

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

**October 21, 2014 at 2:00 p.m.**

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1. [11-39000](#)-C-13 MARK ALVAREZ AND DAWN MOTION TO MODIFY PLAN  
ULC-2 LARKINS 9-4-14 [[60](#)]  
Julie B. Gustavson

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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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 September 4, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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. 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.

**October 21, 2014 at 2:00 p.m.**  
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The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 9, 2014 is confirmed, and counsel for the Debtors 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.

2. [11-38702](#)-C-13 VIRGIL/DIANA LYTAL MOTION TO MODIFY PLAN  
RAC-3 Richard A. Chan 9-4-14 [[49](#)]

**Final Ruling:** The Debtors having filed a Notice of Withdrawal on October 17, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.

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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 September 4, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. The court shall issue a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 4, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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.**

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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 all creditors, parties requesting special notice, the Chapter 13 Trustee, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion for Hardship Discharge is continued to 2:00 pm on [DATE].**

Samuel H Willingmyre, the Debtor in this case ("Debtor"), requests a hardship discharge pursuant to 11 U.S.C. § 1328(b).

**REVIEW OF MOTION**

Samuel H Willingmyre ("Debtor") filed for relief under Chapter 13 of the Bankruptcy Code on September 20, 2012. On October 18, 2012 the meeting of creditors was conducted and concluded. Debtor had \$0.00 in non-exempt assets.

Debtor's plan filed on September 20, 2012, Dckt. No. 5, was confirmed on November 2, 2012. The Confirmed Plan proposed to pay \$1,200.00 for 60 months. Debtor had projected monthly disposable income from Line 59 of CMI of \$1,136.34, and Debtor estimated no less than 48.32% dividend to General Unsecured Claims.

On April 12, 2014, the Debtor, died, survived by his son, Henry Willingmyre. Exhibit A, True & Correct Copy of Debtor's Certified Death Certificate), Dckt. No. 30. As of the date of the filing of this motion, Debtor paid a total of \$22,800.00 into his plan. The principle paid to Unsecured Creditors has been \$19,536.64.

Rule 1016 of the Federal Rules of Bankruptcy Procedure states:

"Death or incompetency of the debtor shall not abate a liquidation case under Chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If the reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Since the Debtor was in a pending Chapter 13 case at the time of his death, the Court must make a determination whether the case should be dismissed or proceed and be concluded if further administration is possible and in the best interest of the parties. *In re Eads*, 135 B.R. 380 (Bankr. E.D. Cal. 1991) (the Court explains the effect of death of Debtor on bankruptcy case). Upon the death of the Chapter 13 Debtor, when determining whether further administration is possible and in the best interest of the parties, the court may consider whether a hardship discharge is appropriate.

11 U.S.C. § 1328(b) provides at any time after the confirmation of the plan and after notice of a hearing the court may grant a discharge to a debtor that has not completed payments under the plan only if:

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

*In re Bond*, 36 B.R. 49 (Bkrtcy. E.D.N.C. 1984) (Debtor died in a pending chapter 13 case and the court determined a hardship discharge was appropriate under 11 U.S.C. § 1328(b)) *In re Graham*, 63 B.R. 95 (Bkrtcy. E.D. Pa. 1986) (Debtor died in a pending chapter 13 case after making a majority of the plan payment, the court determined a hardship discharge was appropriate under 11 U.S.C. § 1328(b))

Here, the Debtor passed away on April 12, 2014. In the present case, Debtor had \$0.00 in non-exempt assets which would have been liquidated

in a chapter 7 case; therefore, the unsecured claim holders would have received \$0.00 in a Chapter 7 case. In the 19 months of payment in his chapter 13 plan, \$19,536.64 was paid to the allowed unsecured filed claims. The confirmed plan provided no less than a 48.32% dividend would be paid to General Unsecured Claims based on Current Monthly Income. The Movant states that in *In re Bond* the court found that the value of the funds distributed to each allowed unsecured claim was not less than the amount that would have been paid in a chapter 7 liquidation. In *In re Graham*, the debtor was found to have paid more to the creditors than they would have received in a chapter 7 liquidation. In the present case Debtor had \$0.00 in non-exempt assets; therefore, the Motion asserts that the unsecured creditors received more than they would have in a chapter 7 liquidation.

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

#### **OPPOSITION BY TRUSTEE**

The Chapter 13 Trustee objects to the Motion on several grounds.

#### **Standing**

The Trustee is not certain that either Pauldeep Bains or Debtor's son, Henry Willingmyre, have standing to make the present motion. The Trustee received a declaration filed by Bains, Dckt. No. 32, in support of the motion and stating that he represents that Debtor in this case, whose death occurred in April 12, 2014.

A copy of the death certificate was filed on August 5, 2014. Dckt. No. 30. Trustee has not been provided with any information regarding the impact of the estate on the bankruptcy, or if probate was opened and if any assets were liquidated. The Debtor has real property listed on Schedule A, Dckt. No. 1. The Debtor's attorney was hired by Debtor, but Debtor has apparently died and is unable to direct the attorney whether to proceed with the discharge, or allow the case to conclude without one. The attorney client relationship may have been terminated (see *O'Connell v. Superior Court*, 2 Cal.2d 418, citing *Hunt v. Rousmanier*, 21 U.S. 174, 203 [L.3d. 589], stating "We hold it to be clear, that the interest which can protect a power, after the death of a person who creates it, must be an interest in the thing itself.")).

In the event that the attorney is representing an heir, executor, or administrator, the Trustee agrees that standing exists. The record does not, however, disclose this detail. Schedules B and C filed September 20, 2012, Dckt. No. 1, include a whole life insurance policy through State Farm with a value of \$21,900.00. Schedule J, filed on the same day, Dckt. No. 1 at 30, includes a life insurance expense in the amount of \$32.33. Trustee has not received information concerning life insurance proceeds, distribution of retirement benefits, or payments of debts through credit

insurance; therefore, the Trustee cannot determine that administration is possible and that it is in the best interest of the parties.

The Declaration filed by Pauldeep Bains states that he was notified of Debtor's death by Debtor's son, Henry Willingmyre. Schedule I filed on September 20, 2012, Dckt. No. 1 at 29, lists a 67-year old daughter as a dependent. The Trustee is uncertain whether Debtor's daughter is in favor of this motion, as no declaration was filed by her.

**RESPONSE TO TRUSTEE'S OBJECTION**

The Movant requested that the Motion be continued to October 21, 2014, to allow the parties involved to provide the Trustee with the requested information, and to further engage in conversations to the Trustee to alleviate other concerns that the Trustee may raise regarding this matter. Dckt. No. 38. The court granted the continuance and the subsequent pleadings are incorporated below.

**RESPONSE BY INTERESTED PARTY HENRY S. WILLINGMYRE**

Movant attached a declaration and asserts that he is Debtor's son, and heir to his estate, and has standing to file this Motion..

Movant asserts that the Samuel H. Willingmyre Revocable Trust was named as the beneficiary of the Whole Life policy. Movant argues that the proceeds from this policy are not property of the estate. Henry S. Willingmyre is the Trustee of the Samuel Willingmyre Trust.

**TRUSTEE'S SUPPLEMENTAL RESPONSE**

Trustee agrees that Henry Willingmyre, as son, has standing to bring the instant motion. The Trustee still questions whether there is a will being probated and, thus a pending probate case.

Trustee notes that the Declaration of Henry Willingmyre indicates that all heirs are in support of the Motion.

Movant argues that the proceeds from the Whole Life policy, listed on Schedules B and C, through State Farm with a value of \$21,900 are not property of the estate, presumably as the plan vested the estate on confirmation. The Trustee is not certain as to the amount of the benefits of the policy, and it appears that the Trust was not Schedules.

Trustee states that he would not be opposed to the Motion if the amounts of the proceeds are disclosed and the Trust is scheduled.

The court will continue the hearing on this matter to 2:00 pm on [DATE], for Movant to submit the final information requested by the Trustee.

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

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

The Motion for Hardship Discharge filed by Samuel H Willingmyre, 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 for Hardship Discharge is continued to 2:00 pm on [DATE]

**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.**

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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 xxxx, <year>. By the court's calculation, xx days' notice was provided. 42 days' notice is required.

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

**The court's decision is to continue the Motion to Confirm the Amended Plan to December 16, 2014 at 2:00 p.m.**

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

1. Debtors' plan may fail Chapter 7 Liquidation under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$2,925 and the Debtors are proposing a 1% dividend to unsecured creditors.

