approving the sale, which may well doom any plan in this case, will be of little moment to the Debtors. If the case were dismissed and they had to truthfully and honestly provide information in a new bankruptcy case and in good faith perform a bona fide plan, it would not be any different then if they were not in bankruptcy."
> ...
> "However, on May 13, 2014, the Debtor Frank Schrodek provides his Supplemental Declaration in support of the present motion. He testifies under penalty of perjury that he did not wait for

the court to authorize the sale of the Truck, but instead on April 17, 2014, chose to just sell the vehicle (without authorization). He further testifies that he sold the vehicle on April 17, 2014, because I could not drive the truck in California After 12/31/13, as the air board wont allow any truck old [sic.] than 2005 to be driven in California. Dckt. 90.

In an apparent justification for knowingly and intentionally selling the Truck without court authorization, Mr. Schrodek states,

'I had tried to sell the truck for some time, but not being able to drive it in California, it is very hard to sell it. It is worth a lot more than what it sold for. I could not let it sit any longer because in time seals and batteries go bad. It cost me almost $600 to find a buyer out of state.'

Id.

This post hoc justification does not ring true. The hearing on the Motion to Sell (because the Debtors hid from the court the buyer and terms of the sale in the original motion) was continued to May 20, 2014. No evidence is presented that seals and batteries would go bad by the time for the hearing on May 6, 2014, set by the Debtors on their Motion."
...
"The court remains concerned regarding the unauthorized sale of estate property. Debtor admits that the property was sold for less than it was worth. Debtor did not offer any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00, but admit that it is worth more in his Declaration.

Conspicuously absent from the Supplemental Declaration is any testimony as to what efforts were made to engage a broker to properly market and sell the Truck. Instead, it appears that the Debtors make a favored, below market same to a person who is now identified as Jonathan Breon. If sold for less than fair market value, the Debtors have violated their fiduciary duty to the bankruptcy estate.

The Debtors proceeded to knowingly, intentionally, and willfully violate the Bankruptcy Code. The court does not know if the Debtors did so in violation of directions from their attorney or lied to him about what they were doing. Counsels conduct in this case causes some concern. This is not the first time he has had clients who knowingly sold assets without obtaining authorization. In once case, the debtors did so after the court expressly denied a motion for authorization to sell. (The denial was without prejudice, again because the motion and supporting evidence prepared by Counsel did not meet the minimum necessary to grant such motion.)"

...

> "The court denies the Motion to Approve the Sale without prejudice. Debtors have failed to show any legally sufficient basis for so retroactively approving the sale. The court recognizes that the failure to now approve the sale creates a significant legal risk for the Debtors and the buyer. There is property of the bankruptcy estate which is in the hands of a person who incorrectly believes he may own it. The Debtors, as fiduciaries of the estate have improperly disposed of assets, paid monies to a creditor other than as provided for in the plan, and then have taken the monies to use for their own purposes (including purchasing a $1,000.00 TV).
>
> The court declines Debtors suggestion that the court punish them by forcing them into a Chapter 7 case. It appears that such sidestep is exactly what they Debtors may want to try and further cover-up their violation of the Bankruptcy Code and improper transfer of estate assets. Quite possibly the Debtors believe that a Chapter 7 trustee with no assets to fund expenses, would have to let the Debtors suffer the fate of being granted their Chapter 7 discharge. The Debtor are not going to be forced to suffer that fate.
>
> At this juncture, the court leaves it to the Chapter 13 Trustee, U.S. Trustee, and other parties in interest to determine if this case should continue as a Chapter 13 case, be converted to Chapter 7, be dismissed with prejudice, or dismissed without prejudice. These persons in interest can also determine what claims the estate may have for conversion or other improper disposition of estate assets, whether any such claims should be prosecuted, and if they should be prosecuted, the proper party to do so."

Civil Minutes, Motion to Approve Sale (retroactive), Dckt. 106. See also Civil Minutes from May 20, 2014 hearing on prior Motion to Sell (motion misstates that relief to sell the property in future is sought, when it had actually already been sold by the Debtor). Dckt. 93.

Debtor attempts to justify the current minimal plan payment, and to cover up the breach of fiduciary duties, by stating that they have only $2,329.00 of monthly income from Social Security. Exhibit 2, updated Schedule I, Dckt. 112. Debtor then lists $2,226.64 in expenses, leaving only $102.36 to fund a Plan. Exhibit 3, updated Schedule J, *Id.* Thus, though the Debtor, and each of them, diverted $15,000 from the estate (used to improperly pay a creditor and to buy personal items, including a big screen television), Debtor cannot be expected to pay anything more.

The court continued the hearing, hoping that the Debtors would address these issues in a manner other than just seeking to absolve themselves of violating the Bankruptcy Code. Debtors' counsel has argued that due to Joanne De La Torre's medical condition, and it all being Frank Schrodek's "fault," both Debtors should be allowed to confirm the modified plan and be absolved of their debts. The court rejects this contention in that (1) it admits that one

of the Debtors violated the Bankruptcy Code (fully intending to do so) and (2) tries to hide that violation by the medical condition of the other Debtor. "Punishing" Frank Schrodek by forcing a discharge on him due to his wife's illness is not something this court will order

Debtor, and each of them, continue in their bad faith prosecution of this case and efforts to improperly divert property of the estate to others, contrary to the provisions of the Bankruptcy Code. Debtor, and each of them, also seek to gain further from the earlier breaches of fiduciary duties.

There has been no supplemental pleadings or declarations filed concerning the instant Motion to Modify Chapter 13 Plan.

Therefore, 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 Modify Chapter 13 Plan After Confirmation 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 Modify Chapter 13 Plan After Confirmation is denied and the proposed Chapter 13 Plan is not confirmed.

9.	11-24420-E-13 PGM-5	**FRANK SCHRODEK AND JOANNE DE LA TORRE** **Peter Macaluso**	**MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY** **9-8-14 [120]**

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

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, parties requesting special notice, all creditors, and Office of the United States Trustee on September 8, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Peter Macaluso, the Attorney ("Applicant" or "Counsel") for Frank Schrodek and Joanne De La Torre, the Chapter 13 Debtor ("Client"), makes an Additional Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of March 12, 2014 through September 2, 2014. The Motion states with particularity (Fed. R. Evid. 9013) the following grounds upon which the fees are requested:

A. Counsel provided necessary, substantial, unanticipated legal serves to the Debtor in this case, which consisted of,

1. Motion to Modify the confirmed plan to address Motion to Dismiss filed by the Trustee;

2. Motion to Sell the Debtor's Peterbuilt truck, which was provided for the in Chapter 13 Plan, appeared for the relating Motion to Compel; and

3. Motion to Modify was needed after the denial of the Motion to Sell.

B. The additional fees are in the amount of $1,700.00.

C. The loadstar rate used by counsel is $200.00 for 8.5 hours of work which was "unanticipated."

D. The unanticipated time services are stated to be:

1. Motion to Modify .....4.95 hours

2. Motion to Sell .....6.90 hours

3. Second Motion to Modify .....2.35 hours

8.5 hours at $200.00 an hour equals $1,700.00 in fees. It appears that Counsel seeks $1,700.00 in additional fees based on the confirmation and modification work exceeding the set fee which he opted to accept for this case. Local Bankruptcy Rule 2016-1 allows for additional fees above the set fee amount only for substantial, unanticipated services provided, not merely because in retrospect Counsel does not feel that the set fee he elected to take was not as advantageous as it appeared previously. L.B.R. 2016-1(c)(3).

REVIEW OF BANKRUPTCY CASE

This case was filed on February 23, 2011, as a joint case by Frank Schrodek and Joanne De La Torre. The Chapter 13 Plan was confirmed in this case on April 17, 2011. Order, Dckt. 22. On May 30, 2011 Debtors filed a motion to modify the confirmed plan to modify monthly payments and forgive missed payments. Motion Dckt. 33. The court granted the motion. Order, Dckt. 39.

The Debtors later filed a Motion to Sell. Dckt. 74. The court denied Debtors' Motion to Sell. The court held the motion "was a sham to try and cover-up the Debtors willful and intentional violation of the Bankruptcy Code by selling an asset without obtaining authorization from the court and then using the money to pay a creditor (possibly multiple creditors or themselves) outside payments permitted under the confirmed Chapter 13 Plan in this case." Dckt. 96.

The Debtor's Third Motion to Modify is set for hearing on the same date as this motion, which the court ruled to deny the Motion to Modify.

OPPOSITION BY TRUSTEE

The Chapter 13 Trustee objects to the Applicant's Motion for Approval of Additional Attorney fees on the basis that Counsel is applying for fees that appear inconsistent with the plan which was filed before this motion was brought. The Third Modified Plan filed on July 30, 2014 only lists the original $3,400.00 of attorney fees. The Trustee notes that while the motion discloses what are likely substantial and unanticipated services performed totaling 14.2 hours and seeks compensation for only 8.5 hours; however, all but 2.35 hours of time spent were prior to the date the modified plan was prepared.

The modified plan hearing is set for the same date that this motion is scheduled. Applicant has not addressed why the plan does not disclose the existence of these projected attorney fees.

RESPONSE BY APPLICANT

Counsel reiterates from Debtor's declaration (Dckt. 111) that the requested $1,700.00 in attorney fees is mathematically calculating this amount into the plan and discounted the request for fees from $2,840.00 to $1,700.00. Dckt. 123.

Applicant notes this disclosure would have been better placed in the motion but that it has been built into the Plan.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the

> customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

"No-Look" Fees

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of

> Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Debtors' proposed Chapter 13 Plan expressly provides that Applicant was allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 46. The Plan was prepared by Applicant, but has not yet been confirmed.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. 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.

Applicant's declaration admits that the decision to accept the set fee was improvident because the prosecution of the case within the scope of the set fee was more complicated than he projected at the start of the case. Such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he or she spends more time than projected. However, in cases when the set fee works to be a bonus (Applicant spending less time than equal to the set fee), Applicant does not state that the rules require him to give the extra amount back. The set fee exists to allow Counsel to elect to accept such fees, taking the bonus in some cases and spending more time in other cases – but in the end the over and under amounts balance out.

It may be that Applicant could, consistent with Local Bankruptcy Rule 2016-1(c)(3), seek the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. But Counsel must seek such additional fees, not ignore the agreed set fee and Local Bankruptcy Rule 2016-1. In seeking such additional fees, Applicant shall provide the court with the standard lodestar analysis (even if from reconstructed records), which will include a statement as to the benefit of the services to the Debtor and estate.

DISCUSSION

This court recognizes that attorneys for debtors do not guaranty specific results and are not "contingent fee" attorneys who will get paid only if a debtor completes a plan. Such would be an unreasonable standard and unduly burden consumer attorneys to prosecute cases in good faith with their clients. The existing confirmed plan in this case provides for a $3,400.00 set fee for Counsel. Order Confirming, filed April 17, 2011, Dckt. 22.

Counsel now seeks an additional $1,700.00 in fees for "substantial and unanticipated" work for these Debtors. As shown on the time sheets provided in support, Counsel has been attempting to dig the Debtors out from their unauthorized sale of property of the estate, disposing of the sales proceeds other than as authorized by the Chapter 13 Plan, and attempting build a plan to "fix" the problem.

Counsel has spent the time and work trying to help the Debtors and the Estate (which currently has a Peterbilt Truck the estate owns in the hands of a purported purchaser, who the court has not authorized to buy, nor the Debtors sell to, the truck), as well as the Debtors using the "extra" proceeds to purchase items, including a big screen TV. Though counsel has not been successful in confirming a Modified Plan, at the end of the day he cannot force the Debtors to authorize him to file a plan which properly addresses the situation or the responsibility of each Debtor for the misconduct.

The Court grants counsel $1,700.00 in additional fees (this does not determine that counsel is entitled to be paid the $3,400.00 in set fees if a plan is not completed in this case). The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Allowance of Professional Fees is granted, and Peter Macaluso is allowed additional attorneys' fees in this case in the amount of $1,700.00. These fees may be paid by the Chapter 13 Trustee in the priority as provided in a confirmed Chapter 13 Plan. The award of the additional fees does not ratify or allow the full payment of the $3,400.00 in set fees approved in the Court's Order confirming the Original Plan in this case, Dckt. 22. denied without prejudice.

10. 14-29223-E-13 WILLIAM/TERRY SHOUSE — MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott Hughes — 9-17-14 [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 Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted, with the Motion set for final hearing.

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, as Debtors were trying to stop a trustee's sale on their home, however, due to a cut in Debtor Terry Shouse's hours and loss of paid holidays, Debtors missed plan payments. Debtors state that now Debtor Terry Shouse's is back to a full 40 hour work schedule and reinstated paid holidays. Also, the Debtors allege that they are owed more in income tax refund for 2013 than they initially anticipated. Because Debtor Terry Shouse is now back to full time schedule with paid holiday, she has increased her withholdings for taxes, Debtors argue that the instant case was granted in good faith.

