

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 20, 2015 at 3:00 p.m.

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1. [10-33002-E-13](#) ROY FAIN ORDER TO SHOW CAUSE
RHS-1 Brandon Scott Johnston 9-24-15 [[101](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

**The court having Discharged the Order to Show Cause (Dckt. 106),
the matter is removed from the calendar.**

2. [15-23902-E-13](#) JOHN/MELISSA RUS MOTION TO AVOID LIEN OF
CLH-3 Cindy Lee Hill NORTHERN CALIFORNIA COLLECTION
SERVICES, INC.
9-22-15 [[40](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

October 20, 2015 at 3:00 p.m.

This Motion requests an order avoiding the judicial lien of Northern California Collection Services Inc., as agent or assignee of Waldorf Schools ("Creditor"), against property of John and Melissa Rus ("Debtor") commonly known as 6300 Whitecliff Way, North Highlands, California (the "Property"). Creditor did not file opposition to this Motion.

A judgment was entered against Debtor in favor of Creditor in the amount of \$45,002.13. Dckt. 43 Ex. B. An abstract of judgment was recorded with Sacramento County on April 17, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$144,000.00 as of the date of the petition. Dckt. 43 Ex. A. The unavoidable consensual liens total \$174,137.00 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 § 703.140(b)(1) in the amount of \$1 on Schedule C. *Id.*

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 Northern California Collection Services Inc., as agent or assignee of Waldorf Schools, California Superior Court for Sacramento County Case No. 34-2013-00156178, recorded on April 17, 2014, Book 20140417 and Page 0858 with the Sacramento County Recorder, against the real property commonly known as 6300 Whitecliff Way, North Highlands, 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.

No further or additional relief is granted.

3. [15-23902-E-13](#) JOHN/MELISSA RUS
CLH-4 Cindy Lee Hill

MOTION TO VALUE COLLATERAL OF
NORTHERN CALIFORNIA COLLECTION
SERVICES
9-22-15 [[44](#)]

**No Appearance by Counsel for Debtors is Required If
Debtor Does Not Object to the Denial Without Prejudice**

Tentative Ruling:

At the October 20, 2015 hearing, this court granted John and Melissa Rus' ("Debtor's") Motion to Avoid Judicial Lien. The judgment lien of Northern California Collection Services Inc., as agent or assignee of Waldorf Schools ("Creditor"), 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.

It appears Debtor filed the instant Motion to Value Collateral as a back-up to the Motion to Avoid Lien. Dckt. 44. The Motion expressly requests that the court "value the collateral of the lien" of the creditor.

The Bankruptcy Code, 11 U.S.C. 506(a)(1), provides that the court shall value the secured claim of a creditor. While as part of the process the court values the collateral, the actual order is to value the secured claim.

For 11 U.S.C. § 506(a) to be applicable, the court must first be presented with "an allowed secured claim." 11 U.S.C. § 506(a)(1). The court then value the creditor's interest in the debtor's interest in the property that secures the claim. By the court avoiding the judgment lien pursuant to Debtor's prior motion (DCN: CLH-3) there is no lien creating an interest for the creditor in the property of the Debtor. Thus, there is no secured claim to be valued.

The Motion is denied without prejudice as moot, the court having avoided the lien pursuant to 11 U.S.C. 522(f)(1).

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

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

The Motion to Motion to Value Collateral of Northern California Collection Services, 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 denied without prejudice.

4. [15-26202-E-13](#) ROSE RODRIGUEZ
BF-5 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
9-16-15 [[26](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Confirmation 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 is sustained and confirmation of the Plan is denied.

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

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

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

IT IS ORDERED that the Objection is sustained.

5. [15-26202-E-13](#) ROSE RODRIGUEZ OBJECTION TO CONFIRMATION OF
DPC-2 Pro Se PLAN BY DAVID P. CUSICK
9-15-15 [[18](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The Objection to Confirmation of the Chapter 13 Plan filed by Trustee was dismissed by the Trustee pursuant to Federal Rule of Civil Procedure 41(a)(1)(I) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 31. Having been dismissed, **the hearing on the Objection is removed from the calendar.**

6. [15-21707-E-13](#) JUDITH LAYUGAN MOTION TO CONFIRM PLAN
RS-3 Richard L. Sturdevant 8-26-15 [[69](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 26, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [15-21707-E-13](#) JUDITH LAYUGAN MOTION TO SELL
RS-4 Richard L. Sturdevant 10-6-15 [[83](#)]

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

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

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

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

Correct Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Bank of America attorney's, and Office of the United States Trustee on October 6, 2015. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Sell Property is denied without prejudice.

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

- A. 8864 La Riviera Drive, #D, Sacramento, California

However, the Debtor failed to provide sufficient notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), 21 days notice is required at a minimum for a Motion to Sell. Here, the Debtor only provided 14 days notice. This is insufficient.

Additionally, the Debtor failed to serve all creditors as required by Fed. R. Bankr. P. 2002(a).

In the Motion Debtor states that under the confirmed plan the property reverts in Debtor. Therefore, Debtor concludes that the property has been "abandoned." That is not correct. While revested in the Debtor, the bankruptcy estate retains a residual interest in the event that there is a default and the case is converted to one under Chapter 7. 11 U.S.C. § 348(f)(1).

Therefore, due to the failure of the Debtor to provide sufficient notice and to properly notice all necessary parties, the Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

ALTERNATIVE RULING

Though Debtor failed to comply with the notice requirements of Federal Rule of Bankruptcy Procedure 2002, Counsel appeared at the hearing to prosecute the Motion. At the hearing Debtor provided the court with the following basis for determining that notice was sufficient for this Motion. ~~XXXXXXXXXXXXX~~.

The court has confirmed Debtor's Chapter 13 Plan. See Civil Minutes for October 20, 2015 hearing (DCN:RS-3). Under the confirmed plan Debtor has provided for the real property commonly known as 8864 La Riviera Dr., #D, Sacramento, California (the "Property") to be surrendered, the automatic stay terminated, and creditors having liens against the Property given relief from the automatic stay to foreclose on the property.

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

- A. 8864 La Riviera Dr. #D, Sacramento, California.

The proposed purchaser of the Property is JBA Enterprises, LLC and the terms of the sale are that the sales price is \$95,000.00. No other terms of the sale are stated and no copy of the sales contract is provided.

The Motion directs the court to read an Estimated Settlement Statement, presumably for the court and parties in interest to “divine” the sales terms.

The Motion states that the property is subject to a first deed of trust securing a claim of \$216,000 owed to Bank of America, N.A. and a second deed of trust securing a claim of \$27,000.00 owed to Bank of New York Mellon.

The Motion does not explain how the Debtor is selling property subject to \$242,000.00 in liens for \$95,000.00. The Estimated Closing Statement is of little help. It purports to state that the Bank of America, N.A. first deed of trust obligation will be paid off for \$80,115.35. It then states that Bank of America, N.A. will have a debt secured by a second deed of trust paid off for \$3,000.00.

Bank of America, N.A. filed Proof of Claim No. 9 which asserts a secured claim in the amount of \$219,068.21, for which the Property is collateral. Proof of Claim No. 8 was filed for a secured claim in the amount of \$28,474.06, for which Bank of New York Mellon, Trustee is the creditor. It appears that Bank of America, N.A. is servicing this claim, which may be the reason that the Estimated Closing Statement makes reference to paying Bank of America, N.A. for the debt secured by the second deed of trust.

It appears that there is more going on in this transaction, for which the court’s authorization is sought, then merely a \$95,000.00 sale of the Property. No evidence has been presented to the court as to the marketing of this property. No evidence has been presented to this court why there are \$5,700.00 in commissions being paid as shown on the Estimated Settlement Statement.

The court cannot determine whether the bankruptcy estate or the plan estate is receiving fair value for conducting this sale. Taking Debtor at her word in the confirmed plan, creditors can go ahead and foreclose on the Property, getting the best they can. No reason is given for the bankruptcy estate or the plan estate, and the fiduciary of those two estates (the Debtor) expending time and effort for others to profit.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is/is not 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 Judith Layugan, the Chapter 13 Debtor and fiduciary under the confirmed Chapter 13 Plan 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 [name of seller], the [“Trustee”/“Chapter 13 Debtor”/ “Debtor in Possession”], is authorized to sell to [Buyer’s Name] or nominee (“Buyer”), the Property commonly known as [Street Address, California/description of personal property](“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$[Purchase Price], on the terms and conditions set forth in the Purchase Agreement, Exhibit xx, Dckt. xx.
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 [Trustee/Chapter 13 Debtor/Debtor in Possession] be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The [Trustee/Chapter 13 Debtor/Debtor in Possession] be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the [Trustee's/Chapter 13 Debtor's/Debtor in Possession's] [broker/agent/auctioneer], [Name of Broker/Agent].
5. 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.

8. [15-26207-E-13](#) TODD/MELISSA MANES
DPC-1 John David Maxey

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-15-15 [[15](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 15, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

No hearing is required, Debtor having filed a subsequent plan and new motion to confirm that plan.

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan filed on August 4, 2015 on the basis that:

1. Debtor fails to provide for the secured debts of RC Willey Home Furnishings and Les Schwab Tire Centers.
2. The plan does not correctly reflect a 27% dividend to unsecured creditors.
3. The plan is not the Debtor's best efforts.

On September 25, 2015, the Debtor filed an amended plan and accompanying Motion to Confirm Amended Plan. Dckts. 22 and 26. The hearing on the Motion is set for November 17, 2015 at 3:00 p.m.

The Trustee's objections are well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on August 4, 2015. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the August 4, 2015 Plan is not confirmed.

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

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

Santander Consumer USA, Inc dba Chrysler Capital opposes confirmation of the Plan on the basis that:

1. The Debtor's plan fails to provide for the full amount of debt of the Creditor's purchase money security interest in a 2014 Dodge Caravan.
2. The Debtor is attempting to retain the benefits of the optional service plans and GAP insurance without providing for them in the plan. The Creditor states that If the Debtor elects to cancel the coverages (service contract and GAP insurance), the Creditor will reduce the claim in the amount of the unearned premiums.
3. The Creditor objects to the Debtor's valuation of the Vehicle.
4. The Creditor objects to the adequate protection payment because the Creditor argues that the Vehicle will depreciate at a higher rate than the adequate protection payment will protect.
5. The Creditor objects to the proposed interest rate which the Creditor believes is less than what should be provided for under *Till*.
6. The Creditor asserts that the Debtor has not provided proof of insurance.

On September 15, 2015, the court granted the Debtor's Motion to Value Collateral of Creditor, valuing the Creditor's secured claim at \$18,791.99. The proposed plan only provides for the secured claim up to \$17,927.43.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

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

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

However, these three possibilities are relevant only if the plan provides for the secured claim.