**Residential Real Property:** Debtors list real property at 1141 El Sur Way, Sacramento, California on Schedule A. Debtors filed Amended Schedule A on September 9, 2014 and increased the value in the property from \$1.00 to \$680,000 (value is actually \$738,000 but Debtors reduced the value by 8%). Debtors claim that the value is the Zillow.com value. Trustee visited the Zillow.com website and found that the property has an estimated value of \$827,535. (Exh. A).

Based on Trustee's Zillow estimate, minus 8% cost fo sale, the net property value is \$761,332.20. After accounting for the mortgage loan, Debtors have \$136,165.27 in equity. Debtors exempted \$100,000 on Schedule C, leaving approximately \$36,165.27 in non exempt equity.

**Non-Primary Residence:** Debtors list on Schedule A interest in real property located at 10200 Tinker Court, Truckee, California with a value of \$100,000. Debtor's had originally listed the value of the property as \$60,000, but give insufficient information pertaining to the property to support any valuation. Trustee queries whether the value provided is proper.

**Bank Accounts:** Schedule B includes multiple bank accounts held at Wells Fargo Bank, N.A. All of the accounts are held in Debtors' trust, listed as an asset on Schedule B. Debtors do not disclose the true value of these accounts and did not provide Trustee with bank account statements for the time period prior to filing.

**Value of Trust:** Debtors list a family trust, The Paul and Lynda Fanfelle Family Trust on Schedule B with a value of \$1.00. Debtors report that the trust holds real property at 1141 El Sur Way, Sacramento California, real property at 10200 Tinker Court, Truckee, California, the contents of both properties, all bank, retirement, pension and 401K accounts; however, the value is only \$1.00. Debtors have provided insufficient information to support the valuation.

2. Trustee argues that the plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and proposing a 60 months plan paying \$1,975 for 12 months, \$2,500 for 24 months, and \$3,840 for 36 months with a 1% dividend to general unsecured claims. In Class 4 of the plan, Debtors indicate that their son is making ongoing auto payments to J.P. Morgan Chase Bank, N.A. of \$339.54 per month. Debtors list their son as a dependent on both Form B22C and Schedule J and report no income from their son on Schedule I. Debtors may not be reporting all income.

#### **CREDITOR'S OBJECTION**

Creditor, Mesa Leasing, Inc., objects to Debtors' Motion. Mesa is the owner and lessor of yogurt and food service equipment previously delivered to and located in Debtors' Sacramento yogurt retail shop. Prior to the filing, Debtors entered into a commercial lease agreement with Creditor and each Debtor signed a personal guaranty for all performances due under the lease.

Creditor argues that the plan is deficient for the following reasons:

1. Debtors have not reported all household income from their son.
2. Debtors are not using their best efforts because they are dealing inequitably among the secured creditors.
3. Repayment to Creditor is provided in Class 2. It is acknowledged that the debt is \$105,343 as set forth in the Proof of Claim. The regular payments under the contract are \$3,148 per month. Debtors propose to only pay \$675.00 per month in the first year; \$1,200 per month for the second year, at the end of 24 months the payment increases to \$2,450 per month for 19 months and then increases to \$2,850 for the remaining 17 months. Creditor argues that the equipment value is depreciating faster than the proposed payments provide and the plan does not come close to adequately protecting the Creditor's interests.

#### **TRUSTEE'S AMENDED OBJECTION**

Trustee amends his objection to add the following basis for denying the Motion:

1. Debtors misclassified the lease agreement with Pawnee Leasing Corporation, which is currently listed in Class 2 of the plan. Pawnee Leasing is described as a Class 2 secured creditor holding a purchase money security interest and is receiving payments of \$907 per month, with their claim amount being \$35,698.08 at 4% interest. Debtors' prior plan proposed to pay Pawnee \$380.00 per month.

Trustee argues that if the contract is not secured but, rather, a lease, it appears the claim would be more appropriately provided for in section 3.02 of the plan as an unexpired lease with regular payments paid by the Debtor and the plan curing any arrears.

#### **DEBTORS' RESPONSE**

Debtors respond and request a thirty (30) day continuance to allow a formal Broker's Price Opinion to be presented to the Trustee for both real properties; to allow the Trustee to account for the nine bank accounts; to allow for analysis of the trust to be provided to the trustee, and to allow for the Debtors to address the best efforts.

Debtor does not address the lease issues present in the objections.

#### **STIPULATION**

Debtor and the Chapter 13 Trustee uploaded a joint stipulation continuing the hearing on the Motion to December 16, 2014 at 2:00.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to December 16, 2014 at 2:00 p.m.

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain that Debtor can make the payments required under 11 U.S.C. § 1325(a)(6). Debtor has a \$23,535.86 post-petition liability to the Internal Revenue Service for 2013 taxes. Debtor does not provide any explanation regarding this post-petition liability. Debtor's Schedule J includes a \$1,000 monthly expense for self-employment taxes.
2. Debtor filed a Declaration in support of the Motion; however,

it lacks sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). Debtor does not address the changes in income of the non-filing spouse. The non-filing spouse's gross income decreased for \$7,691.02 at the time of filing to \$3,595.57 currently. The monthly net income decreased from \$3,161.51 to \$2,747.29.

3. Debtor added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of \$23,535.86. This creditor has not filed a claim for post-petition taxes and only the creditor has the ability to do so under 11 U.S.C. § 1305.

#### **DEBTOR'S RESPONSE**

Debtor responds to the trustee and offers the following:

1. Debtor states that when he filed bankruptcy in November 2013, he filed a plan that anticipated the tax liability and set aside \$1,000 to be paid quarterly to the Internal Revenue Service to prevent future post-petition tax liabilities. Debtor asserts that as of October 2014, he has made payments to the IRS of \$8,100.
2. Debtor attached the Declaration of Dianne Vazquez, his non-filing spouse. The Declaration explains that non-filing spouse attended the meeting of creditors and suffered a reduced income amount because her position with the local police force changed and decreased the available over-time pay.
3. The Internal Revenue Service is in the process of filing the 11 U.S.C. § 1305 claim.

#### **DISCUSSION**

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

Debtor has not provided sufficient evidence for the court to confirm the plan under 11 U.S.C. § 1325. Specifically, the Trustee pointed out that Debtor did not address his non-filing spouse's monthly net income decrease from \$3,161.51 to \$2,747.29 adequately. The Declaration of Diane Vasquez states that her monthly income decreased by \$312.00 per month and does not indicate whether this is a net or gross decrease. The Trustee's figures show a decrease of \$414.22 per month in net income.

The Internal Revenue Service has not yet filed the 11 U.S.C. § 1305 claim, that is provided for in the proposed plan.

The court will continue the hearing on the Motion to **[date]** at **[time]** to permit the IRS time to file the Proof of Claim and ensure Debtor can tie up any loose ends with the Trustee.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to **[date]** at **[time]**.

7. [14-27514](#)-C-13 JULIE FORD OBJECTION TO CONFIRMATION OF  
DPC-1 Mark W. Briden PLAN BY DAVID P. CUSICK  
Thru #8 9-17-14 [[14](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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The case having previously been dismissed, the Objection is overruled 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 overruled as moot, the case having been dismissed.

8. [14-27514](#)-C-13 JULIE FORD OBJECTION TO CONFIRMATION OF  
JB-1 Mark W. Briden PLAN BY STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
9-18-14 [[19](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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The case having previously been dismissed, the Objection is overruled 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 overruled as moot, the case having been dismissed.

9. [14-29214](#)-C-13 CLEVELAND BELLARD MOTION TO AVOID LIEN OF GRANT  
MET-2 Mary Ellen Terranella AND WEBER  
9-18-14 [[15](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

The Motion to Avoid 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 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 Lien is granted.**

A judgment was entered against the Debtor in favor of Grant and Weber, A Corporation for the sum of \$8,192.27. Pursuant to Debtor's Declaration, an abstract of judgment was recorded with the Yolo County Recorder's Office on September 2, 2008. See Decl. of Cleveland W. Bellard, Jr., ¶ 3, ECF, 17. As a result of the recording, a lien attached to the Debtor's residential real property commonly known as 15454 County Road 44, Guinda, California.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$165,000 as of the date of the petition. Debtor owns a 50% interest in the property valued at \$82,500. The unavoidable consensual liens total \$110,000 on that same date according to Debtor's Schedule D. The property is further encumbered by a statutory lien in favor of Yolo County Tax Collector with a balance as of the filing date of \$22,590. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$12,109 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 Grant and Weber, A Corporation, Yolo County Superior Court Case No. G062066, recorded on September 2, 2008 with the Yolo County Recorder's Office, against the real property commonly known 15454 County Road 44, Guinda, California, is avoided 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.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

1. Debtors' Motion and Declaration are insufficient. The Motion lacks the particularity required under FRBP 9013. Neither the Motion nor the Declaration make reference to any changes to the plan and or why the plan is being amended. Both the Motion and the Declaration merely recite the components of 11 U.S.C. § 1325.
2. The plan is not the Debtors' best efforts and it is uncertain that the plan was proposed in good faith. 11 U.S.C. §§ 1325(a)(3) and (b). Debtors are above median income and propose a 60 month plan paying \$626.20 per month with a 97.89% dividend to unsecured creditors.

