UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 21, 2014 at 3:00 p.m.

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1. 14-28101-E-13 SHERRI ARNOLD
DPC-1 James Andrews

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-17-14 [28]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

2. 14-20006-E-13 RYAN/MEGAN ROSTRON MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria 9-9-14 [52]

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. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 9, 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.

3. 10-24808-E-13 AMY HUYNH **MOTION TO MODIFY PLAN**
DPC-1 Alan Steven Wolf **9-17-14 [78]**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a Chapter 13 Trustee to modify a plan after confirmation. David Cusick, the Chapter 13 Trustee, has filed evidence in support of confirmation. The Trustee seeks to modify the plan to incorporate the lump sum payment of $10,000.00 and continue monthly payments of $495.00 for the remaining 8 months of the plan.

In support, the Trustee explains that the Debtor filed a modified plan on February 6, 2014 (Dckt. 65) in which the Debtor stated:

> Debtor has paid in total to date (Month 44) $29,338.26 to her Chapter 13 Plan. Beginning February 25, 2014, Debtor shall pay to the Chapter 13 Trustee $495.00 for Months 45, 46, 47, and 48. After the final payment in Month 48, the Chapter 13 Plan shall be deemed complete and the Debtor is eligible to receive her discharge.

Dckt. 69. The supporting motion stated that:

> Debtor's Chapter 13 Plan has been modified to account for Debtor's withdrawal of funds from her 401(k) retirement account and subsequent large lump sum paid to the Chapter 13 Trustee. On or about Month 38 (July 2013), Debtor made a payment to the Chapter 13 Trustee in the amount of $10,000.00 from a withdrawal from her 401(k) retirement account. This plan modification does not require a change in the Debtor's monthly plan payment under the new First Modified Chapter 13 Plan. Debtor is proposing to pay to the Chapter 13 Trustee payments of $495.00 per month for Months 45 through 48.

Dckt. 65, pg. 2, paragraphs 9-11. The Trustee alleges that the reason for the reduced plan term was not provided for by the Debtor nor did the Debtor submit a current Schedule I and J supporting the modified plan. The Trustee opposed the modified plan on both issues. Dckt 71. The Debtor's motion to modify was denied on March 25, 2014 (Dckt. 75) and the Debtor has not filed any new motion to modify.

Under the Debtor's confirmed plan from November 1, 2010, the plan payments for months 1 and 2 were $1,128.26 combined, then $495 per month for the months 3 through 60. To date, the Debtor has paid the Trustee $31,318.30 with the last payment of $495.00 posted May 21, 2014.

The Trustee alleges that the Debtor has ignored the fact that the last proposed modified plan was denied and is no longer making payments to the Trustee to fulfill the 60 month plan terms.

The Trustee states that the modified plan proposes $31,318.30 total paid in through September 16, 2014 (Month 52) with 8 remaining payments of $495.00, beginning October 25, 2014, and no less than a 9% dividend to unsecured creditors.

No opposition to the Motion was filed by the Debtor or creditors.

11 U.S.C. § 1329 expressly permits a trustee to seek modification of a Chapter 13 Plan.

Upon review of the currently confirmed plan, the previously denied modified plan filed by the Debtor, and the modified motion filed by the Trustee, it appears that the Trustee's modified plan accounts for the $10,000.00 lump sum payment to the Trustee as well as addressing the 60-month term of the Plan. Seeing as the Debtor has failed to file a subsequent plan accounting for the $10,000.00 lump sum payment to the Trustee and failing to provide for an explanation or supplemental Schedule I and J to account for a reduction in the plan's term length, the Trustee's modified plan properly reflects the $10,000.00 payment as well as ensures that the plan length remains 60 months.

While the court notes that it is unusual for a Trustee to file a modified plan, the circumstances surrounding this case justify such action, especially in light of the fact that the Debtor has not filed any revised modified plans and is not longer making payments.

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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Chapter 13 Trustee's Chapter 13 Plan filed on September 17, 2014 is confirmed, and counsel for the Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 Plan and the Chapter 13 Trustee will submit the proposed order to the court.