Here, the plan provides for the secured claim of the Creditor, which must be paid in the amount either stated in the claim or as ordered by the court (as in this case). Plan, ¶ 2.04; Dckt. 5. This \$18,791.99 secured claim is provided for as a Class 2 secured claim. *Id.*, ¶ 2.09. The secured claim is to be paid in full over the sixty months of the Chapter 13 Plan, with 4.25% interest. Using the Microsoft Excel Simple Loan Calculator program, the court computes the monthly plan payment for Creditor's Class 2 Claim as provided in the Plan to be \$348.21.

No other claims, secured or unsecured, are provided for in the Chapter 13 Plan or to be paid as either Class 4 Claims by Debtor or Class 5 claims by a co-debtor outside the plan. The economic feasibility of the plan based on the amount of this payment and the administrative expenses is as follows.

Chapter 13 Plan Payment	\$476.00
Chapter 13 Trustee Expense (Est. 8%)	(\$38.08)
Debtor's Attorneys' Fees	(\$64.59)
Creditor's Class 2 Plan Distribution	(\$348.21)

Over Funded/(Under Funded) Plan Payment	\$25.12

Thus, it appears that the Plan as proposed, will fund the payment of Creditor's secured claim in the amount previously ordered by the court.

The court considers Creditor's other objections.

Creditor objects to the adequate protection payment because the Creditor argues that the Vehicle will depreciate at a higher rate than the adequate protection payment will protect. Creditor has failed to provide any evidence in support of this contention as to the depreciation for this 2014 Dodge Caravan. The plan requires that the actual value of the vehicle be provided for in the five year term of the plan. The cash price for this vehicle purchased in April 2014 was \$17,775.00. Proof of Claim No. 1. First, by the court properly valuing the secured claim, the potential downside from depreciation appears to be substantially reduced as the payments made will go to reduce the actual debt secured by the vehicle. Second, with respect to the risk of depreciation, Debtor appears to have done creditor a favor, shortening the repayment period for the value of this vehicle to only five years. The

original loan was for eight years, for a debt well in excess of the sales price of the vehicle, which did not cause creditor any "depreciation heartburn."

Creditor also contends that a 4.25% interest rate does not properly provide for the present value of the vehicle and any risk inherent with a claim being paid through a Chapter 13 Plan. Citing *Till*. Creditor offers no evidence of what the correct interest rate should be or how it should properly be computed.

Under the original contract, Creditor required a 14% interest rate for Debtor, who was burdened with all of the financial obligations which led to this bankruptcy case. Additionally, Creditor was willing to extend further creditor (for which there was no value in the vehicle being sold) to finance a substantial deficiency owing on the trade-in vehicle and then provide further financing for which there was no value in the vehicle for post-transaction insurance.

As this court has noted in connection with reaffirmations, creditors who require interest rates of 10% or more (in the current economic environment) are making a clear statement that the consumer borrower is either financially unable to pay or is economically so unsophisticated that the consumer does not understand what constitutes a reasonable interest rate for purchasing a vehicle. Here, it appears to be the former, the Debtor so weighed down with the financial obligations which led to the bankruptcy filing.

However, the Debtor has now been freed of those other obligations, and is anticipating obtaining a bankruptcy discharge of all those other obligations. Other than the roof over their head, food on the table, and clothes on their back, Creditor has almost first call to the monthly payment. Additionally, Debtor's ability to obtain a bankruptcy discharge is dependant on making the monthly plan payment to Creditor. It is as if Congress had passed a special law just for Creditor which requires Debtor to pay Creditor, or else Congress will block Debtor from obtaining other economic rights (the discharge).

Based on the evidence presented, the interest rate required by Creditor for the original debt which well exceeded the purchase price of the vehicle, and no other evidence having been presented to the contrary, the court determines that the 4.25% interest rate is proper.

Finally, Creditor objects to confirmation based on not having proof of insurance. As the court noted in connection with the motion to value this Creditor's secured claim, the failure to make the payments for the financing of insurance or to maintain the insurance may well be grounds for relief from the stay. But they are not confirmation issues in this case. Creditor has not filed a motion for relief from the stay, which indicates that its insurance concerns (to the extent bona fide) have been resolved.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed. FN.1.

FN.1. The court notes that the Chapter 13 Trustee filed on October 7, 2015, a motion to dismiss this bankruptcy case. Dckt. 36. The grounds are stated to be the Debtor being delinquent \$466.00, which represents the September 2015 payment. The motion states that Debtor has paid only \$10.00 into the plan as

of the filing of the Motion to Dismiss. However, no objection to confirmation has been filed by the Trustee.

The court would be surprised if Debtor merely paid \$10 into the plan and then defaulted because of an inability to make the plan payments. Such would be a colossal waste of time and money for the parties and the court.

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

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

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

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

10. [15-26412-E-13](#) NICHOLAS/SAMANTHA BAKER
DPC-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[32](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor will be unable to make plan payments due to the Debtor no longer being employed at Clark Pest Control.

The Trustee's objections are well-taken. The Debtor's plan relies on the Debtor being employed and receiving income of \$2,110.00. The Debtor admitted at the First Meeting of Creditors that he is no longer employed at Clark Pest Control. No supplemental schedules have been filed to reflect the change in employment nor new proposed plan to reduce payment. Without evidence that the Debtor has either found a new job or is able to fund the plan, the Debtor cannot make plan payments as required by 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

11. [15-26512-E-13](#) MATTHEW CORSAUT
GW-1 Gary H. Gale

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF GERALD L. WHITE
FOR GARY H. GALE, DEBTOR'S
ATTORNEY(S)
9-16-15 [[18](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 34 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). 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).

The hearing on the Motion for Allowance of Interim Professional Fees is continued to 3:00 p.m. on October 27, 2015, to be heard in conjunction with the Trustee's Objection to Confirmation.

Tentative Ruling, Conditioned Upon the Court Confirming the Proposed Chapter 13 Plan:

Gary H. Gale of the Law Office of Gerald L. White, the Attorney ("Applicant") for Debtor Matthew Albert Corsaut ("Client"/"Debtor"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the pre-petition period of July 27, 2015, through August 17, 2015, and the post-petition period of August 18, 2015, through September 14, 2015. Applicant requests pre-petition fees and costs in the amount of \$1,930.00 and post-petition fees and costs in the amount of \$4,740.00. For the post-petition fees, Applicant requests that \$1,980.00 held by Applicant in trust for Applicant's fees be used, and the remaining \$2,760.00 be paid from funds through the Chapter 13 Plan. Dckt. 18.

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pre-petition administrative activities and post-petition preparation and management of the case. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Pre-petition Administration: Applicant spent 5.4 hours in this category. Applicant assisted Client with reviewing assets and debts, identifying Plan issues and follow-up information needed for face sheet filing, communicating with client, discussing potential issues that may arise after filing, and drafting 362 notice letter to ex-wife's family law attorney to stop collection. Dckt. 22 Ex. B.

Post-petition Preparation and Management of Case: Applicant spent 15.7 hours in this category. Applicant met with, then assisted, client to prepare the petition and supporting documents, proofread the documents, reviewed the proofs of claim, and advised client on various questions or issues throughout the process. Dckt. 22 Ex. C.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The

persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gary H. Gale	21.1	\$300.00	\$6,330.00
Total Fees For Period of Application			\$6,330.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$340.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fee	\$310.00	\$310.00
Amendment Cover Sheet Filing Fee	\$30.00	\$30.00
Total Costs Requested in Application		\$340.00

Dckt. 22 Ex. B, C.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on September 18, 2015.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$6,330.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 under the confirmed Plan.

Costs and Expenses

The First Interim Costs in the amount of \$340.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$6,330.00
Costs and Expenses	\$340.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

CONTINUANCE FOR FINAL RULING

The Chapter 13 Trustee has filed an objection to confirmation. Debtor has filed a response, substantively addressing the issues. This objection may be resolved, or confirmation may be delayed. The court continues the hearing on this Motion for one week to allow the Objection to Confirmation to be addressed.

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 Gary H. Gale of the Law Office of Gerald L. White ("Applicant"), Attorney for 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 hearing on the Motion is continued to 3:00 p.m. on October 27, 2015.

12. [15-26213-E-13](#) LEILANI NOVAL
BF-5 Ronald W. Holland

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
9-23-15 [[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, on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan understates the pre-petition arrearage owed to Creditor. The plan provides for the repayment of only \$39,200 when the total owed is \$43,662.02 due to the arrears.

The Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by the Debtor's residence. Creditor filed a Proof of Claim on October 14, 2015, which states an arrearage of \$43,543.83. Proof of Claim No. 7.

The Plan requires monthly payments from Debtor of \$5,275.00. Dckt. 14. The chart below lists the other payments required under the plan and the remaining funds to pay Creditor's Class 2 arrearage claim:

Plan Payment	\$5,275.00
Chapter 13 Trustee Fees (Est. 8%)	(\$422.00)
Estimated Attorneys Fees	(\$45.00)
Creditor Post-Petition Contract Installments	(\$3,052.00)
RC Willey Class 2 Claim	(\$37.27)
Internal Revenue Service (Priority) Amended Proof of Claim No. 1	(\$652.57)
General Unsecured Claim 100% Dividend (\$30,492.00 Schedule F and \$36,647.18 IRS Amended Proof of Claim No.1)	(\$1,118.99)

Balance of Monthly Plan Payment to Cure Arrearage	(\$52.83)

The Plan does not provide for curing this arrearage. Further, as proposed, the Plan does not have sufficient monies to cure any of the arrearage. Substantial amendments to the plan would be required, which materially negatively effect the interests of creditors under the proposed plan.

Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of the arrearage, the plan cannot be confirmed. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

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

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

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

13. [15-26213-E-13](#) LEILANI NOVAL
DPC-1 Ronald W. Holland

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[33](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Collateral of RC Willey.

On October 6, 2015, the court granted the Debtor's Motion to Value Collateral. Dckt. 7. Therefore, the Trustee's objection is overruled.

However, on October 20, 2015, the court sustained the objection of Bank of America, N.A. for the plan failing to provide the full amount of pre-petition arrearage.

Therefore, the objection is overruled.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled.

14. 15-26319-E-13 VIRGINIA PAYTON **OBJECTION TO CONFIRMATION OF**
MDE-1 Mary Ellen Terranella **PLAN BY HSBC BANK USA, N.A.**
9-9-15 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

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

The court's decision is to sustain the Objection.

HSBC Bank USA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates opposes confirmation of the Plan on the basis that:

1. The plan fails to provide for Creditor's pre-petition arrearage in the amount of \$32,433.42. (When Creditor filed the proof of claim, as stated below, the actual arrearage is asserted to be \$24,316.86.)
2. The Debtor will be unable to afford the plan when the proposed plan correctly states the amount of the arrearage owed to the Creditor.

As to the Creditor's first objection, the Creditor filed a Proof of Claim No. 2 on September 29, 2015. The amount of arrears listed is \$24,316.86. The plan provides for arrearage amount of \$23,707.00. While not the \$24,316.86, the difference is only \$609.86. Spread over the sixty months of the Plan, this is \$10.15 per month.