Debtor Daniel Gutierrez is currently a full-time employee with the City of Sacramento and earns \$24.76 per hour. Schedule I reports him as unemployed and receiving unemployment benefits of \$3,943.33 per month. Debtors provided Trustee a pay stub on date May 13, 2014 showing Mr. Gutierrez working a 40 hour week.

On Schedule I, Debtors report Mary Gutierrez's gross income as \$2,102.40; however, this is only two weeks worth of pay for the co-Debtor. Her monthly gross income on Form B22C shows Debtor's income to average \$4,555.20 per month. The higher income figure is accurate based on her pay stubs.

3. Debtors do not provide for the secured claim of United Consumer Financial Services lien against a Kirby Cleaning System, listed on Schedule D. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide treatment could indicate that Debtors cannot either afford the payments called for under the plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

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

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

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

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

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

**Tentative Ruling:** The Motion for Contempt 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 Respondent creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 for Contempt without prejudice.**

Debtors move for a court order sanctioning Old Republic Insurance Company pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P 9014 and 9020 for violations of the automatic stay. Debtors argue that Old Republic Insurance Company violated the automatic stay by causing to be served on Debtors a complaint seeking money damages on June 4, 2014, when the case was filed and automatic stay injunction entered on April 16, 2014.

In the recent Supreme Court decision *Law v. Siegel*, the United States Supreme Court made clear that the equitable powers conferred on the court under 11 U.S.C. § 105(a) should be limited to those circumstances when there are no statutory directives on point for the particular issue. 134 S.Ct. 1188 (2013). Here, Debtors move solely under 11 U.S.C. § 105(a) for violations of the automatic stay; however, in 11 U.S.C. §362(k) the code provides a provision for an individual damaged by an alleged violation of the automatic stay.

The court's decision is to deny the motion without prejudice because Debtors did not plead with particularity the relief requested properly under 11 U.S.C. § 362(k).

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

**IT IS ORDERED** that the Motion is denied without prejudice.

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 7, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Avoid Judicial Lien is granted.**

Debtor moves for an order avoiding the nonpossessory, nonpurchase-money security interest of Springleaf Financial Services, Inc. ("Creditor") in Debtor's personal property and household goods.

On March 3, 2014, Debtor entered into loan agreement with Creditor for the principal amount of \$10,000 (Exh. A, Dkt. 21). As security for the loan, Debtor pledged a 55 inch Mitsubishi Television and an H.P. Laptop, collectively valued at \$3,000.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (B). Creditor holds a nonpossessory, nonpurchase-money security interest in Debtor's household goods, namely a television and laptop. Pursuant to Debtor's Schedule B, the Television is valued at \$100.00 and the Laptop is valued at \$100.00. Debtor exempted the entire value of both items on Schedule C pursuant to Cal. Civ.

Proc. Code § 703.140(b)(3). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the security interest. Therefore, the fixing of this security interest impairs the Debtor's exemption of the personal 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 nonpossessory, nonpurchase-money security interest of Springleaf Financial Services, Inc., as evidenced by the loan document at Exhibit A, Docket Control No. 21, against the personal property commonly known as a 55 inch Mitsubishi television and a H.P. Laptop, is avoided 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.

13. [13-34931](#)-C-13 SJOERD/MELISSA VERWEIJ MOTION FOR COMPENSATION BY THE  
GW-2 Gerald L. White LAW OFFICE OF THE LAW OFFICE OF  
GERALD L. WHITE FOR GERALD L.  
WHITE, DEBTOR'S ATTORNEY(S)  
9-23-14 [[37](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 23, 2014. Twenty-eight days' notice is required. That requirement was met.

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 Professional Fees is granted.**

#### **FEES REQUESTED**

Gerald White, the Attorney ("Applicant") for Sjoerd and Melissa Verweij the Chapter 13 Debtors ("Client"), makes an Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of February 6, 2014 through August 25, 2014. A previous Motion for Compensation was approved March 25, 2014, allowing fees of \$9,300 and costs of \$311.00. (Dkt. 30).

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 1.7 hours in this category. Applicant reviewed and signed the confirmation order; reviewed emails from client; communicated with Trustee regarding unidentified payment; reviewed email from client regarding a letter from Wells Fargo Home Mortgage.

Review of Claims: Applicant spent 3.05 hours in this category.

**October 21, 2014 at 2:00 p.m.**

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Applicant reviewed claims of various creditors and reviewed Trustee's Notice of Filed Claims. Applicant drafted and sent a letter to Debtor regarding the Notice of Filed Claims.

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

### **Benefit to the Estate**

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a

professional to work in a bankruptcy case does not give that professional "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. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES ALLOWED**

The fees request 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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Gerald White	4.75	\$300.00	\$1,425.00
<b>Total Fees For Period of Application</b>			<b>\$1,425.00</b>

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$1,425 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim Fees in the amount of \$9,611.00 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 under the confirmed Plan.

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 Gerald White ("Applicant"), Attorney for 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 Gerald White is allowed the following fees and expenses as a professional of the Estate:

Gerald White, Professional Employed by the Chapter 13 Debtor

Fees in the amount of \$ 1,425.00

Expenses in the amount of \$ 0.00,

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 under the confirmed Plan.

**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, respondent creditor, and Office of the United States Trustee on September 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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.**

A judgment was entered against the Debtor in favor of Discover Bank for the sum of \$15,195.21. There is no evidence filed showing that the abstract of judgment was recorded. Debtor states the lien attached to the Debtor's residential real property commonly known as 240 Allaire Circle, Sacramento, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$330,000 as of the date of the petition. The unavoidable consensual liens total \$228,147.31 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000 in Schedule C. The respondent purportedly holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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.

**Review of Evidence Presented**

Debtor provided the court with evidence in the form of a Declaration, Schedules, and a copy of the abstract of judgment. Debtor's motion states that Debtor's believe Discover Bank claims a lien on the property by way of an abstract of judgment "filed in the official records of the County Recorder for the County of Sacramento." See Mot. ¶ 4, ECF 15. Included with Debtor's attached exhibits is an abstract of judgment; however, it lacks evidence of recordation in the form of a recorder's stamp with time, date, and document number. See Exh. B, ECF 20. Further, Debtor's Declaration includes no testimony regarding the date and location of the recording of the abstract of judgment. As far as the court is aware, the abstract of judgment was not recorded. Without proof that the abstract was recorded, the court cannot determine that a judicial lien attached to the subject property.

Therefore, the court's decision is to deny the motion without prejudice.

**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 motion to avoid judicial lien is denied without prejudice.

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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. 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 9, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the

**October 21, 2014 at 2:00 p.m.**

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2014. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to ~~xxxx~~ the Motion to Confirm the Modified Plan.**

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

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

1. Debtor is \$1,656 delinquent in plan payments to the Trustee. Debtor has paid \$29,822 into the plan to date.
2. Debtor used incorrect forms to file Amended Schedules I & J.

**DEBTOR'S RESPONSE**

Debtor asserts that he has remitted the amount due to the Trustee and correct the delinquency. Further, on October 14, 2014, Debtor's counsel filed amended Schedules I & J on the proper forms.

The court's decision is to overrule the Trustee's objection and confirm the modified plan. Debtor provided a Declaration testifying that he remedied the plan payment delinquency and a review of the docket shows that Debtor's counsel filed amended Schedules I & J on the correct forms. The modified 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 Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 2, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. [14-23045](#)-C-13 GWENETH MCROY MOTION TO CONFIRM PLAN  
SCG-2 Sally C. Gonzales 8-27-14 [[48](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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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 27, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Thru #20**

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. Thirty-five days' notice is required. That requirement was not met.

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

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

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

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

1. Debtor is delinquent \$280.00 under the terms of the proposed plan.
2. Trustee is unsure if Debtor can afford the proposed plan payment. The proposed modified plan lists Debtor's place of residence as Class 3, to be surrendered. Debtor lists projected home maintenance fees despite the stated intent to surrender.