Multiple Bankruptcy Case Filings

This is not merely the second bankruptcy case filed by Debtor, but third case which has been pending since 2013. The First Chapter 13 Case was filed on June 15, 2012 and dismissed on June 5, 2013. Bankr. E.D. Cal. 12-31326. The Trustee's Notice of Default upon which the First Case was dismissed stated that Debtor was in default in $4,058.00 in Plan payments. *Id.* Dckt. 27. Debtor did not respond to the Notice of Default and the First Bankruptcy Case was dismissed. Order, *Id.* Dckt. 30.

Debtor's Bankruptcy Case was filed on June 7, 2013 (two days after the First Bankruptcy Case was dismissed). Bankr. E.D. Cal. 13-27790. Debtor immediately filed a motion to extend the stay in the Second Bankruptcy Case, alleging,

A. Debtor filed the bankruptcy case to stop a foreclosure.

B. Debtor William House had a stroke and surgery.

C. The Debtor is recovering.

Motion, *Id.* Dckt. 8. Debtor Terry House has provided her declaration testifying as to the medical condition of the co-debtor. *Id.* Dckt. 10. Debtor Terry Schouse states that having resolved the medical issues, she will be able to make the payments under the Chapter 13 Plan.

Debtor's Chapter 13 Plan in the Second Bankruptcy Case required $4,345.00 a month plan payments for sixty months. Plan, *Id.* Dckt. 5. This payments were to be used to pay (1) $3,464.25 a month to the Class 1 claim

(arrearage and current monthly mortgage payment), (2) Debtor's counsel fees, (3) Chapter 13 Trustee administrative expenses, (4) $26,800.00 state and federal income taxes (for 2009-2012 tax years), which payment averages $488.00 a month (subordinated in payment to Debtor's attorneys' fees), and (5) a 0.00% dividend to creditors holding general unsecured claims.

Debtor's Schedules I and J filed in the Second Bankruptcy Case computes Debtor to have $3,875.20 (wages), $1,968.00 (Social Security), and $675.00 (pension) in monthly gross income. *Id.* Dckt. 1 at 23. From this gross income, Debtor has $306.90 withheld for "payroll taxes." On Schedule J Debtor listed $1,767.00 for expenses (excluding mortgage, property insurance, property taxes). *Id.* at 24.

The Trustee's Notice of Default in the Second Bankruptcy Case states that Debtor was $8,690.00 in default (two plan payments). *Id.* Dckt. 47.

Current Bankruptcy Case Finances

Debtor offers explanation as to why substantial monetary defaults have occurred in the prior two cases. Debtor supports the present case with Schedule I and J which show the following income and expenses:

Income	$6,976.24		Expenses	($2,505.90)
Debtor 1				
Gross Wage Income	$4,661.94		Mortgage, Taxes, Insurance	$0.00
Tax Medicare Social Security	($806.52)		Electricity/ Gas	($350.00)
Insurance	($194.08)		Food	($750.00)
Debtor 2			Transportation	$350.00
Social Security	$2,207.80		Health Insurance	$104.90
Pension	$675.16		Taxes	$0.00

Dckt. 1 at 24-29. Debtor's expenses have increased in this bankruptcy case, apparently in conjunction with Debtor now showing a higher income. In the Second Bankruptcy Case Debtor stated under penalty of perjury that the monthly expenses were only $1,767.00. Schedule J, 13-28890 Dckt. 1 at 24-25. In 2013 Debtor's food and household expenses were only ($500) a month. Debtor had no house maintenance expense. Debtor had not health insurance expense. Debtor's transportation expense was only $250.00.

The court is concerned that Debtor has, and continues, to "construct" Schedule J expenses to justify a budget which provide for paying 50% of their monthly income just for their mortgage, property insurance, and tax payments – to keep their home at all costs – ($3,498.58 Class 1 payment/$6,976.24

Schedule I monthly income. Whether the monthly net income is accurate appears problematic as Debtor's tax withholding may well be insufficient, especially in light of the multiple years of significant income tax debt.

For the final hearing, Debtor will have to address, and provide evidence, to show that the expenses listed on Schedule J are reasonable and complete. The failure of the prior two cases may have at their core unrealistic economic calculations by Debtor to save a house which has plunged them into multiple bankruptcy cases.

Interim Extension of Automatic Stay

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 for the court to extend it on an interim basis.

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 through and including November 30, 2014.

The court shall conduct a final hearing on the Motion at 3:00 p.m. on November 18, 2014. Debtor shall file supplemental pleadings substantiating monthly income, monthly deductions (including how proper tax withholding is computed), and reasonable expenses (all expenses, not merely the several summarized by the court in the ruling granting the Interim Order) on or before October 24, 2014. Opposition shall be filed and served on or before November 8, 2014.

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 is granted, with the stay extended through and including November 30, 2014, unless terminated earlier by operation of law or further order of the court.
>
> **IT IS FURTHER ORDERED** that the Final Hearing on the Motion shall be conducted at 3:00 p.m. on November 18, 2014. Debtor shall file and serve supplemental pleadings substantiating monthly income, monthly deductions (including how proper tax withholding is computed), and reasonable expenses (all expenses, not merely the several summarized by the court in the ruling granting the Interim Order) on or before October 24, 2014. Opposition shall be filed and served on or before November 8, 2014.

11. 13-34624-E-13 DEBRA RANDELL **MOTION TO CONFIRM PLAN**
MWB-4 Mark Briden **8-25-14 [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)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The court's decision is to deny without prejudice the Motion to Confirm the Amended Plan.

Debra Randell ("Debtor") filed the instant Motion to Confirm Amended Plan on August 25, 2014. Dckt. 105.

MOTION

The Debtor states that she has filed the instant Third Amended Chapter 13 Plan to take into account two major changes in Debtor's financial circumstances since the date of filing. The Debtor alleges that she has obtained a loan modification with Flag Star Bank who holds a first Trust Deed against her personal residence. According to the Debtor, the new mortgage payment is $1,679.00 monthly. The Debtor also negotiated a payment reduction with Five Star Bank who holds the First Trust Deed on Debtor's commercial property at 999 Mission De Oro, Redding, California. Debtor states that the

payment was reduced from $5,622.00 to $4,800.00 monthly which frees up $822.00 monthly for Debtor's personal budget.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed non-opposition to Debtor's instant motion. Dckt. 118. However, the Trustee does note that the Debtor filed a supplemental Schedule B on June 23, 2014, adding "Cause of action against Flag Star Bank for gross negligence in servicing loan modification" and valued this asset at $320,000.00. Additionally, the Trustee notes that the Debtor also added "cause of action against First Financial of California for gross negligence in representing debtor in loan modification with Flag Star Bank" and valued this asset at $12,000.00. The Trustee notes that the Debtor did not exempt these assets on Schedule C, therefore the non-exempt equity totals $332,000.00.

The Trustee concludes that he does not believe that these assets have value, and if they have value, the Debtor must pay the value to unsecured. As the Debtor's Declaration in support of this motion states that the Debtor has obtained a loan modification with Flag Star Bank, the Trustee believes no value exists.

FLAGSTAR BANK, FSB'S OPPOSITION

Flagstar Bank, FSB filed opposition to Debtor's instant motion on September 22, 2014. Dckt. 120. Flagstar Bank requests that the court deny confirmation or, alternatively, that the order confirming the Chapter 13 Plan clarify that Flagstar has already obtained relief from the automatic stay. Flagstar Bank states that Debtor's Plan fails to provide for a cure of Flagstar Bank's pre-petition claim in full, but treats the loan as current. While the Creditor has not filed a Proof of Claim, Flagstar Bank argues that there is $90,357.73 in pre-petition arrears. Flagstar argues that the failure of the plan to provide for a cure of these pre-petition arrears, it fails to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii).

DEBTOR'S RESPONSE

On September 25, 2014, Debtor filed a response to Flagstar's objection stating:

1. Flagstar is a Class Four creditor in the Third Amended Plan. Flagstar would have automatic Relief from Stay upon confirmation, based on the terms of the court approved Chapter 13 Plan used in the United States Bankruptcy Court for the Eastern District, Sacramento Division

2. During the pendency of the present Chapter 13 proceeding, the Debtor obtained a loan modification with Flagstar Bank FSB. The Debtor requests that the court take judicial notice of the Declaration fo Debtor filed in Support of Confirmation of Third Amended Chapter 13 Plan filed August 25, 2013. The loan modification with the moving creditor is specified by Debtor in Paragraph 6 of the Declaration.

3. Flagstar has already obtained Relief from Stay on July 24, 2014, which is Exhibit C filed with the Opposition to Motion to Confirm Chapter 13 Plan filed by Flagstar Bank, FSB.

DISCUSSION

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

Flagstaff's main objection seems to be around whether the relief from automatic stay in which it was previously granted on July 24, 2014 would still be effective under the terms of the proposed plan. As outlined in the description of class 4 in the proposed plan: "Upon confirmation of the plan, all bankruptcy stays are modified to all the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the even of a default under applicable law or contract." Dckt. 109, pg. 3. Even without having previously being granted relief from stay, Flagstar would have automatic relief from stay by merely being a Class 4 creditor.

Conspicuously absent from the Motion, Supporting Pleadings, and Opposition of Flagstar Bank, FSB is any reference to the Debtor having sought, and obtaining from the court, an order authorizing post-petition credit — the Debtor entering into some "loan modification." The court has no idea what deal has been cut, or what deal Debtor thinks that she has cut, with Flagstar Bank, FSB. Merely because the Debtor says, right now my payment is $xxx.xx, the loan modification has not been presented to the court. That payment may dramatically reduce next month or may double six months from now.

The Flagstar Bank, FSB opposition may well indicate that the "modification" is not as Debtor states. Apparently Flagstar Bank, FSB has grave concerns that a some point in the future, sooner rather than later, the Debtor will default and it wants to make sure that it has relief from the stay to foreclose.

Post-petition approves of loan modifications are regularly and routinely requested from the court. Debtor has not, so effectively there is no loan modification and this claim cannot quality as a Class 4 claim. It could well be that the arrearage is being cured during the term of the plan, which would require this claim to be classified as a Class 1 claim, not a Class 4 claim. The Debtor not having obtained authorization for the loan modification, and providing a copy of the loan modification agreement, the plan cannot be confirmed.

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 the Motion is denied without prejudice.

12.	14-27944-E-13 DPC-1	**MICHAEL/DANNIELLE CARDENAS** **Nikki Farris**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **9-10-14 [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 Debtors and Debtors' Attorney on September 10, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Plan may not comply with applicable law or may not be Michael and Dannielle Cardenas' ("Debtors") best effort. 11 U.S.C. § 1325(a)(1) and (b). First, the Debtors propose to pay GM Financial 20.90% interest on the Class 2 debt listed for the 2009 Chrysler Town & Country LX. The Debtors have not explained why such an interest rate is required. If the payment of this interest rate is not required, it appears discretionary and where the Debtors are below median income, a lower interest rate should be paid. Second, the Debtors propose to pay $1,180.00 at 20.90% regarding arrears to GM Financial on the Class 2 debt listed for the 2009 Chrysler Town & Country LX. Again, Debtors have not explained why this interest rate is required. If it is not required, a lower interest rate should be paid, as Debtors are below median income.

2. The Debtors received a total refund of $8,678.00 for tax year 2012 and $8,829.00 for 2013. No future tax refund income is projected on Schedule I. Continued tax refunds appear likely, and Debtors income should be adjusted to either reflect the tax refund income or a lower tax expense.

The court cannot approve a plan unless it is persuaded that the plan is feasible and the debtor will be able to comply with it. 11 U.S.C. § 1325(a)(6). "An 'eye-popping' interest rate," such as the 20.90% rate proposed by Debtors in this case, can signal to the court that the Debtors will not be able to comply with their own Plan, especially without any explanation of the necessity for this high interest rate. *Till v. SCS Credit Corp.*, 541 U.S. 465, 481 (2004). The Trustee's objection on this issue is well-taken.

Additionally, the fact that Debtors have not accounted for future tax refund income indicates that the Plan does not represent Debtors' best efforts under 11 U.S.C. §1325(b). The Plan cannot be confirmed with this potential income not reported in Debtors' 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 the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

13. 14-25751-E-13 JODI ZACHARY **MOTION TO CONFIRM PLAN**
CAH-1 C. Anthony Hughes **8-14-14 [30]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

Jodi Zachary ("Debtor") filed the instant Motion to Confirm First Amended Chapter 13 Plan on August 14, 2014. Dckt. 30. In addition, the Debtor filed supplemental Schedules to address the concerns of the court and the Trustee. Dckt. 27. Beyond making corrections to her Schedules to properly reflect her income and expenses as well as exemptions, Debtor states that as of the 2nd month, the Debtor has paid $300.00. From month 3 to moth 60, the Debtor proposed plan payment will be $236.49.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 14, 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.

14. 11-37754-E-13 MARI BILL
DPC-1 Jason Borg

OBJECTION TO CLAIM OF SACRAMENTO CREDIT UNION, CLAIM NUMBER 15
8-22-14 [106]

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, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 22, 2014. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Proof of Claim number 15 of Sacramento Credit Union is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Sacramento Credit Union ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $6,054.34. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is November 23, 2011. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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).