4. 14-20708-E-13 NOEL ORLANDO
SDH-4 Scott D. Hughes

OBJECTION TO CLAIM OF CAVALRY INVESTMENTS, LLC, CLAIM NUMBER 21
8-26-14 [71]

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

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 21 of Calvary Investments, LLC is sustained and the claim is disallowed in its entirety.

Noel Orland, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Proof of Claim No. 21 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $186.02. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is April 28, 2014. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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

Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was April 28, 2014. The Creditor's Proof of Claim was filed June 3, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Calvary Investments, LLC, Creditor filed in this case by Noel Orlando, Chapter 13 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 21 of Calvary Investments, LLC is sustained and the claim is disallowed in its entirety.

5. 14-20708-E-13 NOEL ORLANDO
SDH-5 Scott D. Hughes

OBJECTION TO CLAIM OF CAVALRY INVESTMENTS, LLC, CLAIM NUMBER 20
8-26-14 [75]

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

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 20 of Calvary Investments, LLC is sustained and the claim is disallowed in its entirety.

Noel Orland, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Proof of Claim No. 20 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,401.53. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is April 28, 2014. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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

Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was April 28, 2014. The Creditor's Proof of Claim was filed June 3, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Calvary Investments, LLC, Creditor filed in this case by Noel Orlando, Chapter 13 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 20 of Calvary Investments, LLC is sustained and the claim is disallowed in its entirety.

6. 09-36410-E-13 MARC/SHARON VERLE — MOTION TO MODIFY PLAN
FF-4 Gary Ray Fraley — 9-5-14 [80]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

Marc and Sharon Verle ("Debtors"), through Debtors' Counsel, filed the instant Motion to Confirm First Modified Plan on September 5, 2014. Dckt. 80.

MOTION

Debtors, in the motion, state that the financial circumstances of the Debtors have changed since confirmation of the Plan. Debtors state that the plan must be modified because:

1. Due to the fact the unsecured claims came in $27,239.91 greater than scheduled the Debtors are filing this Plan to lower the percentage paid to all unsecured creditors from one-hundred percent to seventy-eight percent.

2. The unsecured claims came in greater than expected because Citi Financial filed a claim for the full amount of an automobile - without deducting the money they received for the sale of the automobile. Debtors surrendered the automobile to Citi Financial at the beginning of their bankruptcy filing.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant motion on October 7, 2014. Dckt. 99. The Trustee objects on the grounds that it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Specifically, the Trustee states that the Debtors are delinquent $1,422.00 under the terms of the proposed modified plans. The Trustee asserts that the payments due under the proposed modified plan for the 60 month term are $84,579.00 and the Debtors have paid a total of $83,157.00 to the Trustee with the last payment posted August 1, 2014.

DISCUSSION

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

The Trustee's objection is well taken. The court cannot confirm a plan when the Debtors are delinquent under the terms of the proposed plan. According to the Trustee's records, the Debtors are delinquent in the amount of $1,422.00. The Debtors offer no evidence or declarations explaining this delinquency.

Additionally, the Debtors fail to adequately explain why, after Debtors surrendered the car to Citi Financial, the claim for the automobile was not reduced. The Debtors do not provide adequate explanation on why the Debtors did not object to Citi Financial's claim in the full amount of the vehicle after the car was turned over.

As the plan currently stands, Citi Financial will be receiving the full value of its claim after the collateral of the claim was turned back over. Furthermore, by Citi Financial not accounting for the returned vehicle and reducing its claim, the remaining unsecured creditors are suffering from a reduction of 100% to 78% on payment of their claims. The court will not allow a 22% reduction in unsecured creditors payment because the Debtors failed to object to Citi Financial's claim. If the vehicle is truly back with Citi

Financial, the Debtors must ensure that Citi Financial's claim is reduced.

The Plan, which proposes to double pay Citi Financial, is does not comply with the provisions of 11 U.S.C. § 1325(a)(5) [providing for the secured claim], improperly discriminates against all other creditors holding general unsecured claims by over paying Citi Financial, and is not being proposed in good faith.

OBJECTION TO CLAIM

On September 22, 2014, Debtors filed an Objection to Proof of Claim No. 18 filed by CitFinancial, Inc. Dckt. 90. The Objection asserts that the general unsecured claim should be $0.00. The hearing on the Objection to Claim is November 6, 2014.