The court's decision is to deny the Motion. The residence in question is subject to a sale motion (DJC-6) set to be heard on October 21, 2014. The outcome of that hearing will determine the course of Debtor's plan. Further, Debtor has not provided evidence that she is current on plan payments. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 30, 2014. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

**The Motion to Sell Property is granted.**

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

- A. 6831 18th Avenue, Sacramento, California

The proposed purchaser of the Property is Shari Anders and the terms of the sale are \$120,000 contract sales price with a \$72,242.29 payoff to CitiMortgage, Inc., holder of the first deed of trust.

The Motion seeks to sell Property free and clear of the liens of Kelkris Associates, Inc. ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

"(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f) (1).

For this Motion, the Movant has established that on September 24, 2013, the court entered an order avoiding Creditor's judicial lien.

#### **TRUSTEE'S RESPONSE**

Trustee informs the court that arrears on the mortgage are scheduled to be paid through the Chapter 13 plan, and the Trustee is prepared to pay the arrears in the escrow by a check swap with the Title Company concurrently at the close of escrow. The payment will assist the Debtor as she is currently delinquent \$1,370.00 in plan payments.

Trustee further informs the court that he will monitor the Debtor's use of the net proceeds from the sale and if the proceeds are not re-invested within six-months, Trustee will pursue a modified plan calling for the proceeds to be paid in for the benefit of unsecured claims.

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.

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

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

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

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

**October 21, 2014 at 2:00 p.m.**

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**IT IS ORDERED** that Victoria Gokey, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f) to Shari Anders ("Buyer"), the Property commonly known as 6831 18th Avenue, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$120,000, on the terms and conditions set forth in the Purchase Agreement, Dockets 148 and 149, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the lien of Kelkris Associates, Inc., creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f), with the lien of such creditor attaching to the proceeds. The Chapter 13 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
4. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

21. [14-24246](#)-C-13 CARL ASMUS AND JODI  
DPC-1 CAMPISI ASMUS  
Scott A. CoBen

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
6-5-14 [[36](#)]

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 5, 2014. By the court's calculation, 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.**

#### **Continuance**

The hearing on this matter was continued from August 5, 2014, and further continued from August 26, 2014 to this hearing date to allow for further settlement negotiations. Civil Minutes, Dckt. No. 60. At the second continued hearing on September 16, 2014, the court continued the hearing again for supplemental pleadings by the Debtor to be filed and served by October 14, 2014. As of October 16, 2014, Debtor has not supplemented the record.

#### **REVIEW OF OBJECTION**

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons. First, the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 29, 2014. The continued meet is set for June 26, 2014.

Second, Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the Motion to Value the Secured Claim of JP Morgan Chase Bank, which is set for hearing on June 10, 2014.

Third, Debtors' Plan does not provide for the secured debt of the Internal Revenue Service. Debtor lists this debt as a priority claim on Schedule E, and provides for it as a Class 5 debt through the plan. The Internal Revenue Service filed a secured claim, Court Claim No. 1, and amended the claim on May 22, 2014, with an amount of \$8,869.47 as the amount of the secured claim. While the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtors either cannot afford the payments called for under the Plan because they have additional debts, or that Debtors want to conceal the proposed treatment of a creditor.

**RESPONSE BY DEBTORS**

Debtors respond by stating that they will attend the continued hearing on June 26, 2014. Debtors also state that they anticipate the Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A. being granted.

Because of a factual dispute over the value of the Debtor's real property, however, the Motion has been continued to August 5, 2014 to permit Creditor to obtain a residential appraisal and present its own evidence of value. Civil Minutes, Dckt. No. 44.

The Debtors state that they are "willing" to provide for the secured claim of the Internal Revenue Service by adding the following language to their plan in the order confirming:

The secured claim of the Internal Revenue Service shall be provide for as a Class 2 claim to be paid in full after payment of attorney fees.

Debtors acknowledge that the plan payment will need to be increased to \$5,025 or \$35, which represents an increase of less than one percent of the plan payment, but do not propose that this revision be made in the order confirming. The Debtors do not provide for this plan increase.

**STATUS OF CASE**

On June 26, 2014, the Trustee concluded the meeting of creditors, resolving the Trustee's objection made on this ground.

On September 29, 2014, Debtors uploaded a Stipulation with J.P. Morgan Chase Bank, N.A. withdrawing the Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. The Trustee's objection to the treatment of J.P. Morgan in the original plan remains unresolved and outstanding.

The court is not amenable to Debtors adjusting the treatment of a

secured creditor in the Order Confirming. It appears the Debtors will need to present a proposed modified plan once treatment of J.P. Morgan Chase Bank, N.A.'s claim is determined and, at that time, proper treatment of the IRS claim can be included in the substantive section of the plan.

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.

**Thru #23**

**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

**PRIOR HEARINGS**

The court held various prior hearings on this Motion in anticipation of Debtor receiving a loan modification, completing the trial period successfully, and filing a final motion for approval of the loan modification.

**REVIEW OF THE MOTION & RELATED PLEADINGS**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. On June 9, 2014, The Chapter 13 Trustee opposed confirmation of Debtors' modified plan on the basis that it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and because the Plan may not be feasible. Debtor is delinquent \$265.00 under the terms of the proposed modified plan.

Additionally, the modified plan was based upon Debtors receiving a permanent loan modification. At the time the Motion was filed, Debtor had yet to receive a permanent loan modification.

On June 17, 2014, Debtor responded and state that she would bring plan payments current by the original hearing date and that she was planning on setting a hearing to approve the loan modification.

On July 14, 2014, the Trustee filed a supplemental objection reiterating the same issues previously set-forth and Debtor responded in a similar fashion.

## **DISCUSSION**

The court is prepared to grant Debtor's Motion to Approve Loan Modification at the hearing on October 21, 2014. The court overrules this part of the Trustee's Objection.

What remains outstanding is whether Debtor has brought plan payments current. Debtor has not filed a declaration attesting to being current. As far as the court is aware, based on the pleading history in this matter, Debtor is \$265.00 delinquent in plan payments and payments of \$265.00 came due on July 25, 2014, August 25, 2014, and September 25, 2014. As of July 17, 2014, Debtor had made one payment of \$265.00 and may now be delinquent \$1,060.00.

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 plan is not confirmed.

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification filed by Sonia Zamora ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,931 a month to \$1,677.32 a month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2.5% to 3.5% over the next four years and to 4.15% for years five through the end of the loan term.

The Motion is supported by the Declaration of Sonia Zamora. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

Findings of Fact and Conclusions of

**October 21, 2014 at 2:00 p.m.**

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Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Sonia Zamora having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Sonia Zamora ("Debtor") to amend the terms of the loan with Bank of America, N.A, which is secured by the real property commonly known as 16 White Lily Court, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 75.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 28, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-27353) was filed on May 30, 2014 and dismissed on September 25, 2014. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). 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( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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 argues that good cause exists as the automatic stay is necessary to protect Debtor's family home. Debtor's previous case was dismissed because Debtor fell behind on her ongoing mortgage payments due to a family medical emergency and temporary reduction in financial contribution from Debtor's son. Debtor's mortgage company set a foreclosure sale and Debtor was unable to cure the delinquency prior to the sale date. To protect the home, Debtor voluntarily dismissed her prior case and filed the instant case, which proposes to cure all mortgage arrears through the plan as a class 1 claim.

Debtor argues that her son's income is now stable again and the medical emergency is resolved. Debtor's son found new employment so as to be able to assist debtor.

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

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

25. [14-26160](#)-C-13 MICHAEL MCCALL  
Thru #28 Charnel J. James

CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
7-16-14 [[29](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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The court issued an order to show cause based on Debtor's failure to pay the required fees in this case. The court docket reflects that on September 17, 2014, Debtor paid the final installment filing fee due.

**The Order to Show Cause is discharged.** No appearance required. The court makes the following findings of fact and conclusions of law:

The fees having been paid, the Order to Show Cause is discharged.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

26. [14-26160](#)-C-13 MICHAEL MCCALL  
Charnel J. James

CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
8-18-14 [[41](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
-----

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case. The court docket reflects that on September 17, 2014, Debtor paid the final installment filing fee due.

**The Order to Show Cause is discharged.** No appearance required. The court makes the following findings of fact and conclusions of law:

The fees having been paid, the Order to Show Cause is discharged.

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 Order to Show Cause 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 Order to Show Cause  
is discharged, no sanctions are ordered, and  
the case shall proceed.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2014. Forty-two days' notice is required. That requirement was met.

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

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

Deutsche Bank National Trust Company, as Trustee on behalf of HSI Asset Securitization Corporation Trust 2007-NC1, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. ("Creditor") and the Chapter 13 Trustee filed objections to the Debtor's Motion to Confirm.