The deadline for filing a Proof of Claim in this matter was November 23, 2011. The Creditor's Proof of Claim was filed July 24, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Sacramento Credit Union, Creditor filed in this case by David Cusick, 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 Proof of Claim Number 15 of Sacramento Credit Union is sustained and the claim is disallowed in its entirety.

15. 14-27755-E-13 ANTHONY FURR
DPC-1 Richard Jare

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-10-14 [52]

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. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. It is not clear if the Debtor is entitled to Chapter 13 relief under 11 U.S.C. § 109(e). No schedules were initially filed with the present case on July 20, 2013. Schedule D was filed on August 5, 2014 (Dckt. 11, pg. 2) and lists PennyMac Holdings in the amount of $840,465.44 as allegedly owing and the debt is disputed and non-recourse deficiency. Debtors plan lists the amount owed to PennyMac Holdings as $32,000.00 Schedule D also

indicates that secured claims may exist against community property where the Debtor does not have legal title are not listed. Schedule A lists Community property claim to 1473 Wentworth Ave., Sacramento, California with a total encumbered amount of $325,000.00. Schedule A also lists Community property claim to 2148 Irvin Way, Sacramento, California with the total encumbered amount of $325,000.00. Neither of these encumbered assets are listed on Schedule D. Schedule F lists unsecured debts totally $7.00. It is not clear what debts the Debtor holds and what debts his non-filing spouse, Sara Stratton, holds. Insufficient information was provided to the Trustee throughout the Debtor's schedules, plans, and the statement of financial affairs. The secured debt limit totals $1,149.525.00. The unsecured debt limits totals $383,175.00.

2. The Debtor admitted at the First Meeting of Creditors held September 4, 2014 that Schedule A should list a total of 4 lots at Shelter Cove, California. Schedule A currently only lists 3 lots: 90 Ridgeview Circle, Lot 23 on Ridge Road, and Lot 35 on Ridge Road. It is not clear how the 50 acres in Riverside County, California was valued. The Debtor admitted in part at the First Meeting of Creditors that he looked at land for sale in the area as a way to value this property. It is not clear why the community properties located at 1473 Wentworth Ave. and 2148 Irvin Way were both valued for $1.00.

3. In the event that the Debtor requests a briefing schedule as to this matter as allowed under Local Bankruptcy Rule 3015(c)(4) and 9014(f)(2), rather than pursuing an amended plan, the Trustee requests that the Debtor file the initial brief so as to address certain pertinent case authority (i.e. *In re Gounder*, 266 BR 879).

DISCUSSION

11 U.S.C. § 109(e) limits Chapter 13 eligibility to individuals with regular income who owe, "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149.525" (emphasis added).

Absent explanation from the Debtor as to the discrepancies of listed secured claims on Schedule D, why the encumbrances on the community properties are not listed, and the astronomically minimal unsecured debts of $7.00 listed on Schedule F, the court cannot determine if, in fact, the Debtor qualifies for Chapter 13. Cases that involve non-filing spouse must tread carefully to ensure that all debts owed by the Debtor are listed. The questionable schedules filed by the Debtor that suggest the existence of debts and liens that are not listed on Schedule D leads the court to believe the Debtor's schedules and proposed plan is not in good faith. This is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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.

16. 14-27755-E-13 ANTHONY FURR — OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC HOLDINGS, LLC
TJS-1 Richard Jare — 9-11-14 [56]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 12, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the

U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

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

PENNYMAC HOLDINGS, LLC FKA PENNYMAC MORTGAGE INVESTMENT TRUST HOLDINGS I, LLC its successors and/or assigns by its duly authorized agent PENNYMAC LOAN SERVICES, LLC ("Creditor") filed the instant Objection to Confirmation of Chapter 13 Plan on September 11, 2014. Dckt. 56. After a review of the bankruptcy case and noting that this is the Debtor's fourth bankruptcy in the past four years, Creditor opposes confirmation of the Plan on the basis that:

1. No Stay in Effect: Based upon the court's ruling on September 9, 2014, denying Debtor's motion to Extend the Automatic Stay, there is no automatic stay in favor of the Debtor. Creditor intends to immediately file a motion seeking relief from stay as to the bankruptcy estate as well as the co-debtor stay of § 1301(a) as the co-obligor Sarah Stratton. Upon entry of an order, Creditor's intent is to proceed with it foreclosure sale of the underlying property. As a result, even if the Debtor is permitted to proceed with his bankruptcy case despite the great bad faith, the Plan should exclude the property and Creditor.

2. Bad Faith: This is a § 362(c)(3) case and there is a presumption of bad faith. In that the court rejected the Debtor's motion, in essence, the court found that the bad faith of the prior cases exists in this bankruptcy filing. As a result, the Debtor cannot meet his burden that his case be filed in good faith. Therefore, this Creditor concludes that the case should be dismissed.

Creditor offers no objection to the current plan terms, merely that since Debtor has filed prior bankruptcy cases and that the court denied Debtor's request to extend the automatic stay (statutory presumption of bad faith under 11 U.S.C. § 362(c)(3)(A) not being rebutted), this must be a bad faith case. Creditor improperly conflates limited, specific statutory presumptions with respect to the automatic stay with the requirements under 11 U.S.C. §§ 1322 and 1325 for confirmation of a plan.

The court overrules Creditor's objections, stated in this Objection to Confirmation, to this Chapter 13 Plan proposed by Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the PENNYMAC HOLDINGS, LLC FKA PENNYMAC MORTGAGE INVESTMENT TRUST

HOLDINGS I, LLC its successors and/or assigns by its duly authorized agent PENNYMAC LOAN SERVICES, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

17. 14-27456-E-13 DPC-1 JENNIFER LINN-KIDWELL Scott Hughes OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-10-14 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection and the Chapter 13 Plan is not confirmed.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan

on the basis that:

1. Jennifer Linn-Kidwell ("Debtor") may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e). According to Amended Schedule F filed August 5, 2014 (Dckt. 15), the Debtor lists unsecured debts totaling $75,022.78. This total does not include the alleged $350,000.00 lawsuit claim listed on Amended Schedule F as disputed, contingent, and unliquidated (the creditor for this is June Linn). The unsecured debt totals $383,175.00. The Schedule does not indicate the nature of the contingency, the reason the claim is unliquidated, and what amounts are disputed.

2. The Plan calls for $283,500.00 in total plan payments, at the rate of $4,725.00 per month for 60 months. According to Trustee's calculations, the Plan will complete in approximately 68 months as opposed to the proposed 60 months. The Bank of New York Mellon filed a claim on August 7, 2014, which lists the arrears due on its claim at $65,168.15. Debtor scheduled Class 1 arrears for $61,000.00. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

CREDITOR'S JOINDER

June Linn ("Creditor") joins the Trustee's Objection to Confirmation. Creditor states that the Plan does not include her unsecured claim exceeding $1.1 million, arising out of Debtor's unauthorized use of her mother's cash, credit cards, and certificate of deposits. The amount of Creditor's allowed claim, in addition to Debtor's other unsecured debt, exceeds the debt limits of 11 U.S.C. § 109(e).

DISCUSSION

Both the Trustee and Creditor alleges that it is not clear that the Debtor qualifies for Chapter 13 treatment due to the amount of Creditor's unsecured claim. 11 U.S.C. § 109(e) limits Chapter 13 eligibility to individuals with regular income who owe, "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175.00 and noncontingent, liquidated, secured debts of less than $1,149,525.00." Upon review of the objections and the Debtor not explaining the nature of the lawsuit claim, the objection of both the Creditor and Trustee are sustained.

As to the Trustee's second objection, a review of the plan appears to show that the proposed plan exceeds the maximum allowed time for a plan under 11 U.S.C. § 1322(d). The Trustee's second objection is sustained.

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

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

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

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

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

18. 11-42659-E-13 GARAY/KAREN HARPER — MOTION TO APPROVE LOAN MODIFICATION
RMD-1 W. Scott de Bie — 9-3-14 [79]

Final Ruling: Nationstar Mortgage, LLC ("Movant") having filed a Notice of Withdrawal on October 2, 2014, Dckt. 87, for the Motion to Approve Loan Modification, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* request to dismiss the Motion without prejudice, the parties, Movant having the right to request dismissal of the Motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Chapter 13 Trustee, the *ex parte* request is granted, the Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Approve Loan Modification filed by Nationstar Mortgage, LLC ("Movant") having been presented to the court, the court concluding that Movant has requested that the Motion be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 87, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

19. 14-22763-E-13 PHILIP BROWN **MOTION TO CONFIRM PLAN**
JMC-2 Joseph Canning **8-20-14 [49]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Philip Brown ("Debtor") filed a Motion to Confirm a First Amended Plan on August 20, 2014. Dckt. 49. The Plan was amended to reflect that Debtor has been approved for a loan modification, bringing monthly mortgage payments to $2,215.54.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed objections to the Motion to Confirm on September 23, 2014. Dckt. 63. The Trustee opposes the motion on the basis that:

1. The Amended Plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. Debtor's non-exempt assets total $4,958.00 and Debtor proposes to pay 5% to unsecured creditors, which amounts to $905.25. Debtor's original plan (Dckt. 14) proposed to pay 28% to unsecured creditors, which amounted to approximately $5,069.00. According to Debtor's Schedules A, B, and C (Dckt. 13), non-exempt equity exists in a 2007 Honda Accord EX-L, in the amount of $4,958.00. Debtor's Declaration (Dckt. 51) provides a liquidation analysis recognizing the $4,958.00 of equity and deducting $1,239.50 for Trustee fees, and admit $3,718.50 will be available for distribution to unsecured claims. The plan proposes to pay no less than 5% to an estimated $18,105.05 of unsecured claims, which is only $905.25 to unsecured claims.

2. The Amended Plan may not be Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's amended Schedule J lists support of $600.00 per month. Debtor testified at the First Meeting of Creditors on may 1, 2014 that this is for child support, and his children are 15 and 17 years old. Debtor stated that the support for the 17 year old will end when the child turns 18. All projected disposable income is not being paid into the plan for the benefit of unsecured creditors after the child support ends. The Trustee raised this issue in the original Objection to Confirmation and Debtor has not addressed it.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's objections on September 30, 2014. Dckt. 66. Debtor states that he will file another Amended Plan to address the objections before the hearing on October 7, 2014.

DISCUSSION

The Trustee's objection that the Plan does not pay unsecured creditors the amount they would receive under a Chapter 7 is well-taken. 11 U.S.C. § 1325(a)(4) requires that unsecured creditors be paid not less than the amount they would receive if this case were a Chapter 7. Since unsecured creditors are proposed to be paid approximately $905.25 total, while unexempt equity in the Debtor's assets totals $4,958.00, unsecured creditors will not receive at least the dividend that they would under a Chapter 7 liquidation.

Additionally, the Trustee objects that not all of Debtor's future disposable income is dedicated to the Plan. 11 U.S.C. § 1325(b)(1) provides:

> [i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor's disposable income will increase during the next 12 months as his eldest child turns 18 and reduces his monthly child support payment. The reduction in child support would, rationally, create more disposable income for Debtor to apply toward his Plan. Thus, the court may not approve the plan.

Debtor, through his attorney, has promised to file a new amended plan that addresses the Trustee's concerns, but the court's review of the docket shows that no such plan has yet been filed. The court is confident that the Debtor and her counsel are diligently working on a new plan, and that confirmation of the current plan can be denied on the pleadings filed.

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.

20. 14-27264-E-13 ASW-1 — DENNIS JACOPETTI — Richard L. Jare — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF NEW YORK MELLON 9-22-14 [37]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 22, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was 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.

Bank of New York Mellon, formerly known as Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-OA7, Mortgage Pass-Through Certificates Series 2006-OA7) ("Creditor") filed an Objection to Confirmation of Plan on September 22, 2014. Dckt. 37.

However, pursuant to Local Rule 3015-1(c)(3), "if the trustee does not receive the debtor's chapter 13 plan by the fourteenth day (14th) day after the filing of the petition, the debtor shall seek confirmation of the chapter 13 plan by complying with the requirements of LBR 3015-1(d)(1)." Here, Debtor filed the plan on August 5, 2014 (Dckt. 23), 21 days after Debtor filed his petition. Under the rule, Debtor was required to file a motion to confirm modified plan in order to have his plan confirmed. Local Rule 3015-1(d)(1). The Debtor complied with the Local Rule and filed the Motion to Confirm on August 27, 2014, set for hearing on October 7, 2014. Dckt. 28. Because the Debtor filed a Motion to Confirm, it is more proper to consider Creditor's objection as an opposition to the Motion to Confirm rather than a stand-alone objection.

Therefore, the court will consider Creditor's instant objection as opposition to Debtor's Motion to Confirm (Dckt. 28) and the court's decision on Creditor's opposition will be reflected in the Motion to Confirm's civil minutes.

21. 14-27264-E-13 DENNIS JACOPETTI **MOTION TO CONFIRM PLAN**
RJ-2 Richard Jare **8-27-14 [28]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm Plan is denied.

Dennis Jacopetti ("Debtor") filed the instant Motion to Confirm Chapter 13 Plan on August 27, 2014. Dckt. 28.