The Plan appears to fund as follows:

Total Plan Payments (\$2,060 x 60 months)	\$123,600.00
Distributions	
Chapter 13 Trustee (8% Est.)	(\$9,888.00)
Debtor's Counsel	(\$3,000.00)
Creditor Class 1 Post-Petition Contract Installments	(\$89,254.80)
Creditor Class 1 Arrearage Cure	(\$24,316.86)
Class 2 Secured (Est. Based on \$100 monthly distribution for a \$695 secured claim with 4.5% interest per annum)	(\$710.00)
Class 4	\$0.00
Class 5	\$0.00
Class 7	\$0.00

Over Funded/(Under Funded)	(\$3,569.66)

Based on the above calculation, the Plan is under funded by approximately \$60 a month. This does not appear to be caused by Creditor's arrearage being slightly higher than computed originally by Debtor.

Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearage, the plan cannot be confirmed.

As to the second objection, since the plan does not fully provide for the Creditor's pre-petition arrearage amount, the Debtor will not be able to cure the full arrearage amount with the proposed plan payment amount. Because the Debtor cannot comply with the terms of the plan, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

15. [13-34027-E-13](#) EILEEN MOFFITT
JMC-3 Joseph M. Canning

MOTION TO INCUR DEBT
9-29-15 [[71](#)]

Tentative Ruling: The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied.

The motion seeks permission to purchase a 2012 GMC Yukon XL, which the total purchase price is \$44,682.41, with monthly payments of \$856.96.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on October 9, 2015. Dckt. 82. The Trustee states that the Debtor's Motion fails to indicate if the Debtor has shopped around for a better interest rate or a more reasonable vehicle. The Debtor does not explain why she needs such a large vehicle as she does not appear to be married or have children based on her schedules.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at 1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase a large luxury vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. As the Trustee noted, there is nothing in the Motion or Debtor's Declaration that explains why the Debtor requires such an oversized vehicle when there does not appear the need. The Debtor does not provide evidence that she shopped around for other vehicles or more reasonably priced, mid-sized cars or why the Debtor requires such a large vehicle.

The Motion does state that the Debtor, who has availed herself of the extraordinary relief available under the Bankruptcy Code, does want to take on an \$856.96 a month vehicle payment to be able to afford the \$44,682.41 post-petition debt to purchase the vehicle. The Motion appears to state that this \$856.96 post-petition financing payment is a "deal" because the Debtor has been paying \$1,014.00 a month to lease the vehicle.

In her declaration, Debtor offered no testimony as to why this \$856.96 a month payment for the \$44,682.41 post-petition financing is reasonable, necessary, and in good faith for this bankruptcy debtor. Dckt. 77.

The Retail Installment Contract provided as Exhibit A indicates that the cash price for this vehicle is \$35,995.00. Dckt. 74. Debtor offers no evidence to support that contention, such as a Kelly Blue Book or NADA Valuation report. Debtor then adds on \$7,495.00 for service contracts. There is no indication of the time period for these service contracts. If for three years, then that is approximately \$2,500 a year for vehicle repairs. If Debtor believes that it is reasonable to allocate \$2,500 a year for vehicle repairs, it is a clear sign that the vehicle is not reliable or worth a \$35,995.00 cash purchase price.

Debtor filed a Reply to the Trustee's opposition. Dckt. 87. Debtor provides a supplemental declaration with the Reply. Dckt. 88.

It is stated that Debtor took two days to investigate possible vehicle financing. She also visited several other auto dealers and from that she concluded (though offers no evidence of the possible options) that this current financing to retain this vehicle was "the best deal I could secure." Dckt. 88. The court has no idea what types of vehicles this Chapter 13 Debtor considered as a reasonable replacement for the vehicle and financing which she obtained pre-petition.

Debtor next testifies that she needs this vehicle because she has three large Doberman Pinschers which are show dogs. Since January 2014 Debtor

testifies that she has participated in at least sixteen shows and competitions throughout California, Nevada, and Oregon. Thus, Debtor needs this large, expensive vehicle to continue showing her dogs during the pendency of this bankruptcy case.

When Debtor filed this bankruptcy case on October 31, 2013, she stated under penalty of perjury that she owed "2 Dobermans," with a combined value of \$5,000.00. Debtor claimed a \$5,000.00 exemption in these animals. On Schedule J, Debtor does not list any expenses for canine competitions in California, Nevada, and Oregon (or any such events). Dckt. 1 at 23. Actually, Debtor lists very modest expenses to come to the \$4,436.00 in Monthly Net Income. *Id.*

Debtor then amended Schedule J, with her Monthly Net Income being reduced to \$3,422. Dckt. 44 at 6. Again, no expenses for these extensive, multi-state dog shows, and the balance of the expenses modest (though Debtor does list a \$400 a month "pet care" expense).

The court confirmed Debtor's plan, relying on the amended financial information. Order, Dckt. 57. Under the Chapter 13 Plan, Debtor is only able to fund \$1,500 a month to pay creditors, choosing to stretch out payment of here nondischargeable taxes of \$12,434.11 and general unsecured claims of \$53,203.50 over fifty-five months. While paying a 100% dividend, due to Debtor's limited finances, she is doing this interest free over the fifty-five months.

Debtor's counsel must first be paid \$3,000, which came from the payments during the first four months of the plan (less an 8% Chapter 13 Trustee fee). The Plan also requires the payment of \$92.71 a month so Debtor can maintain her timeshare.

From the \$1,500 a month plan payment, there is \$1,287.29 to pay unsecured claims. The \$12,434.11 in priority tax claims will consume the \$1,287.29 plan payments for months five through fourteen of the plan. Beginning with month fifteen of the plan, the \$1,287.29 dividend can then be used to pay the \$53,203.50 in general unsecured claims. This will take forty-one months, which is slightly longer than the stated plan term, but not grossly in excess of the sixty month maximum term allowed for a Chapter 13 Plan under the Bankruptcy Code.

Using the Microsoft Excel Simple Loan Calculator program, the court estimates that the payments to creditor holding general unsecured claims represents approximately a 16% present value reduction on their claims. In effect, Debtor has through the plan obtained a sixteen percent reduction on these claims which she is purporting to pay a 100% dividend.

Such a discount is a significant benefit even to a debtor who can pay a 100% dividend when the good faith debtor makes all of his or her disposable income available to fund a plan.

Debtor now seeks to have the court authorize an almost \$900 a month car payment so that Debtor can continue to go to dog shows (for which there does not appear to be monies allocated for gas, travel, entrance fees, lodging, and pet lodging). To afford this activity, Debtor seeks to divert monies from more timely paying creditor claims.

This is not reasonable or in good faith. The interest rate of 11.11% per annum is not reasonable and does not exhibit a debtor exercising reasonable business judgment. Debtor also piles on top of the purchase price, and wants to finance at 11.11% per annum, two service contracts for which no information is provided. Debtor is so financially strapped in obtaining this financing that she is even having to finance, at 11.11% the mere \$3,000.00 down payment. To get to this almost \$900 a month payment, Debtor is having to finance this four model year old vehicle for six more years.

As required by 11 U.S.C. § 364, the court must authorize the Debtor to obtain this secured credit. Obtaining court authorization is something more than merely telling the court that Debtor wants to buy the vehicle and the court rubber stamps an order.

Here, Debtor's sole justification is that this expense is "necessary" because she wants to continue to show her dogs during the life of the plan. Debtor finds it untenable that one of the concessions she would make for the extraordinary relief under the plan would be to take a break from such shows and use the money to fund her plan.

Debtor implicitly seems to state that since she is now freed from the lease which required her to pay \$1,014.00 to lease the vehicle, "reducing" the monthly payment to almost \$900.00 is financially advantageous. There has been on such showing by Debtor.

While Debtor, outside of bankruptcy, could chose to pay \$17,018.17 in finance charges to maintain a vehicle necessary only for showing her dogs, Debtor is in bankruptcy. Debtor is modifying the rights of creditors. Debtor does not have the unfettered discretion to spend (or in the eyes of some, waste) her money however she wants. Further, charging 11.11% financing on the purchase price and the \$7,495.00 for the two services contracts is a statement by the marketplace that this is a risky loan, which Debtor is likely not to be able to pay (or a statement that Debtor lacks the basic economic understanding to evaluate the unfavorable terms of this transaction). FN.1.

FN.1. The fact that Debtor's counsel is promoting this transaction does not require the court to turn a blind eye to the transaction or abdicate the court's obligations under 11 U.S.C. § 364 and the Plan to Debtor's counsel.

The court denies the Motion to obtain post-petition secured credit in the amount of \$44,682.41 at 11.11% interest, amortized over 72 months to purchase the 2012 GMC Yukon XL.

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

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

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

IT IS ORDERED that the Motion is denied.

16. [15-26328](#)-E-13 GUADALUPE MARTINEZ
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[20](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

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

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

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

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

17. [15-23031-E-13](#) WILLIAM HAMILTON
MAC-2 Marc A. Caraska

MOTION TO CONFIRM PLAN
8-26-15 [[53](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

William Hamilton ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 26, 2015. Dckt. 53.

TOYOTA MOTOR CREDIT CORPORATION'S OPPOSITION

Toyota Motor Corporation ("Creditor") filed an opposition to the instant Motion on September 3, 2015. Dckt. 63. The Creditor opposes the Motion on the ground that the proposed plan does not provide for the full secured amount of the Creditor's claim. The Creditor also objects to the proposed interest rate.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 6, 2015. Dckt. 79. The Trustee opposes the Motion on the following grounds:

1. The plan relies on the Motion to Value the Collateral of Creditor.
2. The plan is not Debtor's best efforts because the Debtor reports disposable income at \$380.51 but proposes a plan payment of only \$288.84.
3. The Debtor has erroneously reported his household size on both Schedule I and Form B22C-1. Debtor admitted at the Meeting of Creditors that he has a household of one, that he and his non-filing spouse are separated and not living together.
4. The Motion fails to state with particularity the grounds as required by Fed. R. Bankr. P. 9013. The Trustee states that the Motion fails to disclose the purpose of the amended plan or what changes have been made.

DISCUSSION

The Creditor's and Trustee's objections are well-taken.

To start, the Trustee is correct that the Motion does not comply with Fed. R. Bankr. P. 9013. The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. On April 4, 2015, debtor filed his chapter 13 petition and a proposed chapter 13 plan.
- B. Debtor now comes forward with his first amended chapter 13 plan, which proposes to pay \$288.84 per month for 60 months. Debtor estimates that his general unsecured creditors will receive 0% of the amounts due them. This represents debtor's good faith and best effort to pay his creditors as much as he can afford.
- C. Wherefore, debtor respectfully requests that the court permit him to modify his chapter 13 plan with the proposed first amended chapter 13 plan and to confirm said first amended plan.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the basic terms of the plan. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

The facial failure of the Debtor to comply with the basic pleading requirements of Fed. R. Bankr. P. 9013 is sufficient on its own to deny the Motion. However, the court will also evaluate the other objections and their merits. FN.1.