**CREDITOR'S OBJECTION**

Creditor holds a promissory note secured by a deed of trust on the subject property commonly known as 13409 County Highway A12, Montague, California. As of March 5, 2014, the amount in default under the note was \$32,954.25. Creditor anticipates filing a Proof of Claim with the exact amount of arrearage shortly.

Creditor argues the proposed plan does not provide for the anticipated arrearage and; therefore, does not comply with 11 U.S.C. §§ 1322(b)(2), (b)(5), or 1325(a)(5)(B).

## CHAPTER 13 TRUSTEE OBJECTION

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

1. Debtor is \$2,496.66 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,744.99 is due on October 25, 2014. Debtor has paid \$1,248.33 into the plan to date.
2. Section 1.02 of the plan calls for "Other Payments." This section proposes one lump sum payment of \$2,496.66 to be paid by October 25, 2014, leaving \$0.00 due for the first two months of the plan. Trustee believes, based on the way the plan is drafted, that three payments of \$1,248.33 (July, August, and September) will have come due by the confirmation hearing date. In October, the one lump sum payment is due in addition to Debtor's customary monthly plan payments.
3. Trustee questions whether Debtor's plan was proposed on good faith.

Debtor's first case was filed October 29, 2013 (13-33887) with a plan proposing payment of \$1,363.71 for 60 months. The plan proposed to pay SPS Portfolio Servicing in Class 1, curing the mortgage arrears and paying ongoing payments through the plan, \$0.00 in attorneys' fees, and a 0% dividend to general unsecured creditors. The Trustee filed a Motion to Dismiss based on non-payment and failure to attend the 341 meeting. Debtor filed an Amended Plan on January 20, 2014, which proposed plan payments of \$1,446.01 per month for 60 months. Debtor declared that he filed his case on the eve of a foreclosure sale and that he found renters for the property that bring \$1,600 per month into the estate. The case was dismissed on February 20, 2014 for failure to appear at the 341, failure to make plan payments, and failure to provide tax documents.

Debtor filed a second case on March 5, 2014 (14-22263) with a plan calling for payments of \$1,363.71 for 60 months with the same terms and payments as the original plan in Case 1. On April 15, 2014, Trustee filed a motion to dismiss and the dismissal was vacated. The court denied Debtor's effort to vacate the dismissal. Debtor did not make any payments during the course of the case.

The current case is Debtor's third. Debtor did not attend the first 341 meeting scheduled for August 14, 2014. On August 20, 2014, Trustee filed an Objection to Confirmation and a Motion to Dismiss, with both indicating that Debtor did not attend the 341 meeting and that Debtor did not make plan payments. Debtor also did not provide Trustee with § 521 documents. On September 10, 2014, Debtor filed a First Amended Plan, and set it for hearing on October 21, 2014 and the Motion to Dismiss was continued with the Motion to confirm.

**October 21, 2014 at 2:00 p.m.**

Trustee argues that Debtor has been in bankruptcy for eleven months without confirming a plan. Debtor is merely delaying payments. Debtor does not have the ability to make payments and has not shown he has sufficient regular income to support the plan. Debtor has supplied no evidence to support him working with the mortgage company and does not propose to cure the mortgage arrears.

4. Debtor has filed three cases. The first two cases were filed under a different social security number than the current case. The first two cases were filed under a SSN ending in 621 while the third case was filed under a SSN ending in 7619. Counsel for Debtor stated this was an error, but nothing has been done to correct the error.
5. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan has not been filed in good faith. 11 U.S.C. § 1325(a)(3). Debtor's first Amended Plan proposes to pay ongoing mortgage arrears in Class 1; however, Debtor does not list the amount owed in mortgage arrears or propose a monthly dividend to cure the arrearage.
6. Debtor cannot make the payments required under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor may not be entitled to Chapter 13 relief. 11 U.S.C. § 109(e). Debtor does not have sufficient income to be entitled to Chapter 13 relief under 11 U.S.C. § 109(e). Section 109(e) requires a Debtor to have regular income an "individual with regular income" is defined in section 101 to mean an individual whose income is sufficiently stable to make payments under a plan under Chapter 13.

Trustee argues that Debtor has not demonstrated that he has the resources to make the payments necessary to not only make the proposed mortgage payments, but also to cure the mortgage arrears. Debtor filed his income statement (Dkt. 19), showing income of \$1,966.33, which included \$72.33 in rents, \$575.090 in social security income, and \$666.00 from Genworth. At the Meeting of Creditors on September 11, 2014, Debtor admitted he no longer received \$666 from Genworth.

In Debtor's declaration (Dkt. 54) he states that his income has again changed and that he is no longer receiving the rents reported on Schedule I, but that he is now going to move in with his daughter and son-in-law who will assist with the payments. It appears that his only source of income is the \$575 in social security.

Debtor's daughter provided a declaration (Dkt. 53) stating that she will pay \$1,600 per month to her father in addition to a one-time lump sum payment of \$2,800.

No amended budget has been filed to support the amended plan.

7. Trustee is not certain that Debtor file this case in the proper venue. Debtor's mailing address filed with the court

is 5252 Hauck Street, Unit A, El Paso, Texas. Debtor did not attend the first 341 meeting and the meeting was rescheduled to September 11, 2014. In the prior case (Case 2) Debtor listed the mailing address as 115 Linda Lane, Shady Cover, Oregon. In that case Debtor did not attend the first 341 meeting.

Trustee now questions where Debtor resides, how long he has lived there, and whether venue in the Eastern District is appropriate?

The Trustee has highlighted numerous problems with the proposed plan and the state of the Debtor's case, in general. The court finds persuasive many of the Trustee's arguments, particularly the issues concerning good faith, § 109(e) eligibility and proper venue. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed

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

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

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

**IT IS ORDERED** that the Motion to Confirm is denied.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 25, 2014. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to grant the Motion to Dismiss and dismiss the case.**

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on August 14, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$2,496.66 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,248.33 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

#### **PRIOR HEARING**

At the hearing on September 10, 2014, the court continued the matter so the Motion to Dismiss would be hearing concurrently with the Motion to Confirm.

#### **DISCUSSION**

The court notes that Debtor recently made the final installment payment on the filing fee, remedying the multiple orders to show cause as to why the court should not dismiss the case for the failure to pay the fee. Further, Debtor appeared at the continued meeting of creditor on September 12, 2014. Debtor did not file a declaration with the court indicating whether he is current on plan payments and has provided the required documents to the Trustee. On these grounds, the court finds cause to dismiss the case.

Beyond meeting the obligations highlighted by the Trustee in the Motion to Dismiss, the court finds the following other grounds as "cause" to dismiss the case:

(1.) Debtor may not be eligible to be a Chapter 13 Debtor under 11 U.S.C. § 109(e). Debtor does not have sufficient income to be entitled to Chapter 13 relief under 11 U.S.C. § 109(e). Section 109(e) requires a Debtor to have regular income and "individual with regular income" is defined in section 101 to mean an individual whose income is sufficiently stable to make payments under a plan under Chapter 13.

Trustee argues that Debtor has not demonstrated that he has the resources to make the payments necessary to not only make the proposed mortgage payments, but also to cure the mortgage arrears. Debtor filed his income statement (Dkt. 19), showing income of \$1,966.33, which included \$72.33 in rents, \$575.090 in social security income, and \$666.00 from Genworth. At the Meeting of Creditors on September 11, 2014, Debtor admitted he no longer received \$666 from Genworth.

In Debtor's declaration (Dkt. 54) he states that his income has again changed and that he is no longer receiving the rents reported on Schedule I, but that he is now going to move in with his daughter and son-in-law who will assist with the payments. It appears that his only source of income is the \$575 in social security.

Debtor's daughter provided a declaration (Dkt. 53) stating that she will pay \$1,600 per month to her father in addition to a one-time lump sum payment of \$2,800.

No amended budget has been filed to support the amended plan.

(2.) The court is not confident that the Eastern District is the appropriate venue for the Debtor. Debtor's mailing address filed with the court is 5252 Hauck Street, Unit A, El Paso, Texas. Debtor did not attend the first 341 meeting and the meeting was rescheduled to September 11, 2014. In the prior case (Case 2) Debtor listed the mailing address as 115 Linda Lane, Shady Cover, Oregon. In that case Debtor did not attend the first 341 meeting.

The court and the Trustee now question where Debtor resides, how long he has lived there, and whether venue in the Eastern District is appropriate?

Cause exists to dismiss this case. The motion is granted and 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 to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

29. [14-27762](#)-C-13 CESAR RAMAGOZA OBJECTION TO CONFIRMATION OF  
DPC-1 Jennifer C. Wong PLAN BY DAVID P. CUSICK  
9-17-14 [[29](#)]

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Motion to Dismiss 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 overruled as moot, the case having been dismissed.