MOTION

In support of the motion, the Debtor states that the reason for filing bankruptcy was because Debtor fell behind on the payments required by the Note Secured by a Deed of Trust on the household. Debtor states that he has started making more money, making a Chapter 13 feasible. The purpose of the Chapter 13 is so the Debtor can try and keep his home. Debtor also states that he will be working with Select Portfolio Servicing, Inc. on a loan modification on his residence. Debtor alleges that Select Portfolio Servicing, Inc. is the class 1 creditor (or creditor's servicer).

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to Debtor's Motion to Confirm Chapter 13 Plan on September 19, 2014. Dckt. 33. The Trustee objects to the instant motion as:

1. This case is Debtor's fourth bankruptcy filing within the past 2 years. The Debtor has not given sufficient evidence to show they will have the ability to make the plan payments and complete the plan where they have had three recent prior bankruptcies which were unsuccessful, 11 U.S.C. § 1325(a)(6). The first bankruptcy case (No. 12-26206-13) was filed on March 30, 2012 and dismissed on April 10, 2012 for failure to timely file documents. The second bankruptcy case (No. 13-34493-7) was filed on November 13, 2013 and dismissed on January 17, 2014 for failure to appear at the First Meeting of Creditors. The third bankruptcy case (No. 14-23007-11) was filed on March 25, 2014 and dismissed on April 14, 2014 for failure to timely file documents.

2. The Debtor's first plan payment of $100.00 is insufficient to pay the Class 1 on-going mortgage payment of $3,000.00 to Select Portfolio Servicing. The plan appears to create a default under the mortgage under the plan, potentially violating 11 U.S.C. § 1322(b)(5) and (b)(2).

3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

4. The Debtor has failed to provide the required business documents to the Trustee to date. The Debtor has failed to provide a Business Questionnaire, and Profit and Loss Statements. The Debtor appears self-employed by an LLC. Dckt. 25, Schedule I, pg. 24).

5. The Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor lists the value of his business, Pacific Adjustment, LLC, 100% as $1.00. Dckt. 25, Schedule B, pg. 5. The Debtor has failed to provide the Trustee with any documentation or evidence of the value. The Debtor is proposing a 0% dividend to unsecured creditors.

6. The Debtor lists his business income in the amount of $7,000.00 on Schedule I, however the Debtor has failed to provide a business income and expense attachment showing the gross income and expenses of the business.

7. The Debtor lists the Franchise Tax Board on Schedule E in the

amount of $72,000.00, however the Debtor lists this debt as disputed and provides for the Franchise Tax Board in Class 5 of the Plan at $100.00, and schedules the debt with an address of: Franchise Tax Board, Bankruptcy Mail Stop Pit A-340, P.O. Box 2958, Sacramento, California. The Clerk's Roster of Governmental Agencies shows a different address: Franchise Tax Board, Bankruptcy Section MS A-340, P.O. Box 2952, Sacramento, California.

8. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors's plan proposes to increase plan payments from $3,500.00 to $6,800.00 in month 15 of the Plan. Schedule I, line #13 states "Business has surged at the new location, From Projected $27,500.00 Gross Receipts, after Expenses the passthrough is $7,000.00 and quickly improving. A month 15 stepup is possible if necessary $7,500.00 balance in the LLC bank account buffers the filing fee payment. Quickly improving business makes the month 15 stepup to $6,800.00 feasible." The Debtor has failed to provide specific evidence - where Schedule I shows the Debtor as employed at the business since 2008 (Dckt. 24, pg. 25), and the Debtor has three failed bankruptcies–the Trustee is not satisfied that the Debtor has explained how the business is quickly improving.

BANK OF NEW YORK MELLON'S OPPOSITION

Bank of New York Mellon, formerly known as Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-OA7, Mortgage Pass-Through Certificates Series 2006-OA7) ("Creditor") opposes confirmation of the Plan on the basis that:

1. Dennis Jacobetti's ("Debtor") Chapter 13 Plan understates the pre-petition arrears. While Debtor's Plan proposes to cure arrears in the amount of $95,000.00, the arrears are significantly higher and total $256,420.69. Debtor will have to increase the payment through the Plan to Creditor to approximately $4,271.68 per month for a 60 month term to cure this.

2. Debtor's Schedule J indicates that Debtor has a monthly disposable income of $3,500.00. However, this figure seems inaccurate, since Debtor fails to include the regular mortgage payment in Schedule J as part of his ongoing monthly expenses. Debtor's current monthly mortgage payment is $5,423.42. With the mortgage payment included in Debtor's monthly expenses, Debtor has no surplus income to fund the Chapter 13 Plan. This is even without the increased arrears payments sought by Creditor. After reviewing Debtor's Schedules I and J, there is insufficient income to fund the plan. Therefore, the Plan is not feasible and should not be confirmed.

3. Debtor has filed previous bankruptcy cases. On November 13, 2013, Debtor filed a Chapter 7 case that was dismissed on January 17, 2014. Debtor filed another case under Chapter 11 on

March 25, 2014, which was dismissed on the same date. The instant case was filed July 15, 2014, making it Debtor's third case in one year. The case is deemed to be presumptively filed not in good faith. Debtor has not rebutted the presumption, but proposed an infeasible Plan.

4. Creditor also objects that Debtor has not removed the loan modification provisions attached to the proposed Plan, despite Creditor's denial of Debtor's request for a loan modification.

DISCUSSION

The Debtor has failed to provide the Trustee with the most basic of required documents and information - Tax Returns and Business Income and Expense Information. Debtor does not have a set wage or historic income and projected expense information upon which confirmation is sought. Rather, Debtor projects, without support, that there is "surging income." The Debtor has not provided evidence that the plan is feasible. 11 U.S.C. § 1325(a)(6).

In addition, Debtor seeks to proceed with a plan that relies upon substantially increased payments in the future, not amortizing curing of the Bank of New York Mellon, as Trustee, claim through a series of (relatively) equal payments 11 U.S.C. § 1325(a)(5)(iii) or through a reasonable sale of the property securing the claim. Rather, Debtor's plan makes discounted current monthly payments on this claim (based on Debtor's computation of the monthly payment amount) for fifteen months, and then steps them up. Debtor fails to make any payment on curing the arrearage amount he states in the plan until month 15 of the Plan. In substance, the Plan provides for the Bank of New York Mellon, as Trustee, claim to be paid at a discount, without any cure of the arrearage, until more than a year after the case was filed. Not only does this fail to properly provide for the claim, it further indicates that the Plan is not being presented in a good faith attempt to comply with the Bankruptcy Code (Debtor not having the consent of this Creditor to the proposed treatment). 11 U.S.C. § 1325(a)(3).

As to the Creditor's objections, Creditor holds a deed of trust secured by the Debtor's residence. However, Creditor has not filed a proof of claim nor a declaration to support its assertion of the amount of pre-petition arrearages it claims. There being insufficient evidence on the record to support Creditor's allegations that the arrears are greater than that reported by Debtor, the court cannot sustain this portion of the objection.

Additionally, the Creditor alerts the court that the Debtor filed a previous Chapter 7 petition on November 13, 2013, which was dismissed on January 17, 2014. Then, the Debtor filed a Chapter 11 on March 25, 2014, which was dismissed the same day. The Debtor's recent bankruptcy cases have implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

As to the Creditor's objections concerning the mortgage payments not being listed on Schedule J, the absence of the payments being listed on Schedule J does not prevent the plan from being confirmed. Because the Debtor is paying the mortgage through the plan and Schedule J is meant to calculate the disposable income that is available for plan payments, the absence of the

mortgage payment is merely the Debtor calculating his total disposable income that can be applied to the plan. While the Debtor could have listed the mortgage on Schedule J then added it back when discussing that the mortgage, the way the Debtor compiled his Schedule J is, technically, proper. Therefore, the court overrules Creditor's second objection.

Lastly, the Creditor's fourth objection is not an objection that would prevent confirmation but instead appears to be an inadvertent oversight.

Therefore, upon review of the docket, the proposed plan, the Debtor's motion and declaration, the Trustee's objections, and the Creditor's objections, the court sustains the Trustee's objection.

The Plan complies 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.

22. 13-32066-E-13 ALVINA WESTERN **MOTION TO MODIFY PLAN**
LBG-2 Lucas Garcia **8-20-14 [34]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

Alvina Wester ("Debtor") filed the instant Motion to Confirm Modified Plan on August 20, 2014. Dckt. 34.

MOTION

In the motion, the Debtor states that the reason for the instant motion is due to the fact that a creditor that had previously been believed to be unsecured has filed a secured claim. Because of this reclassification, Debtor states that the plan needed to be modified.

In the Debtor's declaration, Debtor states that she had a family friend stay in her home who ended up not contributing to the household expenses, resulting in an increase in expenses. Dckt. 36. Debtor states that the family friend has been removed from the home and Debtor intends to "catch up" the missed payments in the remainder of the plan.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an objection to Debtor's Motion to Confirm Modified Plan on September 23, 2014. Dckt. 43. The Trustee objects on the following basis:

1. The Debtor may not be able to make the payments called for under the plan, 11 U.S.C. § 1325(a)(6). While the Debtor has paid $13,560.00 into the plan, no payment has been made since $90.00 was paid on May 23, 2014, and the last payment before that date was $1,695.00 on April 11, 2014. The Debtor has claimed that a family friend, "caused a massive increase in expenses," (Declaration, Dckt. 36, pg. 2, lines 3-4), but has not given any details - such as: name of the individual, date the individual lived with the Debtor, and expenses the individual increased- so the Trustee cannot determine if the reason the Debtor failed to make payments was the individual, and whether the Debtor will continue incurring such expenses.

2. The modified plan may not be proposed in good faith, 11 U.S.C. § 1325(a)(3), and the plan may not comply with the Code, 11 U.S.C. § 1325(a)(1). The Debtor has not stated the legal authority for the motion as required under Local Bankruptcy Rule 9014-1(d)(5), which is 11 U.S.C. § 1329. While the Debtor states that one of the reasons for the modification was a claim filed as secured, the Debtor did not indicate the creditor is listed as Class 2 "Wffnatbank" in the plan and not previously classified. Based on the amounts provided for in the plan, this appears to be for claim #3 for "Wells Fargo National Bank," which has filed a claim asserting security but with no credit agreement attached, where the modified plan provides it is secured by a central heater and air conditioner. Where the plan still provides for the ongoing mortgage payments as Class 1 to "Chase," due to Class 1 post petition arrears for the Monthly Contract Installment Amount totaling $3,880.00 payments by the Trustee to the Class 2 creditor will not commence until approximately March 2015.

DISCUSSION

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

The Trustee's objections are well-taken. Debtor has failed to provide enough details concerning the "family friend" who caused the Debtor to miss a substantial amount of plan payments. Additionally, the court is unable to determine who this newly secured creditor is nor whether it is a legitimate secured claim. The court will not peruse the docket and proof of claims to determine the identity of a mysterious creditor. The responsibility of pleading is on the movant – here, the Debtor. The Debtor has failed to provide enough information to the court for it to determine whether the modified plan is feasible.

Debtor's counsel, the Law Office of Stephen Johnson (Lucas Garcia, attorney of record) has not provided the court with evidence of the Debtor's

current finances, how she computes her monthly income, her current (accurate) expenses, and how she computes her projected disposable income. The Debtor's testimony under penalty of perjury with respect to the court determining that a modified plan (in light of the substantial defaults in this case) consists substantially of, "I intend to catch up the missed payments in the remainder of the Plan...I feel confident that I will be able to comply wit the terms of the Modified Plan." Declaration, Dckt. 36.

Debtor has filed a Supplemental Schedule J, but does not provide any testimony for the court to determine that the numbers for these expenses are credible. Dckt. 33. The court also notes that Supplemental Schedule J states taht Debtor pays for mother's transportation expenses and "fully supports" ill mother who lives with Debtor. No information is provided as to income, benefits, Social Security, Cal Fresh ("food stamps") or other income Debtor's mother receives.

Debtor also fails to explain a few other items on Supplemental Schedule J. Debtor lists paying $250.00 rent for Daughter.

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

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

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

23. 14-26567-E-13 SAMUEL TAPIA
JGD-3 John Downing

MOTION TO VALUE COLLATERAL OF WILMINGTON TRUST, N.A.
9-23-14 [46]

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, Specialized Loan Servicing, Wilmington Trust, N.A., and Office of the United States Trustee on September 23, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Samuel Tapia ("Debtor") to value the secured claim of Wilmington Trust, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8781 Minnow Avenue, Kings Beach, California ("Property"). Debtor seeks to value the Property at a fair market value of $254,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $311,185.84. Creditor's second deed of trust secures a claim with a balance of approximately $43,965.70. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wilmington Trust, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 8781 Minnow Avenue, Kings Beach, 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 $254,000.00 and is encumbered by a senior lien securing a claim in the amount of $311,185.84, which exceeds the value of the Property which is subject to Creditor's lien.