It appears that if the objection is sustained, then the dividend to be provided general unsecured creditors is significantly greater than the reduced amount based on CitiFinancial having a large general unsecured claim.

The court continues the hearing to allow Debtors to prosecute the Objection to Claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on November 18, 2014.

7. 11-37113-E-13 TEVIN/JESSICA TIANGTRONG MOTION TO PURCHASE REAL PROPERTY
PGM-3 Peter G. Macaluso 9-15-14 [74]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 15, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Purchase Real Property is granted.

Tevin and Jessica Tiangtrong ("Debtors") filed the instant Motion to Purchase Real Property on September 15, 2014. The motion seeks permission to purchase real property commonly known as 701 Gibson Drive #2036, Roseville, California, (the "Property") which the total purchase price is $139,900.00. The Debtors propose using the proceeds of $70,070.30 from the sale of their previous home toward the purchase of the Property. The balance of the purchase price is being contributed by Debtor Tevin Tiangtrong's mother, Tubtim Hosking, in case and she will be a co-owner of the property. Debtors' counsel has released the proceeds held in trust of $70,070.30 to Placer Title under Escrow #410-28023, as of September 10, 2014, to be held in escrow pending court approval of the purchase.

David Cusick, the Chapter 13 Trustee, filed a limited objection to the

instant motion on September 30, 2014. Dckt. 79. The Trustee states that he has no objection to the proposed purchase, providing that the Trustee receives a final closing statement within fourteen days of the close of the escrow. The Trustee also notes that the $70,070.30 that the Debtors propose using to purchase the new residence is claimed as exempt under California Code of Civil Procedure § 704.730(a)(2). Under this exemption, the Debtors only has 180 days to reinvest the proceeds in a residence, and where the Debtor has put the money in escrow, it appears the Debtors has started to reinvest the proceeds, but if the funds are not reinvested, the proceeds will be non-exempt equity and the Trustee will move to modify the plan.

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. With the Trustee's objection being limited to ensuring that he receives a final closing statements and the purchase takes place before the expiration of the 180 day window provided for in CCCP § 704.730(a)(2), 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 Tevin and Jessica Tiangtrong, Debtors, are authorized to purchase the real property commonly known as 701 Gibson Drive #2036, Roseville, California pursuant to the terms of the agreement, Exhibit A, Dckt. 77.

8. 13-35413-E-13 ROBERT JEFFREY **MOTION TO CONFIRM PLAN**
RJ-10 Pro se **8-22-14 [118]**

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2014. By the court's calculation, 60 days' notice was provided. 42 days' notice is required.

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

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

Robert Jeffrey ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 22, 2014. Dckt. 118.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a nonopposition to the Debtor's instant motion. Specifically, the Trustee lists:

1. Solano County Tax Collector. The Debtor listed Solano County property taxes in Class 2 of the Plan. No collateral description was given. The creditor filed a claim on 12/16/2013 (Claim #2), for $9,116.46, the Debtor filed an amended secured claim on 2/28/2014 for $6,752.00, the Creditor filed an amended secured claim in the amount of $10,736.41 on March 17, 2014; and then another amended secured claim on May 12, 2014 in the amount of $7,346.35. The Debtor may not be able to amend the claim as they can only file a claim if no claim was timely

filed, (See 11 U.S.C. § 501(c)). The Debtor gave no collateral description in the plan for this creditor, although they gave two different account numbers on Schedule D (Dckt. 1, pg. 13), and the Debtor has four different real properties on Schedule A, (although one property is in Oakland). The Creditor first filed a claim for Three Rivers and Masters. The Debtor filed an amended claim for Masters and Mahogany, then the Creditor filed an amended claim for Masters and Mahogany and then for Masters.

2. The Debtor filed an Amended Schedule D on August 22, 2014 and changed the name of Bank of America to BayView Loan Servicing and only listed the following creditors on Amended Schedule D: Wells Fargo Bank; Bayview Loan Servicing and Etrade Bank. The Debtor failed to include the prior creditors listed on Schedule D filed on December 5, 2013 (Dckt. 1, pgs. 9-10). Wells Fargo Bank's 2nd Deed of Trust listed with a claim amount of $102,764.00; Green Tree; Wells Fargo Bank's 2nd Deed of Trust listed with a claim amount of $58,500.00.