30. [14-26765](#)-C-13 WILLIAM BARRANTES MOTION TO CONFIRM PLAN  
RS-2 Richard L. Sturdevant 9-5-14 [[32](#)]

**CASE DISMISSED 9/17/14**

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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The case having previously been dismissed, the Motion is denied as moot.

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

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

The Motion to Dismiss 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 as moot, the case having been dismissed.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 7, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 10-37403) was filed on July 1, 2010 and dismissed on September 17, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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 argues that the current case was filed on September 22, 2014 with a plan that is confirmable and very likely to successfully complete given Debtors' income and expenses. Debtors file the case with the main goal being vehicle retention. Pursuant to Schedules I & J, Debtors have monthly net income of \$150.00. Debtors argue that their Schedule I and B22C reflect that they are earning sufficient wages to cover their Chapter 13 obligations. Debtors' previous case was dismissed on prompting by the Chapter 13 Trustee who filed a Motion to Dismiss based on Debtors being \$940.00 delinquent in plan payments.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The court notes that the delinquency leading to dismissal of the previous case was minor in nature and occurred after Debtor's had paid a substantial amount of money into the plan.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

**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).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2014. Fourteen days' notice is required.

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

**The court's decision is to sustain the Objection.**

#### **PRIOR HEARING**

The court held an initial hearing on the Objection on September 9, 2014. At that hearing, counsel for Debtor requested time to file a written opposition to address the Trustee's concerns. The court granted a continuance to October 21, 2014.

On September 23, 2014, Counsel for Debtor filed a statement requesting that the court sustain the Objection of the trustee because Debtor intends on filing an amended plan to more adequately address the Trustee's concerns.

#### **OBJECTION**

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

1. Debtor did not list an expense for business taxes and no expense was listed for medical or business insurance. It is not clear to the Trustee whether the net income listed on Schedule J is accurate and; therefore, not clear whether Debtor can make the payments under the plan or comply with the plan. 11 1325(a)(6).
2. Schedule J discloses five (5) adult dependents living with Debtor but shows no income from these dependents. Trustee is further confused because Form B22C discloses that Debtor has a household size of two (2). The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b).

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

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

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

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

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

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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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 September 3, 2014. Thirty-five 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. 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 3, 2014 is confirmed, and counsel for the Debtors 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 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).**

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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 17, 2014. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

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

1. Debtor appears to have insufficient disposable income to make the required payments. 11 U.S.C. § 1325(a)(6). Debtor's projected disposable monthly income on Schedule J is \$2,983 and the Debtor is proposing a plan payment over \$3,000.
2. Debtor has not properly completed Form B22C. Debtor may be above median income. Debtor reports income from adoption assistance that totals \$5,947.00 per month, but Debtor did not report this income on her Current Monthly Income Form B22C Line 7.
3. Debtor is \$3,140.00 delinquent in plan payments to the

Trustee to date and the next scheduled payment of \$3,140.00 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 7, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value is continued to [date] at [time].**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1443 Utah Street, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$200,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$225,888.00. Partners for Payment Relief DEII, LLC's second deed of trust secures a loan with a balance of approximately \$39,477.67.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11

U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

#### **OPPOSITION**

Creditor opposes the Debtor's Motion on the grounds that Debtor did not provide evidence of the amount of the senior lien or the value of the property. Creditor complains that it has not had a chance to conduct an appraisal of the property.

#### **DISCUSSION**

The court has evidence of the amount owed on the senior lien by way of the Debtor's schedules, which were signed under penalty of perjury. The court also takes the Debtor's opinion on the value of the residence to be evidence of the asset's value. Fed. R. Evid. 701.

The court will grant Creditor a continuance to submit an appraisal on the value of the property.

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

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

The Motion for Valuation of Collateral filed by 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 continued to **[date]** at **[time]**.

**Final Ruling:** No appearance at the October 21, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

The Motion to Approve Loan Modification filed by Aura Hernandez ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,173 a month to \$816.33 a month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2% for years 1-5 to 3% of year 6, 4% for year 7, and \$.125% for years 8-35.

The Motion is supported by the Declaration of Aura Hernandez. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

The Chapter 13 Trustee filed a statement of non-opposition to the requested relief.

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

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

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

The Motion to Approve the Loan Modification filed by Aura Hernandez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Aura Hernandez ("Debtor") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 4210 Archean Way, Sacramento, California, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 47.

**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 17, 2014. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may not be his best efforts. 11 U.S.C. § 1325(b). Debtor is over median income and proposes to pay \$2,650 per month for 60 months with a dividend of 100% to unsecured claims. Debtor's projected disposable monthly income listed on Schedule J totals \$3,985 and Debtor is proposing a plan payment of only \$2,650. If all disposable income is contributed toward the plan, Debtor's plan could complete in 27 months as opposed to 60 months.

#### **DEBTOR'S RESPONSE**

Debtor argues that the applicable term is permissive and nothing mandates that he cannot propose a plan paying over the course of 60 months. Specifically, Debtor provides that 11 U.S.C. § 1325(b)(4)(B) states that the applicable commitment period "may be less than 3 or years . . . but only if

the plan provides for payment in full of all allowed unsecured claims over a shorter period."

Debtor cites 11 U.S.C. § 1322(a)(1), which states the plan "shall provide for the submission of all or such portion of future earnings or other future income of the debtor . . . as is necessary for the execution of the plan." Debtor argues that since he is proposing to submit all future earnings "as is necessary" for the execution of the plan, the Trustee does not have the authority to require the Debtor to pay more than necessary.

#### **TRUSTEE'S RESPONSE**

Trustee cites 11 U.S.C. § 1325(b)(1)(A):

If the trustee or the holder of an allowed unsecured claim objects to 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.

Trustee argues that Debtor is not proposing to pay all unsecured claims immediately upon the effective date of the plan, but is proposing to stretch the payment of these debts over 60 months with no interest proposed to unsecured claims.

#### **DISCUSSION**

The case law on 11 U.S.C. § 1325(b)(1) is sparse and limited. In full, section 1325(b)(1) provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the 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.

Here, the Trustee lodged an Objection to confirmation that triggered § 1325(b)(1). Debtor is requesting the court confirm a plan that does not propose to pay all of Debtor's disposable income into the plan over the 60 months term. Debtor proposes paying \$2,650 out of projected disposable income of \$3,985; which means subsection B is not applicable.

Trustee argues that the amount of the claim under subsection A should include interest on the allowed claim amount.

As of October 17, 2014, Debtor has two allowed general unsecured claims. TD Bank USA, N.A. filed proof of claim 4 in the amount of \$227.65 and Cashcall, Inc. filed proof of claim 6 in the amount of \$9,981.01. The claims bar date for creditors other than government creditors is December 10, 2014.

Trustee supports his argument that Debtor must pay interest with the unpublished opinion *In re Braswell*, 2013 WL 3270752 (Bankr. D. Or. 2013). *In re Braswell* adopts an opinion out of the Bankruptcy Court for the Northern District of Indiana and holds that if after the Trustee objects to confirmation, Debtor moves forward pursuant to 11 U.S.C. § 1325(b)(1)(A), then unsecured claims must be paid in full with interest. 2013 WL 3270752, \*4 (citing *In re Hight-Goodspeed*, 486 B.R. 462 (Bankr. N.D. Ind. 2012)). The court in *Hight-Goodspeed* determined that the language: "as of the effective date of the plan" preceding subsections (A) and (B) is present in other sections of the code and routinely interpreted to require a present value analysis of the proposed payments, meaning the debtor is required to pay interest to compensate for the delay. See 486 B.R. 462, 464 (citing 11 U.S.C. §§ 1129(b)(2)(A)(i)(I, II), 1225(a)(5)(B)(ii), 1325(a)(5)(B)(ii), 1129(a)(7), 1225(a)(4), 1325(a)(4), 1129(a)(9)(C)(i)).

The court finds the reasoning of *In re Hight-Goodspeed* and *In re Braswell* persuasive and finds it necessary to compel Debtor to set an interest rate to be paid on the allowed unsecured claims.

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

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

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

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

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

38. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA  
DPC-2 ALICE MAY  
Andrew Redner

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
8-18-14 [[74](#)]

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

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

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

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

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

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

**The court's decision is to deny the Motion to Dismiss without prejudice.**

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtors filed their case on April 26, 2014 and have yet to confirm a plan. The Trustee's Objection to Confirmation was heard and denied at the hearing on July 1, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **PRIOR HEARING**

At the hearing on September 10, 2014, the court decided to conditionally grant the motion. The court ordered the Debtor to be current on all payments required under the proposed Chapter 13 plan as of September

26, 2014 and, if not, the Trustee shall lodge with the court an order dismissing the case. (Dkt. 97).