FN.1. The court notes that the text relating to Fed. R. Bankr. P. 9013 and 7007, and Fed. R. Civ. P. 7(b) has been used by the court for almost five years now. There is no reason for any attorney who appears in this court on a regular, or even sporadic basis, to file motions which fail to meet the most basic of pleading requirements. Given that the vast majority of attorneys who appear in this court do meet this basic pleading requirement, the court is confident that it is, and has been, delivering a clear statement on the Rules.

As to the Creditor's objection and the Trustee's first objection, the court granted the Motion to Value Creditor's Collateral on October 6, 2015, valuing the Creditor's secured claim at \$17,350.00. Dckt. 84. The proposed plan only provides for Creditor's secured claim of \$12,500.00. Therefore, the proposed plan does not provide for the full secured claim of the Creditor's claim as required by 11 U.S.C. § 1325(a)(5). From the face of the plan it is clear that there is not sufficient monies being paid into the plan to fund the higher monthly payment computed on the correct amount of the secured claim. Therefore, the plan is not confirmable.

As to the Trustee's second objection, the Trustee next alleges that 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.

The Plan proposes plan payments of \$288.84, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$380.51. Thus, the court may not approve the plan.

The Trustee's third objection raises concerns over whether the Debtor has accurately, truthfully, and fully disclosed his financial reality to determine whether the proposed plan is feasible and viable. The fact that the Schedules do not appear to accurately reflect the household size raises questions over what other information may not be accurate in the Debtor's Schedules. Without having accurate information as to the Debtor's finances the court, Trustee, nor any other party in interest can determine if the plan is feasible. Therefore, 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

18. [11-32334-E-13](#) GINO ISOLA
D. Randall Ensminger

MOTION TO AVOID LIEN OF
FIRESIDE AUTO FINANCE, INC.
9-10-15 [[200](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Fireside Thrift Co. ("Creditor") against property of Gino Douglas Isola ("Debtor") commonly known as 6036 Tall Brave Court, Citrus Heights, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,781.22.

However, the Debtor has failed to attach an authenticated copy of the Abstract of Judgment. Without evidence of the specific judgment lien, the court cannot properly avoid the judicial lien of the Creditor pursuant to 11 U.S.C. § 522(f).

Therefore, because the Debtor failed to provide the court with a copy of the abstract of judgment, the Motion is denied without prejudice.

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

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

The Motion to 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 Motion is denied without prejudice.

19. [15-20336-E-13](#) **ANTWANETTE RAYMOND** **MOTION TO CONFIRM PLAN**
DEF-4 **David Foyil** **8-26-15 [96]**

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 16, 2015, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 15-23238-E-13 KATRINA NOPEL CONTINUED MOTION FOR CONTEMPT
PLC-1 Peter L. Cianchetta 7-20-15 [[26](#)]
DEBTOR DISMISSED:
09/14/2015
WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion for Contempt, the "Withdrawal" being consistent with the opposition filed to the Motion and the representation of the respondent creditor at the prior hearings (see Civil Minutes, Dckt. 43), the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion.**

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

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

A Motion for Contempt having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

21. [15-27338-E-13](#) BRENDA EWING
RK-1 Richard Kwun

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
9-21-15 [8]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 21, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Internal Revenue Service ("Creditor") is granted and the secured claim is determined to be in the amount of \$5,577.48 as stated by the Internal Revenue Service in Proof of Claim No. 3.

The Motion filed by Brenda N. Ewing ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various items of personal property, described in Debtor's Schedule B ("Personal Property"), which includes a 2012 Ford Focus ("Vehicle"). Debtor asserts the value of the Vehicle is \$7,000.00 as of the petition date, and the Personal Property (including the Vehicle) is \$17,226.97. Thus, Debtor seeks to value the Personal Property, without the value of the Vehicle, at a replacement value of \$10,226.97 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed a Proof of Claim #3 on October 9, 2015. Creditor's Proof of Claim asserts that \$5,577.48 is secured by the Personal Property, \$24,645.91 is an unsecured priority claim, and \$3,173.52 is an unsecured general claim.

DISCUSSION

The present Motion was filed on September 21, 2015. Debtor directs the court to the Internal Revenue Service federal tax lien in the amount of \$27,585.59, which has been filed as Exhibit A in support of the Motion. Dckt. 11.

On October 9, 2015, the Internal Revenue Service filed Proof of Claim No. 3 in this case, which asserts claims in the following amounts:

- a. Secured Claim.....\$ 5,577.48
- b. Priority Claim.....\$24,645.91
- c. General Unsecured Claim.....\$ 3,173.32

Attached to Proof of Claim No. 3 is a lien notice consistent with that filed by the Debtor as Exhibit A.

As was recently disclosed, in filing proofs of claim the Internal Revenue Service will make its own § 506(a) calculation based on the assets of the Debtor and self-bifurcate the secured and unsecured portions of the claim. It appears that the Internal Revenue Service has done so in this case. (Though it is not obvious from a review of the Schedules how the Internal Revenue Service has come to the \$5,577.48 figure, which is lower than that as computed by Debtor from the Schedules).

Upon review of the evidence and the statement of the secured claim amount of the Internal Revenue Service in Proof of Claim No. 3, the court determines the value of the secured claim to be \$5,577.48, with the balance to be treated as unsecured claims (whether priority or general unsecured).

The Motion is granted.

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

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

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

IT IS ORDERED that the Motion is granted and the secured claim of the Internal Revenue Service for which the collateral is the personal property of the Debtor has a value of \$5,577.48, with the balance of the claim to be provided for as unsecured claims (whether properly priority or general unsecured claims).

22. [09-44339](#)-E-13 GLEN PADAYACHEE CONTINUED MOTION FOR CONTEMPT
PLC-16 Peter L. Cianchetta 7-28-15 [[213](#)]
ORDER CONTINUING TO 11/17/15
AT 3:00 P.M.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The court has by prior order continued the matter to November 17, 2015 at 3:00 p.m. (Dckt. 230).

23. [15-25442](#)-E-13 RICHARD SANCHEZ MOTION TO CONFIRM PLAN
ET-1 Matthew R. Eason 8-26-15 [[19](#)]

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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

Richard Sanchez ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 26, 2015. Dckt. 19.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 6, 2015. Dckt. 34. The Trustee objects on the ground that the Debtor's proposed plan lists Vv Credit Inc as both a Class 1 claim and also as a Section 3 Unexpired Lease claim, both in the monthly installment amount of \$281.00. The Trustee is not certain of the Debtor's intent as to the treatment of the vehicle.

DISCUSSION

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

A review of the proposed plan confirms that the Debtor has listed the Cc Credit Inc in both Class 1 and Section 3. The language of Section 3 states that the Debtor shall pay directly the creditor for the unexpired lease while Class 1 is to be paid by the Trustee. This dual treatment conflicts with the terms of the plan.

The Debtor has failed to file a response to clarify this discrepancy.

Since the court cannot discern the actual treatment for the Vv Credit Inc claim, the court cannot determine whether the plan is feasible and viable as presented.

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 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.

24. [15-25445-E-13](#) GUADALUPE GONZALEZ
JME-4 Julius M. Engel

MOTION TO VALUE COLLATERAL OF
CONSUMER PORTFOLIO SERVICES
9-16-15 [[32](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Consumer Portfolio Services ("Creditor") is granted and the secured claim is determined to have a value of \$2,928.00.

The Motion filed by Guadalupe Gonzalez ("Debtor") to value the secured claim of Consumer Portfolio Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 F150 STX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,928.00 as of the petition filing date. Dckt. 34 ¶ 4. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in 2003, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,575.00. Dckt. 35 Ex. A Schedule B, D.

The Motion alleges that Creditor has a lien against the Vehicle. Further, the Motion states on Schedule D that Debtor states this is a purchase money security interest. The Motion then alleges that the original sale contract was negotiated on September 19, 2005.

However, no evidence of when this transaction occurred and when Debtor granted creditor a security interest in the vehicle. Debtor does not provide any such testimony in his declaration. Dckt. 34. No copy of the sales contract and security agreement is provided.

The closest thing to evidence as to when this transaction occurred is that the date "8/2005" is typed above the words "Purchase Money Security Interest" on Schedule D for Creditor's claim. Dckt. 15 at 9. While the information in the Schedules are provided under penalty of perjury, no clear evidence is given for there being a vehicle purchase contract over ten years old which is a purchase money security interest. Additionally, the "8/2005" date conflicts with the allegation in the Motion that the purchase money security interest was granted in September 2005.

While the August versus September difference could appear minor, it looms large in the unsupported allegation that there is a more than ten year purchase money security interest contract floating around in this case.

The court notes that Debtor has filed, and had dismissed, multiple prior cases. In these cases, Debtor has been represented by counsel, the same counsel as in this case. In Debtor's 2014 case, creditor Jefferson Capital Systems filed Proof of Claim No. 5, a secured claim for which the collateral is the 2004 Ford F-150. 14-28078 ("2014 Case"). A copy of the a Retail Installment Sale Contract is attached to Proof of Claim No. 5 in the 2014 Case. The contract provides for 60 months of financing, with the final payment due on September 15, 2010. By filing Proof of Claim No. 5, the creditor then owning the claim affirmatively stated that the purchase money obligation was unpaid four years after the last payment was due. (The court notes that the Contract provides for a 17.90% interest rate, a clear sign that the creditor providing the original financing had determined that Debtor was unlikely to repay the loan as agreed, making it necessary to pound interest of almost 20% per annum from the Debtor).

Though Debtor failed to provide clear evidence of the transaction and counsel for Debtor did not provide the evidence from the prior case in which counsel represented Debtor, in the extended record from the court's files in the multiple bankruptcy cases filed by the Debtor, the court can reasonably determine that the purchase money security interest was granted by Debtor more than 910 days before the current bankruptcy case was filed in 2015.

Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$2,928.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The court shall issue a minute order substantially in the following form holding that:

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

The Motion for Valuation of Collateral filed by Guadalupe Gonzalez ("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 Consumer Portfolio Services ("Creditor") secured by an asset described as 2004 F150 STX ("Vehicle") is determined to be a secured claim in the amount of \$2,928.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$2,928.00 and is encumbered by liens securing claims which exceed the value of the asset.

25. [15-26247-E-13](#) RICHARD LAWSON
DPC-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the First Meeting of Creditors.
2. Section 2.06 of the plan indicates that Debtor proposes to pay fees in accordance with Local Bankr. R. 2016-1(c). The plan indicates in Section 2.07 that \$0.00 per month is the dividend toward the balance of attorney fees of \$2,410.00. The Trustee is unable to determine what amount to pay off attorney fees.
3. The Debtor failed to file a business budget detaining their business income and expenses.

The Trustee's objections are well-taken.

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

As to the Trustee's second objection, the failure of the Debtor to provide for a dividend to the remaining attorney fees makes it impossible to determine the feasibility and viability of the plan when all necessary expenses and payments are not provided for in the plan. Therefore, the objection is sustained.