3. The Debtor is proposing 100% to unsecured creditors. According to the court's claim register, the claim of CLC Consumer Services on Behalf of E-Trade Bank filed as an unsecured creditor (Claim No. 1-1), however attached to the claim is an "Open Ended Deed of Trust," it would appear this claim is secured. Based on this claim being secured and not unsecured, the Plan will complete in 60 months.

WELLS FARGO BANK, N.A. OBJECTION

Wells Fargo Bank, N.A. filed an objection to the instant motion on October 7, 2014. Dckt. 138. Wells Fargo Bank, N.A. objects to Debtor's Amended Chapter 13 Plan in that the two EquityLine with FlexAbility Agreements secured by a Second and Third Deed of Trust on the 1176 Mahogany Ct., Fairfild, California property have an End of Draw Period during the term of the Plan, at which time Debtor's monthly payments will change from an interest only payment to a principal and interest payment. Debtor's Amended Chapter 13 Plan fails to set forth clearly and unambiguously the variable terms of the loan, and the amount the Debtor will pay on each loan in accordance with the variable interest provided for by the terms of each loan agreement, and the amounts that Debtor will be obligated to pay when the loan terms convert from interest only to principal and interest.

Wells Fargo Bank, N.A. further objects to the proposed Plan on the grounds that once Debtor's obligations to Wells Fargo Bank, N.A. for loan secured by the Second and Third Deeds of Trusts have been properly scheduled for repayment, Debtor cannot feasibly complete the plan.

Wells Fargo Bank, N.A. concludes by moving for:

1. Due to the fact that Debtor has failed to put forth a "best efforts" Plan to repay his creditors as is required by the laws which govern the administration of this proceeding, Secured Creditor respectfully requests that confirmation of the Plan be denied; or in the alternative,

2. That Debtor's Plan be further amended in order to allow Wells Fargo Bank, N.A. to receive pre- and post-confirmation monthly direct payments of no less than the variable amount due per month pursuant to the terms of the Agreements secured by the Second and Third Deeds of Trust, including but not limited to conversion from interest only payments to principal and interest payments at the End of Draw period.

DISCUSSION

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

First, the only address served for creditors, except for two, were post office boxes. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

As to the objections, Wells Fargo Bank, N.A. is listed as a Class 4 creditor which means that the claims shall be paid by Debtor directly. However, the fact that the Debtor does not account for the step-up in mortgage payments that take place during the plan, the plan's feasibility is questioned since it does not appear that the Debtor will be able to pay the plan once the step-up takes place. This seems to relate to the issues highlighted in the Trustee's issues listed in his nonopposition.

Additionally, the Debtor fails to properly address the secured tax claims. The failure to adequately explain the collateral of the secured tax claims when there are multiple properties and accounts listed on the Debtor's schedules raises questions on the feasibility of the plan, especially in light of the continuously amended claims that have taken plan on the Solano County Tax Assessor's claim.

Because of the failure to take into account the future step up of the Wells Fargo Bank, N.A. claim in the plan, the failure to properly serving creditors, and the failure to adequately account for the secured tax claims, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

9. 13-35413-E-13 ROBERT JEFFREY — CONTINUED MOTION TO DISMISS CASE
DPC-1 Pro se — 8-8-14 [111]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss the Case is granted.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's most recent prior plan on June 24, 2014.

OPPOSITION

Debtor has filed opposition to the Trustee's Motion to Dismiss, stating that a new plan was filed on August 22, 2014. On August 22, 2014, Debtor filed a Motion to Confirm Debtor's Amended Plan. Dckt. 118. The motion is set for hearing on October 21, 2014.

SEPTEMBER 10, 2014 HEARING

At the September 10, 2014 hearing, the court continued the hearing to 3:00 p.m. on October 21, 2014 to be heard in conjunction with the Debtor's Motion to Confirm Debtor's Amended Plan (Dckt. 118). Dckt. 127.

DISCUSSION

The Trustee asserts that the Debtor has yet been able to confirm a plan. While the hearing on the instant Motion to Dismiss was continued to allow the court to consider the plan filed on August 22, 2014, the court denied the motion and the plan was not confirmed on October 21, 2014. The Trustee lists four separate attempts by the Debtor to have a plan confirmed, each of which were denied. Dckt. 76, 89, 92, 106. The case was filed on December 5, 2013 and 10 months later, still no plan has been confirmed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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.