**SUBSEQUENT PLEADING**

Since the entry of the conditional order, the Trustee has not lodged an order with the court dismissing the case. Further, in Trustee's Opposition to the Debtors' Motion to Confirm (ECF-85), Trustee did not oppose the Motion on the grounds that the Debtors were delinquent in plan payments. Such inaction on behalf of the Trustee suggests that Debtors have brought their plan payments current. Debtors are adequately prosecuting their Chapter 13 case.

Cause does not exist to dismiss this case. The motion is denied and the case is to remain open.

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.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee and Dawn Lorraine McGrath, "Creditor," oppose confirmation of the plan.

**TRUSTEE OPPOSITION**

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

1. Debtors' plan proposes to avoid the lien of Dawn Lorraine McGrath; however, the Motion to avoid was withdrawn via a Notice of Withdrawal dated September 30, 2014. Debtors cannot make the proposed payments or comply with the plan under 11 U.S.C. § 1325(a)(6).
2. Trustee argues that Debtors did not properly disclose rental income and that the plan may not reflect Debtors' best efforts. 11 U.S.C. § 1325(b). Debtors' Statement of Current

Monthly Income includes \$600 per month of rental income while Amended Schedule I lists no rental income. Debtors testified at the 341 Meeting that the property at 910 Branciforte Street, Vallejo, California is rented out for gross rent of \$1,250 per month.

3. Debtors may not be able to make the payments under 11 U.S.C. § 1325(a)(6). Debtors' testified at the first meeting of creditors that they are renting a residential property for \$1,250 per month; however this property is not the Debtors' street address on Debtors' petition. Further, Schedule J does not disclose the rent expense.

### **CREDITOR'S OBJECTION**

Creditor joins in the Trustee's objections and takes issue with the following disclosures of Debtors:

1. Creditor argues that Debtors recent spent \$5,000 on admission for a "Media and Eco Celebrity Event" in connection with Dahliana, LLC. Creditor argues that Debtors' income and expense disclosures do not provide for this type of excess income to attend such events and hypothesizes that the income and expenses are not properly disclosed.
2. Creditor states that she learned that prior to filing, Debtors had other bank accounts at a Chase Bank in Grass Valley California and that these accounts differ from the Chase Bank accounts in Sacramento disclosed on Debtors' schedules.
3. Creditor notes that the Schedules do not mention the bank accounts for Debtors' businesses: Dahliana, LLC; Skin Studio; or The Handy House Man.
4. Debtors' identify a claim against David Springfield for malpractice in the amount of \$4,000. Creditor argues that the contract with Springfield was not adequately disclosed. Creditor asserts that the contract provides that Springfield is to pay the judgment Creditor is seeking here, in full, and will take full responsibility for it. Creditor's point is that the contract claim against Springfield is worth over the amount due on the judgement, or \$33,000.

### **DEBTORS' RESPONSE**

Debtors state that the first Trustee objection is resolved because they filed another Motion to Avoid Judicial Lien.

Debtors states that the rental income is adequately disclosed. The figure of \$729.47 listed on line 8a of Schedule I is the rental income after accounting for \$420.53 mortgage expense. Debtors admit this is not the clearest accounting, but after applying the mortgage payment to the gross income of \$1,250, Debtors take home \$729.47 in net rental income per month.

Debtors argue that the rent expense is disclosed on line 4 of

Schedule J, where Debtors indicate that they pay \$650 per month for rent. Another \$650 is paid by Debtors' business, the Handy House Man and is listed as an expense on the Business Income and Expenses sheet attached to Schedule I.

Debtors argue that the "Media and Eco Celebrity" event cost approximately \$1,000, as it was subsidized by a friend and an agreement to buy future advertising. Debtors assert that the business expenses were properly disclosed and that this is a legitimate business expense as Dahliana, LLC requires advertising to be profitable.

Debtor states that Debtor Carola May's bank accounts were combined on the schedules. Debtor Carola May uses four bank accounts. One of the accounts is Dahliana's, and Debtors assert it does not need to be listed. One is empty. One is Skin Studio's, and the last is a savings account. At the current time, co-Debtor has under \$1,000 in all four accounts. Debtor asserts there is no attempt to hide assets.

Debtors believe there is nothing to recover against David Springfield (a claim originally valued at \$4,000). Debtors have been unable to find counsel to prosecute the claim and have no means to prosecute it themselves.

## **DISCUSSION**

The court's decision is to continue the hearing on the Motion to Confirm to permit Debtors to address the remaining outstanding issues.

As to the Trustee's objections, the court will overrule the first, as the Debtors filed a Motion to Avoid Judicial Lien that is set for hearing on October 21, 2014. Debtors sufficiently explain the rental income issue pointed out by the Trustee; however, what remains outstanding is disclosure of the property Debtors are renting. As the Trustee stated, the property is not the street address listed on Debtor's petition.

As for the Creditor's objections, the court is satisfied that Debtors' business income and expenses are adequately disclosed. Creditor presented no convincing evidence to the contrary. The court proposes that Debtor submit an amended Schedule B with the bank accounts properly listed instead of mistakenly combined on the Schedules. Debtors should accordingly update the value of the claim against David Springfield.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to [date] at [time].

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 6, 2014. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Avoid Judicial Lien is granted.**

A judgment was entered against the Debtor in favor of Dawn Lorraine McGrath for the sum of \$24,843.02. The abstract of judgment was recorded with Solano County on March 11, 2014. That lien attached to the Debtor's residential real property commonly known as 910 Branciforte Street, Vallejo, California. The lien also attached to Debtor's personal property listed on Schedule B.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$109,000 as of the date of the petition. The unavoidable consensual liens total \$204,092.77 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract

of judgment in the chain of title of the subject real property. 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).

Pursuant to Schedules B, C, D, the approximate value of, liens against, and exemptions taken in personal property are as follows:

<b>PROPERTY</b>	<b>VALUE</b>	<b>LIEN</b>	<b>EXEMPTION</b> CCP 703.140	<b>EQUITY</b>
Cash	\$80		\$80 (b) (5)	\$0.00
Chase Accounts	\$500		\$500 (b) (5)	\$0.00
Chase Accounts	\$100		\$100 (b) (5)	\$0.00
Investment	\$160		\$160 (b) (5)	\$0.00
TV	\$100		\$100 (b) (3)	\$0.00
Bedroom furniture	\$175		\$175 (b) (3)	\$0.00
Living room furniture	\$200		\$200 (b) (3)	\$0.00
Dining Table	\$50		\$50 (b) (3)	\$0.00
Household goods	\$200		\$200 (b) (3)	\$0.00
Clothing	\$250		\$250 (b) (3)	\$0.00
Wedding Rings and Jewelry	\$750		\$750 (b) (4)	\$0.00
Bicycles	\$300		\$300 (b) (5)	\$0.00
Sole Proprietorship	\$1,500		\$1,500 (b) (6)	\$0.00
Sole Proprietorship	\$1,600		\$1,600 (b) (6)	\$0.00
Dahlia LLC	\$2,090		\$2,090 (b) (5)	\$0.00
Malpractice Claim Estimate	\$4,000		\$4,000 (b) (5)	\$0.00
Potential claim	Unknown		\$1.00 (b) (5)	\$0.00
Trademarks	\$3,000		\$3,000 (b) (5)	\$0.00
2011 Nissan Juke	\$9,391	\$15,055	\$1.00 (b) (5)	-5,664
2003 Toyota Tundra	\$4,800		\$4,800 (b) (2)	\$0.00
Laptop	\$1,000		\$1,000 (b) (5)	\$0.00
<b>TOTALS</b>	<b>\$30,246</b>	<b>\$15,055</b>		<b>NONE</b>

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 in the personal property. Therefore, the fixing of this judicial lien impairs the

Debtor's exemptions claimed in the personal 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 Down Lorraine McGrath, Solano County Superior Court Case No. CU13-079635, Document No. 201400017243, recorded on March 11, 2014, with the Solano County Recorder, against the real property commonly known 910 Branciforte Street, Vallejo, California and personal property listed on Debtor's Schedule B (ECF 99), is avoided 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.

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

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on August 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is continued to [date] at [time].**

The Motion to Approve Loan Modification filed by Nationstar Mortgage, LLC ("Creditor") seeks court approval for Debtor to incur post-petition credit. Creditor, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,951.50 a month to \$1,907.60 a month. The modification will reduce the interest rate from 5.375% to 4.625%, extend the term of the loan from 360 months to 480 months and reduce the principal balance from \$348,500 to \$313,164.53.