Lastly, the Debtor has failed to timely provide the Trustee with business budget. Without the Debtor submitting a business budget, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

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

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

26. [11-43153-E-13](#) MICHAEL/LAURA CARON
SDB-4 W. Scott de Bie

MOTION TO MODIFY PLAN
9-3-15 [[57](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 3, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [15-26153](#)-E-13 VICTORIA ANDERSEN OBJECTION TO DISCHARGE BY DAVID
DPC-1 Michael O'Dowd Hays P. CUSICK
9-15-15 [[18](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector"), filed the instant Objection to Debtor's Discharge on September 15, 2015. Dckt. 18.

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

The Debtor filed a Chapter 7 bankruptcy case on June 28, 2013. Case No. 13-28671. The Debtor received a discharge on July 30, 2015. Case No. 13-28671, Dckt. 22.

The instant case was filed under Chapter 13 on August 1, 2015.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on July 30, 2015, which is less than four-years preceding the date of the filing of the

instant case. Case No. 13-28671, Dckt. 22. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-26153), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-26153, the case shall be closed without the entry of a discharge.

28. [10-51955-E-13](#) ALESIA THOMAS MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 9-4-15 [[89](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

Alesia Thomas ("Debtor") filed the instant Motion to Confirm the Modified Plan on September 4, 2015. Dckt. 89.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on October 6, 2015. Dckt. 105. The Trustee states that the Trustee has no opposition except that the Debtor's attorney, Peter Macaluso, was not the attorney of record at the time of filing the instant Motion and that the Trustee is uncertain the court will recognize Mr. Macaluso's standing.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's response on October 13, 2015. Dckt. 109. The Debtor states that Mr. Macaluso was substituted in on October 7, 2015 pursuant to the order issued by the court. Dckt. 108.

DISCUSSION

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

The order substituting Mr. Macaluso in as attorney of record having been issued and the Trustee having no objections to the plan, the proposed plan complies with the provisions of 11 U.S.C. §§ 1322, 1325, and 1329.

Therefore, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. [14-30855-E-13](#) RICHARD CHAIREZ
HWW-4 Hank W. Walth

MOTION TO MODIFY PLAN
9-8-15 [[59](#)]

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 September 9, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

Richard Chairez ("Debtor") filed the instant Motion to Confirm the Modified Plan on September 8, 2015. Dckt. 59.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 6, 2015. Dckt. 76. The Trustee objects on the grounds that the proposed plan does not include the total amount paid in thus far to the Chapter 13 Plan and it appears the Debtor is at least \$70.00 delinquent under the proposed plan. The proposed plan states in the additional provisions that:

Monthly plan payment and dividend arrears through month 10 (August 2015) are suspended. Plan payments are 1,052.00 for months 11-42. The payment increases to \$1,128.00 in month 43

(May 2018) when the debtor's pension loan is paid off, and continues at that amount through the end of the plan.

The Trustee is uncertain as to the intent of the Debtor. According to the Trustee's records, the debtor has paid in \$6,072.00 through month 11.

The Trustee believes the Debtor meant to state:

Through August 2015 (Month 10), Debtors have paid in a total of \$5,090.00 into the plan, and beginning in September 2015 (month 11), the plan payment shall be \$1,052.00 through April 2018 (Month 42). The Payment increases to \$1,128.00 in May 2018 (Month 43) when the debtor's pension loan is paid off, and continues at that amount through the end of the plan.

DEBTOR'S REPLY

The Debtor filed a reply on October 13, 2015. Dckt. 82. The Debtor states that the \$70.00 delinquency was due to the Debtor not realizing the Trustee does not accept personal checks. The Debtor has now corrected this to allow Nationwide TFS payment to withdraw the additional \$70.00 from his account. The Debtor will schedule another Nationwide TFS payment of \$70.00 to be received by the Trustee by October 25, 2015. The Debtor states that if the Motion is granted, the wage order will be modified to include the additional \$70.00.

The Debtor agrees that the Trustee's proposed language was what was intended and requests that it be included in the order confirming.

DISCUSSION

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

It appears that the Trustee's proposed language will correct any discrepancies in the plan. Since the error appears to be a mere scrivener's error, it can be corrected in the order confirming. A review of the other plan terms shows that they comply with all necessary code sections. With no other objections presented and after the court's own review, the plan appears to be confirmable.

Therefore, after the language in the additional provisions is corrected in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the language in the additional provisions to state

Through August 2015 (Month 10), Debtors have paid in a total of \$5,090.00 into the plan, and beginning in September 2015 (month 11), the plan payment shall be \$1,052.00 through April 2018 (Month 42). The Payment increases to \$1,128.00 in May 2018 (Month 43) when the debtor's pension loan is paid off, and continues at that amount through the end of the plan.

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

30. [14-30855](#)-E-13 RICHARD CHAIREZ CONTINUED MOTION TO DISMISS
DPC-1 Hank W. Walth CASE
8-10-15 [[47](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 10, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 10. Dckt. 47. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 26, 2015. Dckt. 51. Debtor objects on two grounds. The first to address is a service challenge. The second is an argument on Debtor's ability to pay the plan payments.

On the service challenge, Debtor alleges that counsel was not properly served at his updated address. Dckt. 51, ¶ 8.

On the delinquency opposition, Debtor declares under penalty of perjury that a miscommunication between Debtor's counsel and Trustee's office in March 2015 created a 2-month delay, where the wage order was not processed until May 26, 2015. Dckt. 52, ¶ 4, 5. Debtor alleges that the delinquency is "larger than he is able to cure before the dismissal hearing." Dckt. 52, ¶ 7. Debtor acknowledges that:

In retrospect, I realize I should have paid more attention to my financial affairs. The problem is that I don't manage money well, which is the reason I wanted the wage order in place because I know the money is being paid each month.

Dckt. 51, ¶ 6. To help himself personally, Debtor promises to complete the required Financial management Course before the dismissal hearing, rather than waiting until later. Dckt. 51.

TRUSTEE'S REPLY

The Trustee filed a reply to Debtor's response on September 2, 2015. Dckt. 55. The Trustee states that the Debtor remains delinquent under the plan and that no new plan has been filed. The Trustee further states that, as to the wage order, the order was entered May 26, 2015 and the first employer deduction was August 21, 2015. The Trustee states that when the Debtor was using the TFS, the Debtor was almost current until the Debtor changed to wage order.

The Trustee, as to the Debtor's attorney objection over improper service, states that he was not served it until July 30, 2015 by fax. The Trustee argues that the Debtor's counsel was advised the Motion was going to be filed and that the Debtor's counsel timely filed a response.

SEPTEMBER 9, 2015 HEARING

At the hearing, the court continued the Motion to October 20, 2015 at 3:00 p.m. to be heard in conjunction with Debtor's Motion to Confirm Chapter 13 Plan. Dckt. 64.

TRUSTEE'S RESPONSE

The Trustee filed a response on September 29, 2015. Dckt. 73. The Trustee states that the Debtor remains delinquent as of the date of the

response, due to the language of the additional provisions in the proposed plan.

DEBTOR'S REPLY

The Debtor filed a reply on October 13, 2015. Dckt. 79. The Debtor states that the \$70.00 delinquency was due to the Debtor not realizing the Trustee does not accept personal checks. The Debtor has now corrected this to allow Nationwide TFS payment to withdraw the additional \$70.00 from his account. The Debtor will schedule another Nationwide TFS payment of \$70.00 to be received by the Trustee by October 25, 2015. The Debtor states that if the Motion is granted, the wage order will be modified to include the additional \$70.00.

DISCUSSION

On October 20, 2015, the court confirmed the Debtor modified plan, after the language of the additional provisions accurately states the current state of the case and plan payments. With the Debtor's modified plan now confirmed, the Debtor appears to be current. Therefore, cause does not exist to dismiss this case. The motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

31. [12-24857-E-13](#) DONALD/JULIANA EMUKPOERUO MOTION TO MODIFY PLAN
MS-3 Mark Shmorgon 9-2-15 [[109](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 2, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [12-24857](#)-E-13 DONALD/JULIANA EMUKPOERUO
MS-4 Mark Shmorgon

MOTION FOR COMPENSATION FOR
MARK SHMORGON, DEBTORS'
ATTORNEY(S)
9-2-15 [[115](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. By the court's calculation, 48 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). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Second Interim Professional Fees is granted.

The Law Offices of Mark Shmorgon, the Attorney ("Applicant") for Donald and Juliana Emukpoeruo the Chapter 13 Debtor ("Client" or "Debtor"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for work performed on September 2, 2015. Applicant requests fees in the amount of \$1,000.00.

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case administration and filing various motions. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent .5 hours in this category. Applicant assisted Client with communicating with Client on various matters. Dckt. 118 ¶ 8.

Significant Motions and Other Contested Matters: Applicant spent 3.5 hours in this category. Applicant filed a Motion to Modify the Chapter 13 Plan, drafted two Modified Plans, reviewed the Notice of Mortgage Payment Change and supplementing Schedules I and J, and drafted this Motion for Compensation. Dckt. 118 ¶ 8.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mark Shmorgan	4	\$250.00	\$1,000.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$1,000.00

Dckt. 118 ¶ 6, 8.

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
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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 The Law Offices of Mark Shmorgan, the Attorney ("Applicant") 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 Law Offices of Mark Shmorgan is allowed the following fees and expenses as a professional of the Estate:

The Law Offices of Mark Shmorgan, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$1,000.00

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

33. [15-25257](#)-E-13 MEGAN CARR
DPC-1 Mikalah R. Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
8-5-15 [[17](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on August 5, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. The Debtor failed to appear at the Meeting of Creditors on July 30, 2015. The Meeting has been continued to September 24, 2015.
2. The Debtor is delinquent in the amount of \$440.00 in plan payments. The Debtor has paid \$0.00 into the plan to date.
3. Debtor may not be able to make the plan payments. The Debtor's Schedule I lists gross income of \$2,700.00 per month. Schedule J indicates that the Debtor has two dependents. The Schedule lists living expenses totaling \$1,740.00 per month, including rent of \$286.00, utilities and phone of \$150.00, and transportation of \$90.00. The Trustee is concerned that, after comparing with the IRS National Standards for Allowable Living Expenses, the Debtor's budget is insufficient for the care and maintenance of the Debtor and her dependent.

SEPTEMBER 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 20, 2015 to allow the Debtor to address the Trustee's concerns. Dckt. 22.

TRUSTEE'S WITHDRAWAL

The Trustee filed a Notice of Withdrawal on October 6, 2015. Dckt. 36. The Trustee states that the Debtor appeared at the continued Meeting of

Creditors, the Debtor is current in plan payments, and that the Trustee believes the Debtor can make payments.

DISCUSSION

In light of the Trustee withdrawing his objection and the objections being rectified, 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 the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

Steven and Sherry Morris ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 28, 2015. Dckt. 30.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on September 22, 2015. Dckt. 39. The Trustee objects on the following grounds:

1. The Debtor's proposed plan appears to have an overpayment. The Debtor has paid \$1,025.00 into the plan to date. The Debtor's amended plan calls for payments of \$675.00 through August 2015, \$125.00 for 32 months starting September 2015. Based on the proposed amended Plan, the Debtor is proposing a plan where they are now ahead by \$225.00.