24. 14-26567-E-13 SAMUEL TAPIA — **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
DPC-1 John Downing — **7-30-14 [23]**

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 the Debtor and Debtor's Attorney on July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. The Debtor appeared at the First Meeting of Creditors held on July 24, 2014, but Debtor's Counsel failed to appear. The Trustee did not conduct the examination of the Debtor. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to August 21, 2014, at 10:30 am. The Trustee's Report of the continued First Meeting of Creditors states that both Debtor and Counsel appeared, with the Meeting being concluded. Trustee's Report, August 21, 2014 Docket Entry.

2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

3. The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

4. Debtor proposes to value the secured claim of Specialized Loan Servicing on a second deed of trust on Debtor's residence, but has not filed a Motion to Value the Secured Claim to date.

AUGUST 26, 2014 PRIOR HEARING

On August 26, 2014 hearing, the court continued the hearing on the Objection to 3:00 p.m. on October 7, 2014 in order to allow Debtor the opportunity to file a motion and value the secured claim of the creditor. Dckt.40.

At the hearing, the Trustee confirmed that he had received the documents that were listed in his objection. The only item remaining was the valuation of the secured claim.

OCTOBER 7, 2014 HEARING

The court granted Debtor's Motion to Value, ruling that Wilmington Trust, N.A.'s secured claim is determined to have a value of $0.00.

DISCUSSION

As the only remaining objection to the plan was the Motion to Value, which the court granted on October 7, 2014, all of Trustee's objections have been properly dealt with and the Trustee's objections are overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Samuel Tapia, 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 Objection is overruled, Debtor's Chapter 13 Plan filed on June 24, 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.

25. 14-27870-E-13 **LATANYA MOORE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Scott Johnson** **PLAN BY DAVID CUSICK**
9-10-14 [17]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Latanya Moore ("Debtor") is $982.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $982.00 is dues on September 25, 2014. The case was filed on July 31, 2014 and the Plan calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor has paid nothing into the plan to date.

2. Debtor failed to choose either box in Section 2.06 of her Plan, which requires her attorney to file a motion for fees to get any order allowing attorneys fees, even though a Rights and Responsibilities has been filed. Dckt. 8.

Additionally, the Plan was not properly signed by Debtor and Debtor's attorney. For electronically submitted documents, the documents must bear either a copy of the actual signature with the name written out below or "/s/ Name" with the name written out below. Debtor has not signed the Plan, and while the act of e-filing acts as a signature for the registered user, by failing to sign the plan, the attorney has prevented parties other than the court from knowing if the attorney has signed the document. The Trustee does not know if the attorney has signed the plan. The Trustee requests that the attorney produce the originally signed document for review or, in the alternative, a signed declaration of the parties stating that the plan was signed by the parties must be filed.

The Debtor has not made any of her scheduled monthly payments of $982.00 to date. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, as the Trustee alleges, the Debtor has not signed the Chapter 13 Plan, nor has her attorney. Upon review of the Plan, filed as Dckt. 6, the Plan is indeed not signed. The failure to sign the Plan, not properly identifying how the attorney is to be paid, and the delinquency in plan payments are sufficient to sustain the Trustee's objections.

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

26. 12-31671-E-13 CHRISTIAN NEWMAN
PGM-6 Peter Macaluso

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
8-19-14 [180]

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

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 19, 2014. However, the court cannot determine if proper service was provided because the identity of the actual creditor is unknown. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges 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 Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges is set for further hearing at 3:00 p.m. on xxxx.

Christian Newman ("Debtor") has filed this Objection to Notice of Post-petition Mortgage Fees, Expenses and Charges. The title to the pleading states that it is an Objection to such charges of "US Bank/America's Servicing Company." As an initial note, the court cannot identify any entity with the name "US Bank/America's Servicing Company." Before a federal court exercises the federal judicial power it must be confident that it has before it the real parties in interest for whom there is an actual case or controversy as required by Article III, Section 2, of the United States Constitution.

The Objection asserts the following:

A. Debtor asserts that the increase in the Class 1 mortgage payment of an unidentified creditor from $1,021.40 to $1,601.60 is

incorrect.

B. An entity identified as "ACS" (which is not more specifically identified) has amended "their" proof of claim three times, each time lowering the arrearage. Further, that the proofs of claim state incorrect "escrow payment" amounts, and have failed to take into an account "an apparent note rate change."

C. On April 25, 2014, Counsel for Debtor filed a proof of claim on behalf of "America's Servicing Company" in the amount of $12,000.00 for a mortgage arrearage. Proof of Claim No. 9. FN.1.

FN.1. While stating the arrearage amount, Counsel for Debtor does not state the total claim which is owed by Debtor on this claim.

D. On May 20, 2014, "America Servicing Company ("ACS") filed a proof of claim asserting a $16,393.91 arrearage, of which $2,442.98 is for pre-petition escrow shortages. FN.2.

FN.2. This claim was actually filed for U.S. Bank National Association, as Trustee (full name of the trust included in the proof of claim). The claim is for $256,692.94, not merely an arrearage. While "Americas Servicing Company" filed the proof of claim as the agent for U.S. Bank, National Association, as Trustee, the servicing company is not the creditor.

E. In the Original and Amended Proof of Claim No. 10, the monthly payment is identified as being $1,021.41.

F. Debtor identifies America [sic] Servicing Company as the "secured creditor." FN.3.

FN.3. In light of this court for four years now having stressed the need to correctly identifying the creditor (whether for a secured or unsecured claim) as defined by 11 U.S.C. § 101(10) and (5), and U.S. Bank, National Association, as Trustee, being identified as the creditor on Proof of Claim No. 10, little reason exists for the Debtor affirmatively misidentifying the creditor.

G. On June 7, 2013, "ACS" filed a Notice of Payment Change, increasing the monthly escrow payment from $268.35 to $377.75. This Notice was withdrawn.

H. Amended Proof of Claim No. 10 states the arrearage to be $15,979.54, which includes $2,442.98 for pre-petition escrow shortages.

I. On June 3, 2014, "ACS" filed a Notice of Payment Change stating the monthly payment to be $1,601.38, which consists of $1,178.62 for principal and interest, and $422.74 for escrow payments.

J. The analysis of these payments includes a charge for "Flood Insurance," which is not "a requirement for the property."

K. On June 9, 2014, Proof of Claim No. 10 was further amended to state the arrearage to be $14,424.54, of which $2,442.98 (the amount was not changed) for pre-petition escrow shortage.

L. On July 28, 2014, the Chapter 13 Trustee notified Debtor that the Class 1 mortgage payment for this claim was increased to $1,601.36.

Objection, Dckt. 180.

Debtor states that the principal and interest payment amount was changed under the Note. Debtor believes that the principal and interest payment should continue to be $753.06, not the $1,178.62 stated by "ACS."

Debtor asserts that he escrow analysis ending for June 2014, the "lowest projected balance" was ($1,513.28). However, for 2014 the lowest projected balance was a positive $2,442.98.

DISCUSSION

In some respects the Objection could be quite simple, and in other respects, the court is provided with a "pile of numbers." The court's analysis begins with the "who," in the classic "who, what, where, when, and why" newspaper person analysis.

As drafted the Motion seeks to have a determination made as to the claim of "America" [sic] Servcing Company. This entity is clearly not the creditor – one only has to look as far as the face of Proof of Claim No. 10.

This court is not going to issue an order purporting to affect the legal rights of an entity which the court does not have a good faith belief is the creditor in this case. Further, the Objection does not identify a legally recognizable entity, but creates a "mutant entity" which Debtor names "US Bank/America's [sic] Servicing Company." Movants/Objectors must correctly identify the target entity of the motion or objection – not some made up name which will hopefully catch whomever it can.

Proof of Claim No. 10 makes it clear that U.S. Bank, N.A., is a creditor solely in its capacity as the Trustee of a Trust. The Objection does not name such trustee. The Certificate of Service does not name such trustee as being served (if the court were to overlook the trustee not being named in the Objection).

It is true that the Notice of Mortgage Payment Change filed on June 3, 2014, incorrectly names America Servicing Company (it appearing that nobody can correctly name this servicing company). This Notice states that the current and the future principal and interest payment is $1,178.62. It is in the June 7, 2013 Notice of Payment Change (which was withdrawn) that America Servicing Company identifies itself as the creditor and increases the principal and interest payment from $753.06 to $1,178.62.

The court is left befuddled as to who is the creditor and how either the Debtor or creditor properly computes the principal and interest payment due under the Note. The court does not have an objection which names the apparent creditor, and even America's Servicing Company, or Americas Servicing Company, or America Servicing Company, correctly names the creditor and servicing company.

The court cannot make a determination on the current objection. Therefore, pursuant thereto, Proof of Claim No. 10 filed in this case, and the Notices of Payment Change, the court orders further pleadings to be filed by the following parties.

U.S. Bank, National Trust Association, as Trustee for Structured Asset Security Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1:

A. The Bank, as Trustee, through an officer familiar with the claim asserted for it in this case, shall appear, and,

1. Confirm whether the Bank, as Trustee, is the creditor in this case for the claim identified in Proof of Claim No. 10, as amended.

2. Whether the Bank, as Trustee, has transferred its claim to "America Servicing Company." If transferred, provide documentation of the transfer.

3. Whether the Bank, as Trustee, if a creditor in this case, authorized "America Servicing Company," or any other person, to represent that it was the creditor for the obligation which is the subject of Proof of Claim No. 10, as amended, and hide the identity of U.S. Bank, National Association, as Trustee, as the true creditor in this case.

B. The computation of its claim, the current mortgage payment, the correct computation of principal, interest, and any escrow payments for the debt which is the subject of Proof of Claim No. 10, as amended.

America's Servcing Company:

A. Whether America's Servicing Company asserts that it is a creditor in this case, or if it is a servicing company for a creditor in this case.

B. Why "America Servicing Company" is named as a creditor under Proof of Claim No. 9 as stated,

1. Notice of Mortgage Payment Change, Filed June 3, 2014; and

2. Notice of Mortgage Payment Change, Filed June 7, 2013.

C. Whether the Notices of Payment Change, referencing Proof of Claim No. 9, are for the debt which is identified in Proof of Claim No. 10, filed by America's Servicing Company for U.S.

Bank, National Association, as Trustee.

D. The computation of its claim (or claim of actual creditor for which it is the loan servicing company), the current mortgage payment, the correct computation of principal, interest, and any escrow payments for the debt which is the subject of Proof of Claim No. 9 and Proof of Claim No. 10, as amended.

Christian Lynn Newman, Debtor:

A. Whether Proof of Claim No. 9 accurately states the claim of America Servicing Company, and whether the claim of such "creditor" is only for $12,000.00, the identity of the security for the claim, and copies of the Note, Deed of Trust, and other documents evidencing the obligation and collateral.

B. The computation of Proof of Claim No. 9 and Proof of Claim No. 10, the current mortgage payment, the correct computation of principal, interest, and any escrow payments for the debt which is the subject of Proof of Claim No. 10, as amended.

For each of these parties in interest, they shall show the basis for how they compute the principal and interest, which shall include how the debt is computed based on the Note, and any modifications thereto, and any additional amounts asserted to be owed pursuant to specific provisions of the Note and the Deed of Trust which secures the Note.

The court shall issue an order for the parties to provide supplemental pleadings and requiring the attendance of each party, senior officer, debtor and counsel, No Telephonic Appearances Permitted for the continued hearing.

27. 13-27673-E-13 NLE-1 ALFONSO/CHRISTIE YASONIA Scott Shumaker

OBJECTION TO CLAIM OF AMERICAN CONTRACTORS INDEMNITY COMPANY, CLAIM NUMBER 21 8-18-14 [42]

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, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Proof of Claim number 21 of American Contractors Indemnity Company is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of American Contractors Indemnity Company ("Creditor"), Proof of Claim No. 21 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unliquidated/undetermined damages in the amount of $7,740.00. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is October 16, 2013. Notice of Bankruptcy Filing and Deadlines, Dckt. 14.

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).

The deadline for filing a Proof of Claim in this matter was October 16, 2013. The Creditor's Proof of Claim was filed May 15, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 American Contractors Indemnity Company, Creditor filed in this case by David Cusick, 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 Proof of Claim Number 21 of American Contractors Indemnity Company is sustained and the claim is disallowed in its entirety.

28. 13-34373-E-13 RUSSELL/TINA CALDWELL MOTION TO MODIFY PLAN
LBG-4 Lucas Garcia 8-20-14 [58]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The court's decision is to deny without prejudice the Motion to Confirm the Modified Plan.

Russell and Tina Caldwell ("Debtors") filed the instant Motion to Confirm First Modified Plan on August 20, 2014. Dckt. 58.

MOTION

The Debtors in the motion state that the financial circumstances of the Debtors have changes. Specifically, the Debtors state that the discovery of a previously unknown tax debt from 2011 is the catalyst for the instant motion and the reason for the need to modify.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection on September

23, 2014. Dckt.64. The Trustee objects on the grounds that the Trustee is uncertain of the classification for creditor Internal Revenue Service. Specifically, the Trustee asserts that the proposed modified plan lists the IRS as class 5 priority. However, according to the Trustee's records, there was a Proof of Claim No. 10-1 that was filed on August 8, 2014 by the Debtors' attorney's office as a secured claim in the amount of $4,409.68. The Trustee objects based on the alleged incorrect classification.