The Motion is supported by a copy of the loan modification agreement. No declaration was filed with the Motion.

**Chapter 13 Trustee Response**

Trustee has reviewed the terms of the loan modification and has no objection to the terms. Trustee objects on the basis that Creditor lacks the legal authority to move for the requested relief.

Local Bankr. Rule 3015-1(b) (1) provides:

*Transfers of Property.* The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1(i).

Pursuant to 11 U.S.C. § 363(b), the Trustee after notice and a hearing may use property of the estate other than in the ordinary course of business, and 11 U.S.C. § 1303 grants exclusive rights under § 363(b) to the Debtor in a Chapter 13. There is no indication that Creditor has the power under 11 U.S.C. § 363(b) to make this motion. While the court may find the creditor has derivative standing to exercise powers otherwise reserved to the Trustee (*In re Godon*, 275 B.R. 555, 565 (Bankr. E.D. 2002)), no declaration was filed by the debtor affirming that they seek, or still seek, the requested relief.

The loan modification agreement is in the name of Brenda DeVore (Dkt. 47). Exhibit 5 to Docket 47 is a death certificate reporting a date of death of 06/06/13 for Brenda DeVore, and appointment of Thomas DeVore as administrator of the decedent's estate. The document is not signed by Mr. DeVore on behalf of the estate or as administrator of the estate.

Trustee is uncertain if the probate estate of Brenda DeVore has closed or remains open. Exhibits filed by movant show that Mr. DeVore was appointed as administrator of the estate; however, no declaration was filed by Mr. DeVore as to the status of the probate estate.

Finally, no notice of death was filed with the court nor a Motion to Substitute Party.

### **Discussion**

The court is prepared to grant Debtors' Motion made pursuant to FRBP 1016 (Dkt. 53). By way of that Motion, the court is ordering that the Chapter 13 case is to proceed as though the death of do-Debtor Brenda did not occur. As such, the court is satisfied that the loan modification process can continue. However, what remains outstanding is a declaration from the Debtor's testifying that Movant has the requisite power to seek the relief requested.

Again, the court has no issues with the substance of the loan modification, only the lack of evidence. The court recognizes that efforts on this Motion were overshadowed by the Rule 1016 Motion and will, therefore, grant a second continuance for Debtors to supplement the record accordingly.

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

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

The Motion to Approve the Loan Modification filed by Nationstar Mortgage, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is continued to **[date]** at **[time]**.

**Tentative Ruling:** The Motion to Substitute Deceased Party 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).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 7, 2014. Fourteen days' notice is required. That requirement was met.

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

**The motion is granted pursuant to Fed. R. Bankr. P. 1016 Motion.**

Debtors seek an order of the court substituting co-Debtor Thomas De Vore for deceased co-Debtor, Brenda Eve De Vore. The court interprets the requested relief not as a desire to have a party substituted, but as a request to have the case continue, pursuant to FRBP 1016, as though co-Debtor Brenda De Vore's death did not occur.

On June 8, 2013, co-Debtor Brenda Eve De Vore passed away. A death certificate was issued on June 13, 2013. Co-Debtor Thomas Edward De Vore asserts he is capable of substituting himself for his deceased spouse. Debtor has made all plan payments and only has 20 months remaining in the case.

Fed. R. Bankr. P. 1016 provides that the death of a Chapter 13 debtor does not automatically end a case, but that the case may be dismissed, or if

further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Debtor presented the motion as an effort to substitute Thomas for Brenda; however, the court perceives the motion as one requesting the case continue pursuant to Fed. R. Bankr. P. 1016 as though Brenda's death did not occur. In this instance, the court finds that the administration of the case is possible after the death of co-Debtor and that it is in the best interest of the parties for the case to proceed. The case will proceed as though the death of co-Debtor had not occurred.

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 Substitute Deceased Party filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the case is to continue as though the death of Brenda Eve De Vore did not occur pursuant to Fed. R. Bankr. P. 1016.

43. [11-39000](#)-C-13 MARK ALVAREZ AND DAWN  
ULC-3 LARKINS  
Julie B. Gustavson

MOTION TO INCUR DEBT O.S.T.  
10-10-14 [[68](#)]

**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).**

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Local Rule 9014-1(f) (3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 10, 2014.

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.

**The Motion to Incur Debt is granted.**

The motion seeks permission to purchase a 2013 Hyundai Sonata, which the total purchase price is \$22,831.30, with monthly payments of \$305.53 per month.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The Chapter 13 Trustee filed a statement not opposing the court granting the relief requested. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Mark Alvarez and Dawn Larkins, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 71.

**No 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.**

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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 September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**No Tentative Ruling**

The Chapter 13 Trustee seeks dismissal of Debtor's pursuant to 11 U.S.C. § 1307(c)(1), Debtor is causing unreasonable delay that is prejudicial to creditors and requests an order pursuant to 11 U.S.C. § 105(a) prohibiting Debtor from filing any subsequent petition under the bankruptcy code without first obtaining permission from the court for the district in which the case would be filed.

Since 2009, Debtor has filed six cases in the Eastern District of California. Each case has been inadequately prosecuted and each was commenced with a skeleton filing. Debtors case history is as follows:

Case Number	Date Filed	Debtor Name	Disposition	Notes
09-44142	11/04/09	Alexander Zeakovi	Dismissed 01/07/10. Reopened 01/28/10. Terminated 02/18/10.	No relief granted.

10-20028	01/04/10	Alexander Zeakovi	Dismissed 04/09/10	No relief granted.
11-29821	04/21/11	Aleksandr Zhirkov	Dismissed 08/03/11	No relief granted.
12-33723	07/26/12	Aleksandr Zhirkov	Dismissed 11/09/12	No relief granted.
13-31337	08/29/13	Alexander Zeakovi	Dismissed 11/14/13	No relief granted.
14-24797	05/07/14	Aleksandr Zhirkov	Pending.	

The current case was commenced with a skeleton filing. On May 5, 2014, the court issued a notice of incomplete filing, and allowed the Debtor until May 21, 2014 to file the missing documents. Debtors filed a motion to extend the document filing deadline that was denied by the court (Dkt. ). Debtor filed the missing schedules on May 27, 2014 and a Chapter 13 plan on May 29, 2014.

Trustee convened the first meeting of creditors on June 26, 2014. The Trustee's Objection to Confirmation (DPC-2) and Objection to Exemptions (DPC-3) were both heard and sustained by the court at the hearing held August 5, 2014. (Dkts. 66 & 67).

To date, Debtor has not filed an amended plan. A total of three plan payments have come due. Debtor is \$100 delinquent in plan payments, with the next scheduled payment of \$100 being due September 25, 2014. Debtor has paid \$200 into the plan to date.

On August 26, 2014, the court entered a civil minute order granting OneWest N.A., f/k/a OneWest Bank, FSB's Motion for Relief from Stay with *in rem* relief binding for two years.

Trustee believes that Debtor's repeat filings are an attempt to delay, hinder, or defraud creditors and believes there is a strong likelihood that Debtor will continue to file future bankruptcy petitions in attempts to delay, hinder, or defraud creditors.

#### **DEBTOR'S OPPOSITION**

Debtor argues that there are no facts to support that creditors are prejudice by Debtor's actions. Specifically, Debtor points out that the only creditor who filed a proof of claim is OneWest Bank, N.A., and it was granted relief from the automatic stay on August 28, 2014. The relief granted in that motion was ordered binding for a period of two years. The basis for the Motion to Dismiss, Debtor argues, was mooted by the granting of the relief for automatic stay.

Further, Debtor asserts that Debtor has been actively engaged with OneWest over the course of his filing history to in an effort to retain his home. He felt that bankruptcy was his only option when faced with Trustee Sales. Debtor argues he attempted to complete each case in good faith.

Debtor asserts that he and OneWest entered into a trial loan

modification plan that will possibly alleviate the need for bankruptcy.

Debtor has retained counsel to provide advice throughout the bankruptcy process and Debtor's counsel is working diligently to review Debtor's last proposed plan, the pending Objection to Proof of Claim, and the related adversarial complaint.

Counsel for Debtor anticipates that she will do one of the following no later than three days following the order on the Trustee's Motion to Dismiss:

- (1.) File a voluntary Motion to Dismiss the case; or
- (2.) File an Amended Chapter 13 Plan and Motion to Confirm

#### **DISCUSSION**

The court continued the hearing to October 21, 2014 and ordered that if by October 20, 2014, Debtor has not either filed a voluntary motion to dismiss or filed an amended chapter 13 plan and related motion to confirm, the court will also issue an order dismissing the case.

As of October 20, 2014 ...

Therefore, the court's decision is to ...

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 ...