2. The Debtor's plan fails to provide for Central Loan Admin & R listed on Schedule D. The prior plan provided for the claim as a Class 4 for \$1,003.14 monthly to be paid by the Debtor. The Trustee cannot determine whether the Debtor intends to keep the property or surrender it and the plan may not be the Debtor's best effort if the intent is to surrender.

DEBTOR'S REPLY

The Debtor filed a reply on August 13, 2015. Dckt. 42. The Debtor responds to the Trustee's objections as follows:

1. The plan terms should read "\$225 x 4, then \$125 x 32 months." Debtor is current with the plan payments and the next payment due October 25, 2015.
2. The claim of Central loan Admin should be provided for as Class 4 with a monthly payment of \$1,003.14. It was a typographical error.

DISCUSSION

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

The Trustee's second objection appears to be just a mere scrivener's error by the Debtor. The order confirming could include a provision to list Central Loan Admin & R as a Class 4 claim to be paid outside of the plan in the monthly amount of \$1,003.14.

However, the Trustee's first objection requires a more in-depth analysis. The Debtor's response states that the plan is meant to state that the payments required under the Plan are: "\$225 x 4, then \$125 x 32 months."

This could be read two ways. From the time of confirmation, Debtor will make four payments of \$225, and then make an additional 32 payments of \$125 each. Or it could be read to state,

"Debtor shall pay \$225 a month for the first four months of the Chapter 13 Plan in this case as modified, and 32 payments in the amount of \$125 each, commencing with September 2015 payment, for a total plan term of 36 months."

It appears that in the Reply Debtor merely short-handed the proposed correction.

With the two proposed amendments, further modified as discussed above, the Modified Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is granted, and the proposed Modified Chapter 13 Plan filed August 28, 2015, as further amended to provide for the secured claim of Central Loan Admin as a Class 4 claim and specify that the monthly plan payments are \$225.00 a month for the first four months and then \$125 a month for thirty-two months commencing with the September 2015, is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, including the further amendments stated herein, which upon approval by the Trustee shall be lodged with the court.

35. [15-26063-E-13](#) REGINALD NORRIS
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[20](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor filed a blank plan.
2. The Debtor has failed to make any plan payment to date.
3. The Debtor's plan may fail the liquidation analysis since the Debtor has failed to disclose any assets in the Schedules or to propose any dividend to unsecured creditors.

4. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his return.
5. The Debtor lists on Schedule D Revenue Reimbursement and reports the debt is for tickets and fines. The Trustee states that this claim may either be unsecured or priority claim, but does not appear to be appropriately listed as a secured claim and is not provided for in the plan.

The Trustee's objections are well-taken.

Overall, the Trustee's objection is that the Debtor has failed to properly complete not only the plan, which is blank, but also the Schedules. The Debtor lists no assets on either Schedule A or B and does not claim exemptions. It is impossible for the court to confirm a blank plan.

The Trustee's first, second, and third objection all deal with the failure of the Debtor to comply with the basic requirement of accurately, truthfully, and completely filing out the necessary forms and plan. Without any indication of the Debtor's finances and assets, there is nothing for the court to confirm. This is grounds to sustain the objection.

Additionally, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

36. [15-24765-E-13](#) GLEN/TERRI SULLIVAN
SJS-1 Scott J. Sagaria

MOTION TO CONFIRM PLAN
9-4-15 [[28](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 4, 2015 is confirmed.

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

37. [14-22769-E-13](#) MICHELLE HARGARAY MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 9-8-15 [[34](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

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

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

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

Kenneth and Renette Johnson ("Debtor") filed the instant Motion to Confirm the Modified Plan on September 1, 2015. Dckt. 79.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 21, 2015. Dckt. 86. The Trustee objects on the following grounds:

1. The Debtor is delinquent in the amount of \$200.00 under the terms of the proposed plan. According to the proposed plan, payments of \$26,250.00 have become due. The Debtor has paid a total of \$26,050.00 with the last payment posted on September 2, 2015 in the amount of \$2,050.00

2. Section 6.12 of the plan provides:

Section 6.12 - Additional Provisions for Section 4.02(b). The disbursement Dividends are based upon a trustee compensation of 6.5%. In the event the trustee compensation rate increases, the trustee is entitled to inform the debtors of an automatic corresponding plan payment increase.

The Trustee opposes this provision in that the Debtor appears to require the Trustee to contact the Debtor for an increase to occur in Trustee compensation which appears contrary to the statute.

3. Section 6.10 and 6.11 of Debtor's modified plan are not clear to the Trustee. Arguably they appear to provide that the Debtor will pay \$367.00 per month to student loan debts while general unsecured claims receive 0%. The Trustee objects to the plan as unfairly discriminating in favor of student loan debtors and against general unsecured claims. In the event that the plan calls for arrears to be paid by the Trustee, it is not clear how the plan can defer payments to the student loans when arrears have accrued - the long term debt is not being maintained under 11 U.S.C. § 1325(a)(5).

OCTOBER 6, 2015 HEARING

At the hearing, the court continued the Motion to Confirm the Modified Plan to 3:00 p.m. on October 20, 2015 to allow the Debtor to supplement the record to address the additional provisions regarding the student loan.

TRUSTEE'S RESPONSE

The Trustee filed a response on October 13, 2015. Dckt. 91. The Trustee restates his first objection.

As to the second objection, the Trustee opposes the proposed language of Section 6.12 because it requires the Trustee to change the way the Trustee's system disburses administrative expenses for this case alone. The case is feasible with a monthly dividend of \$135.00 so the proposed additional language of "\$57 plus up to an additional amount available in the event the trustee compensation [sic] is below 10% and that additional sum could increase the dividend to an amount estimated [sic] to be \$135," is unnecessary.

For the Department of Education, the Trustee states that the plan states that post petition arrears are not provided for since it is the policy of the Department of Education to defer post arrears upon filing of a Chapter 13 bankruptcy case. Debtor does not indicate whether they have accrued post petition arrears and if so in what amount.

The Trustee concludes by stating that the Trustee does not oppose the additional provisions dealing with the real property but notes that they are unusual. Namely:

1. Debtor has increased various time lines from 14 days to 28 days.
2. Debtor has added additional language under 6.05 stating that a loan modification is likely and deleted the provision which require arrearage cure payments made during the term of the plan.
3. Debtor has omitted the fourth point under Section 6.07 which should state "Post-Petition non-monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition property taxes or property insurance."
4. The Debtor omitted the language regarding the termination of the automatic stay.
5. Section 6.04 states that they want to start the process of a loan modification, not that they have.

DISCUSSION

The Debtor has failed to file any supplemental papers.

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

The Trustee's objections are well-taken.

The basis for the Trustee's first objection is that the Debtor is \$200.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, it appears misleading that the additional provision requires that the Trustee to not only contact the Debtor of such, but also to *sua sponte* increase the plan payments accordingly. This is facially inappropriate as it suggests that the Trustee, in his fiduciary capacity, can alter the terms of a confirmed plan, without any need for confirmation hearing. This improper provision is an individual ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to the Trustee's third objection, the Trustee is incorrect in stating that the general unsecured creditors are receiving 0%. According to the plan, the Class 7 claimants will receive a 100% dividend. While the language in the proposed plan is dense, the court reads that the plan as stating that, while there may be a delay to the Class 7 claimants, they will receive 100% of their claim and the student loan will just be paid separately due to the nature of the loan. Therefore, the Trustee's third objection is overruled.

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

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

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

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

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

39. [15-26372-E-13](#) HUBERT/SIOBHAN EVANS
DPC-1 David P. Ritzinger

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-23-15 [[26](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on November 17, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the proposed plan relies on a Motion to Value Collateral of Ocwen Loan Servicing and Motion to Value Collateral of Chase.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on October 6, 2015. Dckt. 30. The Debtor states that the Motion to Value Collateral of Chase was granted on October 6, 2015. The Debtor's Motion to Value of Collateral of Ocwen was denied due to the Debtor's failure to provide evidence of the actual creditor holding the claim. The Debtor filed a new Motion to Value set for hearing at 3:00 p.m. on November 17, 2015.

ORDER CONTINUING OBJECTION

On October 9, 2015, the court issued an order continuing the Objection to 3:00 p.m. on November 17, 2015. Dckt. 37

DISCUSSION

Therefore, the Objection is continued to 3:00 p.m. on November 17, 2015.

40. [12-24180-E-13](#) JOJIE GOOSELAW MOTION TO DISMISS CASE
CDR-1 Peter G. Macaluso 9-10-15 [[156](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 10, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case 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 Dismiss is denied without prejudice, having been rendered moot by the court ordering the case dismissed upon motion by the Chapter 13 Trustee.

This Motion to Dismiss the Chapter 13 bankruptcy case of Jodie Gooselaw ("Debtor") has been filed by Franchise Tax Board ("Movant"), a creditor.

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

- A. California Franchise Tax Board (FTB), a creditor in these proceedings, submits this Motion to Dismiss pursuant to Federal Rule of Bankruptcy Procedure 9014 and 11 U.S.C. § 1307(c), on the ground that the Debtor has failed to pay her post-petition state tax liabilities for the 2012 and 2013 tax years.
- B. The Debtor's Chapter 13 Plan requires her to pay post-petition taxes, and her failure to do so not only constitutes a material default of the Chapter 13 Plan under 11 U.S.C. § 1307(c)(6), but it also demonstrates the Debtor's lack of good faith as set forth in greater detail in the accompanying Memorandum of Points and Authorities.
- C. For these and the reasons stated in the Memorandum, FTB's Motion to Dismiss should be granted and the case dismissed.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the case should be dismissed and to go read the Memorandum of Points and Authorities. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations

supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

The Franchise Tax Board's Motion facially does not comply with Fed. R. Bankr. P. 9013.

Additionally, pursuant to the motion of the Chapter 13 Trustee, which was properly set for hearing on the court's Chapter 13 dismissal calendar, has ordered this case dismissed. Civil Minutes, Dckt. 164. This renders California Franchise Tax Board's Motion moot, and 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 Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

41. 12-40280-E-13 DANNY/ANN VALTIERRA MOTION TO MODIFY PLAN
SNM-1 Stephen N. Murphy 8-28-15 [24]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 28, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42. [15-26082-E-13](#) NICHOLAS RIGHTER
FF-2 Gary Ray Fraley

MOTION FOR ORDER AVOIDING WAGE
GARNISHMENT AND/OR MOTION FOR
ORDER PERMITTING TURNOVER OF
GARNISHED FUNDS
9-15-15 [[19](#)]

STIPULATED AMENDED NOTICE
CONTINUING TO 11/17/15

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Order Avoiding Wage Garnishment and Motion for Order Permitting Turnover of Garnished Funds 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 for Order Avoiding Wage Garnishment and Motion for Order Permitting Turnover of Garnished Funds is continued to 3:00 p.m. on November 17, 2015.