DEBTORS' RESPONSE

The Debtors riled a response to Trustee's objection on September 29, 2014. Dckt. 67. In their response, Debtors state that they have filed an amended proof of claim for the Internal Revenue Service classifying it as a priority claim. Attached to the response is a copy of the amended proof of claim.

DISCUSSION

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

LOCAL RULE 2002-1
Notice Requirements

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

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

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

. . .

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

addresses:

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

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

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

The proof of service does not list the Internal Revenue Service.

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

It does not appear that the Internal Revenue Service has ever been given notice of this bankruptcy case. Proof of Claim No. 10 was filed by the law office of Stephen Johnson (signed by "Manager" of said Law Office). Given actual notice of a bankruptcy case, the Internal Revenue Service has shown that it is able to file a proof of claim stating the amount which it asserts is owed by the Debtor.

Because the Internal Revenue Service was not properly served, the instant motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

29. 14-28881-E-13 CURTIS/LORRA DARLING **MOTION TO AVOID LIEN OF ARROW**
MRL-1 Mikalah Liviakis **FINANCIAL SERVICES, LLC**
9-22-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 23, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Arrow Financial Services, LLC ("Creditor") against property of Curtis & Lorra Darling ("Debtor") commonly known as 921 Beller Way, Galt, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,287.31. An abstract of judgment was recorded with Sacramento County on June 16, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $347,000.00 as of the date of the petition. The unavoidable consensual liens total $320,000.00 as of the commencement of this

case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $27,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Arrow Financial Services, LLC, California Superior Court for Sacramento County Case No. 34 2009-00056507, recorded on June 16, 2011, Book 20110616 with the Sacramento County Recorder, against the real property commonly known as 921 Beller Way, Galt, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

30. 14-27984-E-13 ROSE RODRIGUEZ
DPC-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-10-14 [17]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to 3:00 p.m. on November 18, 2014.

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

1. Rose Rodriguez ("Debtor") failed to appear at the First Meeting of Creditors held on September 4, 2014. Debtor is required to attend the meeting under 11 U.S.C. § 343 and the Debtor has not presented any evidence to the court as to why she failed to appear. The Meeting was continued to October 30, 2014 at 10:30 am.

2. Schedule I in part calls for a monthly contribution from "wife's aunt" in the amount of $1,200.00 on line 8h. No evidence has been provided to the Trustee that Debtor is receiving the room rental income and the Statement of Financial Affairs fails to disclose any income from the Debtor's aunt. The Plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. The Debtor's non-exempt equity totals $170,251.00 and the Debtor is proposing a 0% dividend to unsecured creditors. The Debtor is married and her spouse is not included in the bankruptcy. The Debtor has failed to file a Spousal Waiver for the use of California State Exemptions under the California Code of Civil Procedure § 703.140.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who

appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The continued meeting of creditors will be held on October 30, 2014, after the hearing date for this Objection to Confirmation.

The Trustee further objects that the Plan does not pay unsecured creditors at least the amount they would receive under a Chapter 7. This is grounds to deny confirmation. 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity does in fact appear to be $170,251.00. With such a large amount of non-exempt equity, it appears that a 0% dividend to unsecured creditors is substantially less than what the creditors would receive under a Chapter 7. Additionally, Debtor has failed to account for rental income and has not filed the appropriate waivers to allow her to use the exemptions allowed under California Code of Civil Procedure § 703.140, as it appears she has attempted to do. This indicates that the proposed Plan does not represent Debtor's best efforts under 11 U.S.C. § 1325(b).

The Trustee does request that the Objection to Confirmation be continued till after the Continued First Meeting of Creditors in hopes that the Debtor will be able to resolve the Trustee's objection.

The court will afford the Debtor the opportunity to address these objections at the Continued First Meeting of Creditors and continues the hearing to 3:00 p.m. on November 18, 2014.

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 David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to confirmation is continued to 3:00 p.m. on November 18, 2014.

31. 14-23685-E-13 PAUL LUDOVINA **MOTION TO CONFIRM PLAN**
LBG-5 Lucas Garcia **8-20-14 [66]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Paul Ludovina ("Debtor") filed the instant Motion to Confirm First Amended Chapter 13 Plan on August 20, 2014. Dckt. 66.

MOTION AND SUPPORTING DECLARATION

In support of the instant motion, the Debtor's states that the proposed first amended plan provides the assumption of a lease previously left off because the Debtor mistakenly told his attorney that Debtor was not personally responsible for it. Debtor states that the expense of the lease is paid for by Debtor's business and will continue that way. Dckt. 68.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant motion on September 23, 2014. Dckt. 71. The Trustee made the following objections:

1. The Debtor may not be able to make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of Advanced Restaurant, which was set for hearing on September 30, 2014. The creditor has filed Proof of Claim No. 3 showing the $123,331.55 debt is owed by the Debtor's business, which far exceeds the $15,825.83 of assets that the business had according to the Debtor in Schedule B. Dckt. 1, pg. 11, item 13. Debtor has not adequately explained the income and expenses of the business and has not shown how the business can continue with this outstanding obligation which has been personally guaranteed by the Debtor. Proof of Claim No. 3, pg. 12.

2. If the Debtor's business has substantial assets, it may have more than $0.00 in value as listed on Schedule B, and unsecured may not be receiving what they should in the event of a Chapter 7 liquidation. 11 U.S.C. § 1325(a)(4).

3. In Section 6.01 of the proposed plan, Debtor addresses attorney fees. Based on this provision, it appears as it counsel intends to deduct from the initial retainer held in trust, at his own discretion, for all pre-petition fees. The Trustee objects unless the court authorizes this procedure pursuant to this objection, or counsel seeks approval of the fees by separate motion as appears required under Local Bankruptcy Rules 2015-1 (a) & (b).

4. Debtor's amended plan, subject to this motion to confirm, filed on May 30, 2014, was subject to a prior denial of confirmation on July 22, 2014. Dckt. 59.

DEBTOR'S RESPONSE

Debtor filed a response to Trustee's objections on September 29, 2014. Dckt. 74. The Debtor made the following response:

1. The Motion to Value is expected to be granted as the prior motion did not receive an objection from any parties.

2. Trustee has not requested any documentation as of the date of filing the response to either suggest a desire to further investigate the business to ensure that the balance sheets and profit and losses supplied to the Trustee are accurate. Debtor believes this argument to be disingenuous both because the Trustee offers no facts related to the current state of their investigation nor have the Trustee indicated to Debtor that further information for investigation is needed.

3. Because the previous plan was denied without prejudice, there is no reason why a substantially similar plan may be confirmed through the instant motion.

DISCUSSION

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

The Motion to Value the Secured Claim of Advanced Restaurant Finance, LLC that was heard on September 30, 2014 was denied. Because the proposed amended plan was premised on the Motion to Value being granted, the plan does not comply with 11 U.S.C. § 1325.

Furthermore, the Debtor's response does not address the Trustee's objection concerning the treatment of attorney's fees under the plan. Without clarification or court order on the payment structure of the attorney's fees, the court cannot confirm the proposed amended 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.

32. 14-22789-E-13 DPC-2 DAVID COTA AND KAREN SLAVICH-COTA Julius M. Engel

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS

Final Ruling: David Cusick, the Chapter 13 Trustee,("Movant") having filed a Notice of Withdrawal on October 2, 2014, Dckt. 73, for the Objection to Debtors' Claim of Exemptions, no prejudice to the responding party appearing by the dismissal of the Objection, the court construing the Notice of Withdrawal as an *ex parte* request to dismiss the Objection without prejudice, the parties, Movant having the right to request dismissal of the Objection pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the *ex parte* request is granted, the Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtors' Claim of Exemptions filed by David Cusick, Chapter 13 Trustee,("Movant") having been presented to the court, the court concluding that Movant has requested that the Objection be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed without prejudice.

33. 14-22789-E-13 JME-3 — DAVID COTA AND KAREN SLAVICH-COTA — Julius Engel — MOTION TO CONFIRM PLAN — 8-22-14 [57]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

David Cota and Karen Slavich-Cota ("Debtors") filed the instant Motion to Confirm Amended Chapter 13 Plan on August 22, 2014. Dckt. 57. The Debtors state that the proposed amended plan has been filed since the Motion to Value has been granted (Dckt. 46). Debtors argue that, since the First Amended Plan was denied confirmation because of the contingency of the Motion to Value, the instant amended plan is confirmable.

TRUSTEE'S RESPONSE

David Cusick, Chapter 13 Trustee, filed a non-opposition to the instant motion. Dckt. 70. The Trustee does not have any objections to the amended plan but does have points of clarification. First, the Trustee states that this is actually Debtors' second amended plan, not first, since the Motion to Confirm First Amended Plan was denied on July 9, 2014 (Dckt. 45). Secondly, the Trustee notes that the Debtors' classification that the only objection Trustee had as to the first amended plan was due to the contingency of a pending Motion to Value is incorrect and that the Trustee and other reasons to object. However, the Trustee states that those reasons have been resolved. Additionally, the Trustee states that the Trustee has a current pending Objection to Exemptions (Dckt. 64) set for hearing on October 7, 2014, which this amended plan resolves by proposing to pay 20% toward unsecured claims.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation.

The Trustee has filed non-opposition to the Motion. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 22, 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.

34. 11-40390-E-13 GERARDO RAMOS **CONTINUED MOTION TO MODIFY PLAN**
BLG-4 Paul Bains **7-2-14 [56]**

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

Gerado Ramos ("Debtor") filed the instant Motion to Confirm First Modified Plan on July 2, 2014. Dckt. 56.

TRUSTEE'S OBJECTION

David Cusick, Chapter 13 Trustee, filed an objection to the instant motion on August 4, 2014. Dckt. 64. The Trustee objects that:

1. The Debtor has added class 1 Select Portfolio Service claim for post-petition arrears claim in the amount $10,000.00. The creditor has not filed a claim for post-petition arrears and only the creditor has the ability to do so under 11 U.S.C. § 1305. Additionally, the Trustee is uncertain the claim would qualify under 11 U.S.C. § 1305(a)(2). Per Proof of Claim 10-1,

part 3, page 18, the mortgage note was dated March 24, 2005 prior to filing the petition.

AUGUST 19, 2014 PRIOR HEARING

At the August 19, 2014 hearing, the court continued the hearing to 3:00 p.m. on October 7, 2014 and ordered the Trustee to file and serve supplemental declaration on or before September 3, 2014. The court further ordered that the Trustee to file and serve Response or Reply, if any, on or before September 24, 2014.

TRUSTEE'S RESPONSE

On September 8, 2014, the Trustee filed a response to Debtor's Motion to Confirm First Modified Plan. Dckt. 73. The response reiterates the same objection as from Trustee's original objection but does add clarification to the objection. The Trustee concedes that the plan may cure any default, and the court has normally confirmed such plans in other cases, although the additional provisions should set forth the Trustee is to pay the claim even if no claim has been filed.

The Trustee also states that the declaration filed by Debtor (Dckt. 58) does not address why the Debtor became delinquent in post-petition mortgage payments or how the monies were spent. The Trustee notes of a Notice of Mortgage Payment Change filed by the creditor on September 20, 2014 which reflects a monthly payment amount of $1,221.38, effective November 1, 2013. The Trustee argues that the proposed post-petition claim would represent several months of arrears.

DEBTOR'S RESPONSE

Debtor filed a response to Trustee's objection on September 24, 2014. Dckt. 77. In response, the Debtor states the following:

1. Debtor argues that the Trustee filed their objection on September 8, 2014 when objections were due by September 3, 2014. Debtor has no issue with the late filed objection and will address the Trustee's concerns in the response.

2. A Proof of Claim on behalf of Select Portfolio Servicing for the post-petition arrears will be filed concurrently with this response. Debtor references the Declaration of Pauldeep Bains.

3. Debtor has provided explanations as to why he fell behind on his mortgage payments per Trustee's request, citing to Debtor's declaration.

Reviewing the Debtor's Declaration, the Debtor states that he fell behind on mortgage payments because he lost his job around May 2012. Dckt. 79. Debtor states that after losing his job, he began doing side-jobs which he has continued. Debtor alleges that in the beginning, the side-jobs were not very dependable so Debtor would not be able to make his mortgage payment or plan payment. However, Debtor alleges that his income is much steadier and will be able to catch up on the post-petition delinquency through the Chapter 13 plan.

Debtor also states that, as to the Trustee's question concerning how the money was spent, the Trustee simply state "there was no additional money that was spent."

As to Pauldeep Bains Declaration, it merely states that: "A Proof of Claim on behalf of Select Portfolio Servicing for the post-petition arrears added to Debtor's First Modified Plan Filed on 7/2/2014 will be filed concurrently with this response." Dckt. 78.

PROOF OF CLAIM 13

On September 24, 2014, Proof of Claim No. 13 was filed. The listed creditor is Select Portfolio Servicing, Inc. The amount of the claim is for $10,000.00 and categorized as "Post-Petition Mortgage Arrears."

DISCUSSION

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

The Debtor has added as a Class 1 claim that of Select Portfolio Servicing for an arrearage in the amount of $10,000. The proposed modified plan does not provide for the Class 1 current mortgage payment. Instead, it attempts to improperly bifurcate the payment into Class 4. FN.1.