Nicholas Richter ("Debtor") filed the instant Motion for Order Avoiding Wage Garnishment and Motion for Order Permitting Turnover of Garnished Funds on September 15, 2015. Dckt. 19. FN.1.

FN.1. The Motion requests two forms of relief, which is improper. Federal Rule of Civil Procedure 18, which permits requesting multiple forms of relief in a single motion, is not incorporated into bankruptcy law and motion practice. As such, the court will sua sponte treat the instant Motion as a Motion for Order Avoiding Wage Garnishment.

The Debtor seeks avoidance of the wage garnishment pursuant to 11 U.S.C. § 522(f)(1)(A). The Debtor states that Golden 1 Credit Union ("Creditor") has a pre-petition judgment which the Creditor delivered an Order for a Garnishment to the Los Angeles County Sheriff's Office who served Bank

of America the Order. On June 16, 2015, Bank of America debited \$19,242.16 out of Debtor's checking account. Debtor filed for bankruptcy on July 31, 2015.

AMENDED NOTICE OF HEARING

On October 2, 2015, the Debtor filed an Amended Notice of Hearing on the Motion which states that the Debtor and the Creditor stipulate to continue the hearing to 3:00 p.m. on November 17, 2015. Dckt. 29.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 6, 2015. Dckt. 30. The Trustee states that the Debtor is requesting turnover of funds that the Trustee argues may not be exempt. The Trustee filed Objection to Exemptions which is scheduled for hearing on November 17, 2015.

Additionally, the Trustee argues that the Debtor fails to specifically state what the funds would be used for. While the Motion states the Debtor would use the funds to purchase a vehicle for commuting to work, the Debtor does not provide any specifics as to what type of vehicle or that the current vehicles listed on Schedule B are unsuitable.

DISCUSSION

In light of the Debtor and Creditor stipulating to continuing the Motion to November 17, 2015 and the Trustee having a pending Objection to Debtor's Exemptions set for the same day, the court continues the instant Motion to 3:00 p.m. on November 17, 2015 to be heard in conjunction with the Objection.

43. [11-28284-E-13](#) RANDY/ELAINE HALL
JLB-4 James L. Brunello

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
8-26-15 [[49](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter [7/11/12/13] Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of the Internal Revenue Services ("Creditor") is granted and Creditor's secured claim as to the real property is determined to have a value of \$0.00.

The Motion to Value filed by Randy and Elaine Hall ("Debtor") ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2605 La Crescenta Drive, Rescue, California ("Property"). Dckt. 51 ¶ 2. Debtor seeks to value the Property at a fair market value of \$275,000.00 as of the petition filing date. *Id.* at ¶ 3. 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).

OCTOBER 7, 2015 ORDER ON STIPULATION

On October 7, 2015, this court entered an Order on the parties' Stipulation Regarding Motion to Value Collateral. Dckt. 55.

The Stipulation stated that

IT IS STIPULATED that the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. \$0.00 of the Internal Revenue Service Tax Lien is secured by the real property located at 2605 La Crescenta Drive, Rescue, CA 95672.

Although, there is no equity in in [sic] debtors' residence for security, the tax lien of Internal Revenue Service will still attach to debtors' personal property and is secured in the amount of \$24,090 as to their personal property only and shall still be owed at the completion of the plan

The court ordered:

IT IS SO ORDERED: the court making no finding of fact or conclusion of law of the value of Creditor's secured claim for which personal property is the collateral.

DISCUSSION

Therefore, in light of the Stipulation and the accompanying order, the Internal Revenue Service's secured claim as to the Property is determined to be \$0.00.

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

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

The Motion for Valuation of Collateral filed by Randy and Elaine Hall ("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 secured claim of Internal Revenue Service for which the real property commonly known as 2605 La Crescenta Drive, Rescue, California, is the collateral determined to be a secured claim in the amount of \$0.00.

IT IS FURTHER ORDERED that the court makes no finding of fact or conclusion of law of the value of Internal Revenue Service's secured claim for which personal property is the collateral, which is the subject of a separate order of the court.

44. [14-28888](#)-E-13 JAMES/JENNIFER CRUM
MRL-6 Mikalah R. Liviakis

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LIVIAKIS LAW FIRM
FOR MIKALAH RAYMOND LIVIAKIS,
DEBTORS' ATTORNEY(S)
9-23-15 [[91](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees 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 [7/11/12/13] Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees 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 for Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Debtors James and Jennifer Crum ("Client" or "Debtor"), makes a Final Request for the Allowance of Fees and Expenses in this case and for final approval of Applicant's First and Second Interim Fees.

The period for which the Final Fees are requested is for the period September 9, 2015 through September 19, 2015. Applicant requests fees in the

amount of \$1,122.00. Applicant also requests final approval for interim fees of \$889 and \$1,538.50 for the First and Second Interim Fees allowed in this case. In total, these Interim and Final fees amount to \$3,549.50 for services Applicant provided to Client.

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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.

A review of the application for fees shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including various motions and other contested matters. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided in the Final Fees period, which are described in the following main categories:

General Case Administration: Applicant spent 1.3 hours in this category, none of which is pending in the Final fees period. Applicant assisted by communicating with Client, addressing a motorcycle accident settlement, reviewing the Notice of Filed Claims, and drafting two claims.

Significant Motions and Other Contested Matters: Applicant spent 11.6 hours in this category, 3.4 of which is pending in the Final fees period. Applicant assisted Client by:

1. Drafting a modified plan, motion to confirm, and order confirming the plan;
2. Objecting to claim 8, attending the hearing, and reviewing the letter from JC Penny;
3. Discussing the sale of Client's real property, drafting the Motion to Authorize Sale and supplemental documents, and drafting the Order;

4. Drafting three applications for compensation and attending the hearings.

Dckt. 93 ¶ 11.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mikalah Raymond Liviakis	5.5	\$355.00	\$1,952.50
Andrew Redner	5.7	\$225.00	\$1,282.50
Jeremy Heebner	1.7	\$185.00	\$314.50
Total Fees For Period of Application			\$3,549.50

Dckt. 93 ¶ 13.

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$889.00	\$889.00
Second Interim	\$1,538.50	\$1,538.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$2,427.50	

Dckt. 42, 80, 93 ¶ 14.

Costs and Expenses

Applicant does not seek reimbursement for and costs or fees.

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Third and Final Fees in the amount of \$1,122.00 pursuant to 11 U.S.C. § 330 are approved and prior Interim Fees in the amount of \$2,427.50 are approved pursuant to 11

U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 7/11/12/13 case under the confirmed Plan. FN1.

FN.1. Applicant notes that the necessary funds will not be available until the Sale of Real Estate is finalized. However, Applicant asserts the sale should be sufficient to cover the fees requested. Dckt. 93 ¶ 16.

Applicant also notes an agreement with "a creditor whereby the creditor will pay to Debtor's [sic] approximately \$450 as reimbursement for part of Debtor's cost of attorneys fees in this case." Id. at ¶ 14.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,122.00
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pursuant to this Application and prior interim fees of \$2,427.50 as final fees pursuant to 11 U.S.C. § 330 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 Mikalah Raymond Liviakis ("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 Mikalah Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah Raymond Liviakis, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$1,122.00

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$2,427.50 are approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

45. [15-25788-E-13](#) CAMILLE GARRETT
FF-1 Gary Ray Fraley

MOTION TO VALUE COLLATERAL OF
CHRYSLER CAPITAL
9-22-15 [[20](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Chrysler Capital ("Creditor") is granted.

Camille Garrett ("Debtor") filed the instant "Motion to Value Secured Portion of Claim of Chrysler Capital and Avoid Nonpossessory Nonpurchase-Money Security Interest" on September 22, 2015. Dckt. 20.

The Motion states that the Motion is "brought pursuant to 11 U.S.C. § 522(b) and Rule 3012 of the Federal Rules of Bankruptcy Procedure." Later in the Motion, the Debtor states that the Motion is being made also pursuant to 11 U.S.C. § 522(f)(1). The relevant Bankruptcy Code Sections for which the relief is expressly based provide,

"(b) (1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the

property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is-

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that-

(I) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii) (I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D) (I) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that-

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount."

and

"(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any-

(I) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor."

Somewhere in this block of text relating to the ability of a debtor to claim exemptions under federal law or state law, and avoiding liens that impair exemptions is law which Debtor believes provides a basis for the relief requested.

However, by the end of the Motion in the "Restatement Section," Debtor requests that the court "[d]etermine the value of the secured claim of that claim held by Chrysler Capital, in the ASSET to be allowed at \$13,000." Motion, Dckt. 20. No relief is sought to avoid a lien to the extent that it impairs an exemption.

Additional Grounds Stated With Particularity In the Motion

In addition to stating that the relief sought is pursuant to 11 U.S.C. § 522(b) and (f)(1), Debtor states (as restated by the court) in the Motion,

- A. Creditor has filed a Proof of Claim.
- B. Debtor has an interest in the Vehicle, which has a value of \$13,000.00.
- C. Creditor's claim is secured by the Vehicle.
- D. Creditor's lien on the Vehicle is a purchase money security interest, which was granted on June 27, 2013.

- E. The amount financed for which the purchase money security interest included a "rollover balance" of \$5,110.00.
- F. The "rollover balance" should be avoided pursuant to 11 U.S.C. §§ 522(b) and 522(f)(1).
- G. The non-roll over portion of the original credit financed to purchase the Vehicle was \$21,767.24 (77% of the original credit extended).
- H. Of Creditor's \$22,250.17 claim as of the commencement of this case, 23% represents the roll over balance which may be avoided pursuant to 11 U.S.C. §§ 522(b) and (f)(1). This avoidable amount of the secured claim is \$5,117.50.
- I. Debtor requests that the court avoid the lien against the vehicle to the extent that it secures the \$5,117.50.

The above states a common motion to avoid lien pursuant to 11 U.S.C. § 522(f)(1). The non-purchase money debt exceeds the value of the collateral. Interestingly, the Motion fails to identify the collateral which secures the claim. The Motion merely states, "4. As shown in Schedule of this case, the Debtor has an interest in (hereinafter, the "ASSET")." Motion, p. 2:1-2. The Motion then makes reference to some unidentified Schedule being filed as an exhibit. Schedule B is filed as part of Exhibit 1, which lists multiple personal property assets owned by Debtor. Schedule D is attached as part of Exhibit 1, which includes Chrysler Capital as a creditor, having a claim secured by a 2012 Chrysler 200, VIN ending in 9442.

While a party is required to state with particularity in the motion the grounds upon which the relief, and the relief itself, with particularity, and the court will not canvas other pleadings, exhibits, and all of the other documents filed in the bankruptcy case (as some attorneys use to request), it appears that the failure to identify the vehicle in the Motion is merely a typographical error. The court waives this pleading defect for the current Motion.

The prayer appears to sneak in another claim for relief, seeking to reduce the purchase money secured claim down to \$13,000.00. No such grounds are stated in the Motion. Further, the bankruptcy law and motion practice does not incorporate the provisions of Federal Rule of Civil Procedure 18 which allows multiple claims to be stated in one complaint. See Fed. R. Bankr. 9014. As this court has discussed on many occasions, the exclusion of this multiple claim pleading for bankruptcy law and motion practice is relatively obvious. Law and motion matters are heard on anywhere from 14-days to 42-days notice. This is contrasted to the years it takes to get a complaint to trial. Gumming up a motion with multiple (and possibly camouflaged) claims would only lead to improper gamesmanship and rendering a potentially due process deficient procedure.

While the title to the Motion works in a reference to valuing the secured portion of the claim, if that were part of the motion, then the motion would not comply with Federal Rule of Bankruptcy Procedure 9014, as it would improperly combine multiple claims for relief in one motion. Presumably the title is in error.

Though the prayer to the Motion requests relief not stated in the Motion, the court will not hold that to be sufficiently deficient to deny the relief under 11 U.S.C. § 522(f)(1). The court will also not presume that Debtor's counsel was attempting to combine multiple claims for relief in violation of Federal Rule of Bankruptcy Procedure 9014 or sandbag Creditor and mislead the court into granting relief snuck into the prayer.

Therefore, the court grants the motion and avoids pursuant to 11 U.S.C. § 522(f)(1) the lien of Chrysler Capital which encumbers the 2012 Chrysler 200, VIN ending in 9442, subject to the provisions of 11 U.S.C. § 349(b)(1)(B) which reinstates the lien if the case is dismissed.

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 Camille Taylor Garrett ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the lien of Chrysler Capital which encumbers the 2012 Chrysler 200, VIN ending in 9442, is avoided pursuant to 11 U.S.C. § 522(f)(1) to the extent that it exceeds \$17,132.67, subject to the provisions of 11 U.S.C. § 349(b)(1)(B) which reinstates the lien if the case is dismissed.

All further or other relief requested in the Motion is denied without prejudice.

46. [15-25788-E-13](#) CAMILLE GARRETT
DPC-1 Gary Ray Fraley

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
9-2-15 [[15](#)]

Tentative Ruling: The Objection to Confirmation 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. The hearing was continued.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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

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

The court's decision is to sustain the Objection.

David P. Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Collateral of Chrysler Capital.

OCTOBER 6, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 20, 2015 to be heard in conjunction with the Motion to Value. Dckt. 25.

DISCUSSION

On October 20, 2015, the court denied the Motion to Value Collateral of Chrysler Capital, in part because the Debtor improperly titled the Motion and was attempting to avoid the lien of Chrysler Capital pursuant to § 522(f)(1) which is impermissible.

The Trustee's objections are well-taken and the proposed plan does rely on the valuation of the collateral of Chrysler Capital. In light of the court denying the Motion, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

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

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

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

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

47. [15-27295-E-13](#) ERROL/ALITA MERCADO
RJ-2 Richard L. Jare

MOTION TO VALUE COLLATERAL OF
EXETER FINANCE CORP.
10-6-15 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 6, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Exeter Finance Corp. ("Creditor") is granted and the secured claim is determined to have a value of \$13,800.00.

The Motion filed by Errol and Alita Mercado ("Debtor") to value the secured claim of Exeter Finance Corp. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a Mazda Mazda5 2012 Mazda5-4 Cy. Wagon 5D GT, VIN ending in 7776 ("Vehicle"). Dckt. 22 ¶ 2; Dckt. 23. The Debtor seeks to value the Vehicle at a replacement value of \$13,800.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the

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

The lien on the Vehicle's title secures a purchase-money loan incurred in August 25, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,500.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$13,800.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Errol and Alita Mercado ("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 Exeter Finance Corp. ("Creditor") secured by an asset described as Mazda Mazda5 2012 Mazda5-4 Cy. Wagon 5D GT, VIN ending in 7776 ("Vehicle") is determined to be a secured claim in the amount of \$13,800.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$13,800.00 and is encumbered by liens securing claims which exceed the value of the asset.

48. [15-25697](#)-E-13 DONNA PALMER
APN-1 Eamonn Foster

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR WELLS FARGO
BANK, N.A.
8-11-15 [[15](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the U.S. Trustee on August 11, 2015. By the court's calculation, 35 days' notice was provided. 70 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on November 24, 2015.

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

1. The value of the collateral is improperly low.
2. The proposed \$148.24 monthly adequate protection payments is too low.
3. The proposed interest rate of 4.25% is less than necessary under *Till*.

On October 6, 2015, the Motion to Value Collateral of Wells Fargo Bank was heard. At the request of the parties, the Motion was set for an evidentiary hearing on November 23, 2015 at 9:00 a.m. Since the Trustee's objections relates to the Motion to Value Collateral, the instant Objection is continued to 3:00 p.m. on November 24, 2015.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to 3:00 p.m. on November 24, 2015.

49. [15-25697](#)-E-13 DONNA PALMER OBJECTION TO CONFIRMATION OF
DPC-1 Eamonn Foster PLAN BY DAVID P. CUSICK
9-15-15 [[24](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 15, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on November 24, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the proposed plan relies on a pending Motion to Value Collateral of Wells Fargo Bank.

On October 6, 2015, the Motion to Value Collateral of Wells Fargo Bank was heard. At the request of the parties, the Motion was set for an evidentiary hearing on November 23, 2015 at 9:00 a.m. Since the Trustee's objections relates to the Motion to Value Collateral, the instant Objection is continued to 3:00 p.m. on November 24, 2015.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to 3:00 p.m. on November 24, 2015.

50. 15-27472-E-13 RIGOBERTO/FELIX RODRIGUEZ MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso O.S.T.
10-8-15 [16]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2015. By the court's calculation, 12 days' notice was provided.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 denied.

Rigoberto and Felix Rodriguez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-21472) was dismissed on September 18, 2015, after Debtor failed to file a proposed plan within 60 days of the date of entry of der denying confirmation of the Debtor's prior plan. See Order, Bankr. E.D. Cal. No. 15-21472, Dckt. 93, September 18, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 13, 2015. Dckt. 27. The Trustee states that the Chapter 13 Trustee, Jan Johnson, in the prior case opposed confirmation of the Debtor's plan based on the inclusion of Robert Russo in Class 6 for a non-dischargeable judgment in the amount of \$12,303.72 while proposing 0% to all other general unsecured creditors. The Trustee in that case argued that this type of unsecured debt does not justify special treatment proposed in the plan. The court denied the Debtor's Motion to Confirm on June 29, 2014 and the Trustee's objection was sustained. Case No. 15-21472, Dckt. 90.

The Trustee states that in the instant proposed plan, the Debtor is proposing the same treatment which the previous court denied. The Trustee states that this is evidence that the case is not proceeding in good faith.

DISCUSSION

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. However, the Debtor only state that the case was filed so that the Debtor can retain their vehicles and to provide for the judgment of Robert Russo.

The Debtor does not explain why the treatment of Robert Russo that the court in the previous case found was unfairly discriminatory is now fair when the proposed plan filed in the instant case proposes the same treatment.

Reviewing the court's files, the court notes that this is not the Debtor's second bankruptcy case, but Debtor's third case. The first case is a Chapter 7 case filed on November 29, 2010. 10-51274 (Chapter 7 Case"). The discharge was entered on March 9, 2011.

The second case is the Chapter 13 case which was recently dismissed. 15-21472 ("First Chapter 13 Case"). In denying confirmation of the Chapter 13 Plan in the First Chapter 13 Case, the Hon. Michael S. McManus determined:

"While it is possible to provide disparate treatment of similar claims in a chapter 13 plan, such discrimination cannot 'discriminate unfairly.' Courts have generally rejected attempts to discriminate in favor of the holder of a nonpriority, nondischargeable claim to the detriment of holders of nonpriority, dischargeable claims.

The discrimination here is unfair. Were the court to permit it, then 'nondischargeable' would be equated with "priority." Lawson v. Lackey (In re Lackey), 148 B.R. 626 (Bankr. N.D. Ala. 1992). Further, there is nothing fair, measured from the perspective of the other general unsecured claim holders, about getting paid nothing when another general unsecured claim holder is paid everything. In re Warner, 115 B.R. 233 (Bankr. C.D. Cal. 1989); Groves v. La Barge (In re Groves), 39 F.3d 212, 215-16 (8th Cir. 1994); McDonald v. Sperna (In re Sperna), 173 B.R. 654, 658-60 (B.A.P. 9th Cir. 1994)."

15-21472, Dckt. 86.

Though Judge McManus extended the time for Debtor to file an amended plan in the First Chapter 13 Case, no amended plan was filed. Debtor's failure to act led to the Chapter 13 Trustee filing a motion to dismiss the First Chapter 13 Case. *Id.*; Motion to Dismiss, Dckt. 92. The First Chapter 13 Case was dismissed on September 18, 2015. *Id.*; Order, Dckt. 93.

The court is not persuaded that the instant case was filed in good faith. If anything, it appears that the Debtor is "judge-shopping" to find a judge that will find that the non-dischargeable nature of Mr. Russo's claim is somehow priority over other unsecured who, under the proposed plan, would receive 0% dividend on their claims. The Debtor's Motion does not mention at all the reason for the dismissal.

In fact, the Debtor's Motion states that they believe the proposed plan "is confirmable and very likely to successfully complete." Dckt. 16. The fact that the Debtor fails to note that the reason for the dismissal in the prior case was failure to file a proposed plan after the denial of a plan that proposes the same treatment of a non-dischargeable debt in the instant case is troublesome.

Debtor's counsel in this case was Debtor's counsel in the First Chapter 13 Case. In the Motion and Supporting declaration, Debtor offers no explanation for failing to try and confirm a plan in the First Chapter 13 Case. No explanation is provided by Debtor's counsel was not able to prosecute such a plan in the First Chapter 13 Case.

Debtor's plan in the current case continues with proposing the improper, discriminatory treatment for the claim of Robert Russo. Debtor seeks to pay Robert Russo a 100% dividend on his general unsecured claim, and all other creditors holding general unsecured claims will be paid a 0.00% dividend. The total amount to be paid Russo is \$13,200.00.

The Russo claim is based on a nondischargeable judgment Debtor failed to respond to the complaint for nondischargeability and allowed the nondischargeable judgment to be entered. Adv. Pro. 14-02103. In effect, Debtor is now seeking to "punish" the other creditors by paying them nothing, and diverting projected disposable income only to Mr. Russo.

This court agrees with Judge McManus and has previously ruled in other cases that merely because a debt is nondischargeable is not a good faith basis for discriminating against the other creditors holding general unsecured claims. Merely because Debtor prefers not to have to address the remaining balance of a nondischargeable debt after the good faith, proper, legal pro rata distribution paid to all creditors holding general unsecured claims.

Here, Debtor states in the Plan that there are \$7,844.58 in general unsecured claims (excluding Mr. Russo) who will receive a 0.00% dividend. Plan, Dckt. 13.

Debtor has not filed the present case and has not proposed a Chapter 13 Plan in good faith. The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied.

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

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

The Motion to 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 denied.