FN.1. Given that counsel for Debtor regularly practices in the Eastern District of California and knows that under the required plan and Local Bankruptcy Rules a secured claim which is in default cannot be bifurcated between Classes 1 and 4, the proposed plan manifests an intention by the Debtor to try and fool the court, creditors, and the Trustee. This does not manifest good faith in the prosecution of the case and this plan by the Debtor.

Further, it appears that "Proof of Claim No. 13" is not a proof of claim for any creditor in this case, and to the extent it purports to state a proof of claim, is defective on its face. First, Select Portfolio Servicing is the loan servicer for JPMorgan Chase Bank, N.A. - See Proof of Claim no. 10. Attempting to name Select Portfolio Servicing as the "creditor" fails to provide the proper party in interest before the court.

Second, Proof of Claim No. 10 misstates the secured claim of JPMorgan Chase Bank, N.A. – it is not merely a $10,000.00 secured claim.

The Motion to Confirm the Modified Plan states that the Debtor is now doing "odd jobs," no longer being employed by "Tails of the City." The Debtor's non-filing spouse is "now unemployed." However, the Motion further states that Debtor's oldest son is now working and "contributes to the household." While Debtor provides Schedule I and J forms as Exhibits, he provides no testimony about how he is generating income, why it is reliable income, why the substantial defaults have occurred, and why, in light of the past defaults, they are not likely to reoccur. No testimony is provided by Debtor's son as to why, how, and how reliable is his income contribution to Debtor.

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

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

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

35. 12-37390-E-13 STACY MORRISON — MOTION TO SELL
CAH-1 C. Anthony Hughes — 9-4-14 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 9459 Windrunner Lane, Elk Grove, California

The proposed purchaser of the Property is Helen Chau Phung, Nancy Chan, and Kwong C. B. Chan and the terms of the sale are:

1. The sale is a short sale.

2. The purchase price is $265,000.00.

3. The initial deposit will be $2,500.00.

4. The first loan will be in the amount of $159,000.00.

5. Balance of the purchase price in the amount of $103,500.00 to be deposited with Escrow Holder within sufficient time to close escrow.

6. Debtor will not have to pay any money or closing costs and will not be getting any cash from the proceeds of the sale.

The Chapter 13 Trustee filed notice of non-opposition on September 5, 2014.

The Motion seeks to sell Property under 11 U.S.C. § 363(b)(1) which states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless –
>
> (A) such sale or such lease is consistent with such policy; or
>
> (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease –

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Under 11 U.S.C. § 1303, the Debtor has the rights and powers of a trustee under 11 U.S.C. § 363(b).

For this Motion, the Movant has established that the proposed sale is in the best interest of the estate and that it is not in violation of any policy that would prohibit the sale. The terms of the proposed sale are fair and provide for the payment in full of creditors who have liens and security interests encumbering the Property.

However, the Movant has not established cause to waive the 14-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h). The Movant does not provide grounds upon which the request to waive the 14-day stay is based. At best, it is a mere after thought included in the prayer. The court denies the Movant's request to waive the stay. FN.1.

FN.1. The Rules Committee proposed and the United States Supreme Court promulgated Rule 6004(h) to expressly provide for a 14-day stay of enforcement.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Stacy Morrison the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Stacy Morrison, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Helen Chau Phung, Nancy Chan, and Kwong C. B. Chan or nominee ("Buyer"), the Property commonly known as 9459 Windrunner Lane, Elk Grove, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $265,000.00, on the terms and conditions set forth in the Purchase

Agreement, Exhibit A, Dckt. 34, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is not waived.

36. 13-32494-E-13 THEODORE/MOLLY MCQUEEN
CAH-5 C. Anthony Hughes

MOTION FOR COMPENSATION FOR C. ANTHONY HUGHES, DEBTORS' ATTORNEY
9-9-14 [147]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on September 9, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is denied without prejudice.

FEES REQUESTED

C. Anthony Hughes ("Applicant"), the Attorney for Theodore and Molly McQueen the Chapter 13 Debtor ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period September 25, 2013 through September 8, 2014. Applicant states that he has worked 75.6 hours at an hourly rate of $300.00 performing tasks such as general correspondences, emails, phone calls, file reviews, amendments, review of proof of claims, evidentiary hearing, and motions to confirm plans. This totals $22,680.00, and Applicant requests fees in the amount of $19,180.00 and costs in the amount of $63.60 for printing and mailing evidentiary hearing documents.

OVERVIEW OF CASE AND FEE REQUEST

Though this Bankruptcy Case appears to present a significant opportunity for Debtor and the Objecting Creditor to take a terrible situation and create an economic upside for each, to date the parties appears to have managed to have driven this business and case into a quagmire. The Bankruptcy Case was file don September 25, 2013. It has contained significant problems for Debtors, Debtor's' counsel, and this creditor.

For Debtors and Debtors' counsel, they have stated under penalty of perjury that Debtors generate sufficient income from their business not only to fund the Chapter 13 Plan, but also pay directly to Debtors' counsel (without court authorization) of $1,000.00 a month. See Civil Minutes, Motion to Confirm, Dckt. 90; Adv. No. 14-2004 Civil Minutes, Dckt. 46.

Debtors' counsel chose to represent Debtors' corporation prior to the commencement of this case. Objecting Creditor sold a business to the corporation, which obligation is/was secured by the assets sold and business. On the eve of the Debtors filing bankruptcy, Counsel assisted or was aware that the business was being transferred into the Debtors' name and then counsel was going to represent the Debtors in the bankruptcy case. This raises serious 11 U.S.C. § 327 disinterestedness issues for Counsel.

While the Objecting Creditor asserts a security interest, it is in assets for a service business. Unless the Debtors personally work on the business, it appears that the actual collateral is of modest value. For Creditor to obtain a substantial recover, Debtors must have an incentive to work for the business.

In connection with cross adversary proceedings, the Debtors and this Creditor were able to reach a stipulation concerning the value of Creditor's secured claim. Order, Dckt. 132. The Stipulation, stated on the record, also set forth the terms for the payment of that secured claim through a Chapter 13 Plan. *Id.*

Though an agreement was reached for the treatment of the secured claims, the Debtors and Creditor continued to fight – precluding confirmation of a plan in this case. Order denying confirmation, Dckt. 174. The parties have now devolved into requiring an Evidentiary Hearing on the current motion to confirm a plan in this case. Order, Dckt. 170. The "fight" for confirmation is whether allowing Debtors' counsel $19,180.00 in attorneys' fees renders the plan not to be feasible.

OVERVIEW OF MOTION FOR ALLOWANCE OF FEES

The Motion for Allowance of Fees in this case states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the relief is based:

A. Counsel has received a retainer of $3,500.00.

B. Counsel has been the attorney for Debtors since September 2013.

C. While Counsel originally believed that this could be handled as a set fee case for $3,500.00 pursuant to Local Bankruptcy Rule 2016-1(c), Counsel subsequently determined that fees would be requested pursuant to Local Bankruptcy Rule 2016-1(b).

D. Counsel has done work in the case as set forth in the exhibits.

E. Counsel has determined that there has been 75.6 hours reasonably billed to the Debtors and that a $300.00 an hour rate is reasonable for those services. Therefore, the fees incurred by the Debtors is $22,680.00. In addition, Counsel seeks recovery of $63.60 in costs.

F. Counsel request the court approve only $19,180.00 in "additional attorneys' fees" and expenses of $63.60. (It appears that counsel believes that having received the retainer of $3,500.00, any services relating to that amount does not need to be approved by the court. Such an assumption is incorrect.)

Motion, Dckt. 147.

OPPOSITION

Trustee's Objection

David Cusick, the Chapter 13 Trustee, has filed an objection to the Motion on September 15, 2014. Dckt. 160. The Trustee objects that:

1. Applicant filed a Disclosure Statement on October 7, 2013 (Dckt. 9), which indicated that Applicant received $3,500.00, had agreed to accept an additional $2,500.00, and did not include dischargeability actions, judicial lien avoidances, relief from stay actions, discovery under rule 2004, and adversary proceedings. The statement was not signed by the Debtors — the form never provides a line for Debtors' signatures — and the case was filed on September 25, 2013. An Amended Disclosure Statement was filed on March 18, 2014 (Dckt. 81), which added a disclosure that the attorney charges Debtors on an hourly basis for adversary proceedings and collects $1,000.00 per month from Debtors, and that Applicant received $2,000.00 from Eliminator Enterprise, Inc. dba Heaven's Best of Sacramento and represented the corporation in debt negotiation. Again, due to the form, no signature of the Debtors appears. A Rights and Responsibilities form filed October 8, 2013 (Dckt. 11) has been filed signed by Debtors indicating that initial fees in this case were $6,000.00, and of this amount, $3,500.00 was paid by Debtors before the filing of this petition and that Applicant may request additional fees from the court where substantial and unanticipated post-confirmation work is necessary. The actual Attorney-Client agreement does not appear in the record, as is required, so it cannot be determined whether the fees requested are reasonable based on this agreement.

2. The present motion seeks compensation for various time spent with an itemized exhibit of time. While the records are authenticated, the contents of the record appear lacking. The person who performed each task is not identified, and more than one attorney has worked on the case. Dckts. 131, 148. A certain amount of time, around 7.9 hours, is shown as having no subject and contents redacted for attorney-client privilege. No task-billing analysis has been presented. While the tie for work performed has been presented, even with some subjects redacted, no effort has been made to organize this time by tasks performed in a manner to enable the court, creditors, and trustees to readily determine if they have any basis to oppose the motion. Where certain tasks are clearly related, Applicant can organize the motion if the expenses are reasonable.

Creditor's Opposition

G & K Heaven's Best, Inc. ("Creditor") has filed opposition to this motion on September 15, 2014 (Dckt. 165). Creditor opposes the Motion on the basis that:

1. Applicant has obtained pre-petition attorney's fees that were undisclosed to the court until brought to light by Creditor's counsel. Applicant sought to be paid $1,000.00 per month from the business' operating expenses, all without disclosing these fees to the court, without seeking permission for payment thereof, and without placing these funds into a client trust account until he obtained court approval. Debtors and Applicant claimed these funds were not fully paid each month and no bank statements have been provided to show either the receipt of the funds nor the account they were drawn from.

2. A plan has yet to be confirmed in Debtors' case and all fees Applicant has requested are part of the confirmation process. Additionally, Debtors were represented by counsel before filing, yet Debtors did not disclose these additional fees paid within the year prior to filing. Creditor also alleges that the unsecured claims in this case total $12,000.00, which could have been paid given that Applicant is now requesting over $19,000.00 in fees.

3. In Applicant's Declaration supporting the instant Motion, Applicant states that he is counsel for Debtors. He fails to mention that he was also counsel for Debtors' now-defunct corporation prior to September 2013. The Debtors liquidated this corporation prior to filing. The Declaration only states that Applicant was compensated with a pre-petition retainer of $3,500.00 for attorney's fees, but this fails to disclose all payments received from Debtors and/or their defunct corporation. The Declaration also says that "no additional attorney fee has been paid through the plan," yet fees were paid from the operating budget of the business in the amount of $1,000.00 per month to Applicant.

4. Creditor additionally alleges that the change in the contract between Debtors and Applicant, which moves Applicant's fees from a flat rate to hourly, was not done because of "unexpected substantial amount of work" in the case. Creditor alleges that this is a scheme to crowd out the claims of unsecured creditors by requesting additional fees for allegedly substantial and unexpected services. The services do not rise to that level and are an attempt to support a 0% dividend to unsecured creditors.

5. Creditor also alleges that the hourly rate of $300.00 per hour is incorrect, as Zhijun Gong, an associate in Applicant's firm, performed a substantial amount of work. Her rate and the clerical services she performed are not properly set at $300.00 per hour.

6. If the instant Motion is approved, and an additional $19,180.00 in hourly fees are added to the case, Debtors' pending plan could not be confirmed as it would be infeasible. This would add $450.00 to each monthly payment, which Debtors do not have the ability to make with their disposable income, assuming Debtors have disclosed all of their disposable income.

DISCUSSION

This Motion, and the supporting evidence, expose several weaknesses to the Motion, as well as to the "litigation strategy" of the case.

Lack of Task Billing

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a

system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

It is a waste of judicial time to comb through nine pages of attorney time sheets to try to discern which fractions of hours were spend in which general category of service. The necessary task billing analysis would provide this information without the court wasting its time laboring over Applicant's insufficient pleadings.

"No-Look" Fees

Trustee, and especially the Creditor, make much of the Original Proposed Plan in this case being one which provided for Debtors' Counsel to accept a $6,000.00 set fee pursuant to Local Bankruptcy Rule 2016-1(c), rather than filing "normal" fee applications and having fees approved pursuant to 11 U.S.C. § 327, 329, 330, and 331. The court does not have such "heartburn" or believe that such unapproved fee arrangement binds counsel "once and for all" in a Chapter 13 case.

Local Bankruptcy Rule 2016-1 governs attorneys' fees in Chapter 13 cases. Any proposed Fixed Fee Agreement is effective only through confirmation of a Chapter 13 Plan. L.B.R. 2016-1(c). There has been no confirmed plan in this case. Try as they might, a debtor and debtor's attorney cannot bind the other to a Fixed Fee absent approval of the court.

While Creditor bemoans the "unfairness" of Debtors' counsel changing the ground rules of how and what "Debtors" will pay (the court being cognizant that it is actually creditors with unsecured claims who will be "paying counsel" through a reduced dividend), Creditor does not control what Debtors' counsel will ultimately be allowed as fees.

To try and "hogtie" a debtor's counsel to a set fee based upon pre-filing assumptions that a case will go relatively smoothly would work to effectively preclude Chapter 13 debtors from having effective counsel. Creditors would then have an incentive to be as difficult, uncompromising, and litigation expense raising as possible, to render such representation on a Fixed Fee economically burdensome on debtor's counsel. (To be clear, the court does not find, infer, or conclude that Creditor and Creditor's counsel has so acted in this case.)

Debtors and Debtors' Counsel, in light of the issues which have arisen can, prior to an order confirming a Chapter 13 Plan and approving a Fixed Fee, elect to proceed with having counsel's fees approved pursuant to Local Bankruptcy Rule 2016-1(b).

No Showing of Benefit or Reasonableness of Fees

The Motion and the two declarations by the attorneys for Debtors merely presumes whatever Counsel has done is beneficial for the estate. That assumption is unwarranted. Rather than proceeding with an economic resolution, Debtors filed their Adversary Proceeding and Creditor filed its. After dragging on, the parties stipulated to a value for the secured claim.

Much of the litigation, and distrust of Creditor, flows from Counsel representing Debtors' corporation and then being party to the transfer of corporate assets into Debtors. A myriad of ethical issues, bankruptcy and non-bankruptcy, arise when corporations which do not have the ability to pay their creditors transfer their assets (including accounts receivable) to the insiders. Because this is a two-party dispute, the court has been willing to "over-look" such issues while the Creditor and Debtors came to grips with the issues and challenges to this case.

Neither attorney provides any substantive testimony as to the services provided, or what each attorney has done in this case. In his declaration, Anthony Hughes testifies under penalty of perjury that his firm has filled various pleadings, but never identifies who actually did the work (Mr. Hughes, an associate attorney, a paralegal, a non-paralegal staff person). Mr. Hughes does not provide a statement of his experience, cases, or background involving bankruptcy cases, especially business bankruptcy cases, by which the court can determine an appropriate hourly rate for Mr. Hughes. He merely concludes that a "customary hourly rate" for the services provided is $300. It is true that for some attorneys, $300.00 an hour, or $350.00 or $400.00, would be proper, it is equally true that an hourly rate of $150.00 or $200.00 an hour would be proper for such services. The $300.00 to $400.00 an hour attorney will focus the case on the issues involved and drive it to a resolution – whether by agreement or court ruling. The $150.00 to $200.00 an hour attorney will be learning as they go, prolonging the case.

The Declaration of Zhijun Gong, the associate attorney, in Mr. Hughes law firm has been filed in support of the Motion. Dckt. 150. She does not testify what she has done in the case, but merely that she personally is "the" custodian of the Hughes Law Firm billing records.

The billing records lists dates, a brief description of the service, and then an amount of time. The attorney, paralegal, or non-paralegal staff person for whom the billed time is claimed is identified. The identity of the person doing work is critical to any fee application. There is not a generic $300.00 a hour that an attorney, paralegal, non-paralegal staff person has a right to bill and be paid. In this case and the two related Adversary Proceeding it has been Ms. Gong who as appeared, and assured the court that it is she handling the case, with Mr. Hughes involvement not being necessary.

According to the California State Bar, Ms. Gong was admitted to practice in California December 4, 2008. FN.1. The State Bar does not identify Ms. Gong's experience, significant cases handled, or knowledge of business and bankruptcy law. In reviewing the website for Anthony Hughes law firm, http://www.anthonyhughesbankruptcyattorney.com/, no information is provided concerning Ms. Gong's experience. No listing for Ms. Gong was found on the Martindale Hubble Lawyer Directory website. http://www.martindale.com.

While Ms. Gong has worked, and been diligent to the case in asserting the Debtors' interests, the level of legal services, and experience demonstrated, does not support a $300.00 a hour rate for an attorney in the Sacramento legal market.

Significantly, the court has no idea who is billing for what as part of this application.

FN.1. http://members.calbar.ca.gov/fal/Member/Detail/258590

While the court could make a lump sum pronouncement as to what would appear to be reasonable legal fees for the services provided (as clearly the Debtors' interests have been protected and they will have the opportunity to save their business – if a plan can be confirmed), the court is not convinced that such would be conducive to a resolution which would lead to confirmation of the plan in this case.

Rather, it appears that Creditor and Creditor's counsel need to put forth a realistic proposal to allow Debtors' counsel reasonable fees in this case. Debtors' Counsel needs to critically consider the work done and appropriate billing rate for the services, and the ethical issues which can be resolved through a good faith, fair amount of agreed fees. Creditor, Creditor's Counsel, and Debtors' Counsel need to also agree to a fair schedule for payment of the fees - in light of the amount of fees, the payment on Creditor's unsecured claim, and the need for Debtors' counsel being reasonably and fairly compensated.

Additionally, all of the parties should keep in mind if they cannot so agree, the court can, and will, as part of its order specifying how the Chapter 13 Trustee may pay the fees through the Chapter 13 Plan.

The Motion for attorneys' fees is denied without prejudice. If the Objecting Creditor and Debtors, after post-order consideration, believe that an agreed amount of fees can be approved, the court will consider an ex parte motion to vacate, restoring this matter to calendar, and considering further briefing from the parties.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by C. Anthony Hughes ("Applicant"), Attorney for the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Allowance of Fees and Expenses is denied without prejudice.

37. 14-27422-E-13 CAH-1 — LONNIE/SHARON SHURTLEFF, Oliver Green — CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION 8-15-14 [18]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on JPMorgan Chase Bank, N.A., Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Lonnie and Sharon Shurtleff ("Debtors") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor").

MOTION

The Debtors' motion is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 308 Savoy Avenue, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $175,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid.

701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

OPPOSITION

Creditor has filed an opposition on September 2, 2014. Creditor objects to both the Debtors' valuation of the Property and the balance of the first deed of trust on the Property. Creditor alleges that the balance of the first deed of trust is $214,000.00 and the value of the Property is approximately $233,000.00. Dckt. 37. Creditor states that it is in the process of getting a valuation of the Property in support of this allegation.

SEPTEMBER 16, 2014 HEARING

The hearing for this motion was set for September 16, 2014. The hearing was continued to September 30, 2014 to allow the Creditor and Debtor to come to a settlement or stipulation regarding the value of the Property central to the instant motion. A review of the docket shows that no supplemental documents, stipulations, or claims have been filed in relation to this motion.

The hearing was continued to 3:00 p.m. on October 7, 2014 due to technical difficulties with the court call at the September 30, 2014 hearing.

CREDITOR'S SUPPLEMENTAL FILING

Creditor filed a notice of filing appraisal in opposition to the instant motion on September 30, 2014. Dckt. 45. Attached to the notice was a Residential Appraisal Report performed by Linda Molinari of Prestige Appraisal Service, Inc. The thorough report gave the opinion of value of the Property at $225,000.00. Dckt. 46.

DISCUSSION

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

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

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

The senior in priority first deed of trust secures a claim with a balance of approximately $284,133.33. FN.1. Creditor's second deed of trust secures a claim with a balance of approximately $30,661.00. Even taking the valuation of the Property at the increased value given by the appraiser of $225,000.00, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

FN.1. The court notes that Creditor, who is also the holder of the first deed of trust, disputes the outstanding balance on the first deed of trust. However, Creditor has offered no evidence of supporting its contention that the first deed of trust secures a claim of less than $284,133.33, the amount shown on Debtors' Schedule D. Exh. B, Dckt. 21. A review of the record shows that Creditor has not filed a proof of claim in this case for either of its liens on the Property. The court notes that Creditor has filed a request for judicial notice on August 29, 2014 (Dckt. 34), asking the court to take notice of a claim transfer, there remains no claims in this case for either the Creditor nor the original claim holder.

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 Lonnie and Sharon Shurtleff ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A., secured by a second in priority deed of trust recorded against the real property commonly known as 308 Savoy Avenue, Rio Linda, 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 $175,000.00 and is encumbered by senior liens securing claims in the amount of $284,133.33, which exceed the value of the Property which is subject to Creditor's lien.

38. 14-27422-E-13 ALP-1 LONNIE/SHARON SHURTLEFF Oliver Green — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A. 8-29-14 [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, Debtor's Attorney, and Chapter 13 Trustee on August 29, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

JPMorgan Chase Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that Lonnie and Sharon Shurtleff's ("Debtors") Plan is proposed based on the assumption that Creditor's lien will be avoided if the Debtor's motion to value is granted. Dckt. 18. Creditor has filed its opposition to the motion to value independently. Dckt. 37. If the Debtors' Motion to Value is

denied, Debtors will be unable to comply with the terms of their Plan, making the Plan infeasible.

The Creditor's objection is correct — the Debtors' plan will not be feasible should the pending Motion to Value not be granted. In order for the court to confirm a plan, that plan must be feasible. 11 U.S.C. § 1325(a)(6). However, given the court's tentative ruling to grant the Motion to Value at the continued hearing on October 7, 2014 and the fact that nothing further has been filed in opposition to the motion, this objection will be overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by JPMorgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on July 21, 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.

39. 13-20944-E-13 DEBRA WARRINGTON
RWF-1 Robert Fong

CONTINUED MOTION TO REFINANCE
9-2-14 [23]

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, and Office of the United States Trustee on September 2, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Debra Warrington ("Debtor") seeks court approval for Debtor to incur post-petition credit with Comstock Mortgage ("Creditor"). The Motion states the following:

A. Debtor seeks to refinance the loan secured by her home.

B. The amount of the refinance loan will vary, but be in the approximate amount of $112,850.00, depending on closing date and lien amounts to be paid.

C. A title company named Orange Coast Title is involved in an unstated way.

D. The payment will be $721.52 (PIIT).

E. Interest rate will be 4.875%.

F. Debtor will not receive any cash from the refinance.

G. The balance of pre-petition mortgage arrears, if any, shall be paid to the Chapter 13 Trustee for disbursement to that creditor, with the principal balance to be paid directly to the creditor.

H. Debtor seeks a waiver of the fourteen day stay arising under Federal Rule of Bankruptcy Procedure 6004(b) and Interim Rule 6004(h).

[The court is unsure which Rules the Debtor is referring or how they are relevant to this motion to obtain post-petition credit.]

Motion, Dckt. 23.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee filed a statement of non-opposition on September 8, 2014.

SEPTEMBER 30, 2014 HEARING

At the September 30, 2014 hearing, the court continued the hearing to 3:00 p.m. on October 7, 2014 to allow the Debtor to file supplemental pleadings to be filed and served by October 2, 2014.

DEBTOR'S SUPPLEMENTAL DECLARATION

On October 1, 2014, the Debtor filed a Supplemental Declaration of Debtor in Support of Motion to Refinance Home Mortgage. Dckt. 27. In support, the Debtor states that Debtor has arranged for refinancing on the property commonly known as 4500 Zachary Way, Sacramento, California on the following terms:

1. Amount: Approximately $112,850.00. The loan amount and interest may vary depending on the closing date and payoff demands establishing the actual amounts needed to pay off all existing loans and liens and the Chapter 13 Plan. The principal amount owed on the residence is $108,431.82. The obligation is paid directly in the Chapter 13 Plan.

2. Title Company: Orange Coast Title, 55 University Ave. #180, Sacramento, California. Escrow officer is Keri James, (916) 648-5390, Escrow No. 525-1591529-62

3. Lender: Comstock Mortgage, 2240 Douglas Blvd., Suite 200, Roseville, California, Dennis Graves, Sr. Loan Consultant.

4. Proposed Payments: $721.52 total, including principal, interest, tax and insurance, 30 years.

5. Interest Rate: 4.875 percent.

Debtor states that all liens secured by the residence will be paid in full in a manner consistent with the confirmed Chapter 13 Plan by this refinance and that Debtor will not receive any cash from the refinance.

Attached as exhibits is a copy of a Good Faith Estimate that gives the preliminary details of the prospective loan, as well as an updated summary of the terms of the refinance, drafted by Comstock Mortgage and provided to Debtor's attorney at Debtor's request. Dckt. 29 and 30. The terms of the refinance listed in the Good Faith Estimate are the same as presented by the

Debtor in the supplemental declaration, with just the Good Faith Estimate clarifying that:

1. New Payment: $597.21 (principal and interest) + $124.31 (escrow for property taxes and insurance cost) Total payment: $721.52.

2. Interest rate: 4.875% 30 year fixed.

DISCUSSION

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debra Warrington having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Debra Warrington ("Debtor") to amend the terms of the loan with Comstock Mortgage, which is secured by the real property commonly known as 4500 Zachary Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A & B in support of the Motion, Dckt. 29 & 30.