10. 14-26217-E-13 JEFFERY/MANDY PATTERSON — CONTINUED MOTION TO CONFIRM PLAN
CA-3 Michael David Croddy — 7-22-14 [21]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

Jeffery and Mandy Patterson ("Debtor") filed a Motion to Confirm Debtors' First Amended Chapter 13 Plan on July 22, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

MOTION

Debtor seeks confirmation of their First Amended Chapter 13 Plan. This proposed plan provides for monthly payments of $909.00 over a 60-month period. General unsecured creditors will receive 22% repayment of their claims. Debtors intend to clarify issues surrounding their rental property, income from the rental property, and child care expenses. The proposed plan also addresses changes in the Debtor's tax withholdings in paychecks. The Debtor alleges that they are current on all fees and charges in the case and that they have proposed the plan in good faith.

TRUSTEE'S OPPOSITION

The Trustee has filed opposition to this motion. The Trustee alleges that the Debtor has not used best efforts in their plan by failing to include all of Debtor's projected disposable income. 11 U.S.C. § 1325(b). Trustee argues that the Debtor is over median income, paying $909.00 per month for 60 months with a 22% guaranteed dividend to general unsecured claims, where the plan estimates total unsecured claim at $103,135.37, so the plan proposes to pay approximately an average of $378.15 per month to unsecured.

The Trustee also states that the increased monthly payment should increase the dividend to general unsecured creditors, though the percentage repayment stated in the plan has not changed from the Debtors' prior plan.

The Trustee also objects to the increase in Debtors' child care expenses. The Trustee alleges that the increased expense is not supported by evidence or receipts and that the expense exceeds the maximum amount allowed per child under I.R.S. guidelines. The Trustee also argues that Debtors have failed to account for decreasing care costs as the four-year-old children will soon enter school and will no longer need full-time daycare. The Trustee believes Debtors' plan payments should increase over time as this expense decreases.

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S OPPOSITION

Sacramento Municipal Utility District ("SMUD"), a creditor with a secured claim, also filed opposition to this motion. SMUD alleges that the proposed plan violates 11 U.S.C. § 1325(a) because it decreases interest rates such that the plan payments would be less than the allowed claim amount. SMUD argues that the plan provides for an interest rate of 4.25%, which is based on an insufficient risk factor for the amount of risk Debtors present. Debtors' rental property does not appear to be generating profits, which increases their financial risk. Additionally, Debtors' plan decreases SMUD's monthly payment and extends the life of the repayment, which also adds risk.

In stating that there is an insufficient risk factor adjustment SMUD cites the following:

A. a 1% adjustment is not sufficient.

B. In any bankruptcy case there is a risk of default.

C. SMUD's collateral is in rental property in which the monthly rental income is equal to just the monthly debt service. There is no income to pay for the regular maintenance for the rental property.

D. The proposed plan payments decrease the monthly payment from $142.69 a month to $110.00 (reamortizing it over the life of the plan).

E. SMUD proposed increasing the interest rate to 5.00%, an increase of 0.75% from the 4.25% proposed by Debtor.

Opposition, Dckt. 59. In the Opposition, SMUD neglects to specifically identify its collateral and the risk that relates to its collateral. SMUD asserting a purchase money security interest fixture filing, which makes the

deed of trust on the property junior to SMUD's lien. The priority of SMUD's lien and the junior liens whose interests are junior to the SMUD lien are very relevant and important to determine the true risk for SMUD's interest. SMUD apparently does not consider that in making this argument to the court.

Neither of the two declarations filed in opposition to the Motion provide testimony as to the actual risk to SMUD under the Plan. The court has used the Microsoft Excel Spreadsheet program, the court has computed the absolute value dollar difference in SMUD asserting that there is an additional 0.75% risk adjustment that is necessary. The claim secured by the senior fixture filing is 5,892.67. The court computes, using the Excel Spreadsheet program:

A. With a 4.25% interest rate over sixty months, the total payments are $6,551.31.

B. With a 5.00% interest rate over sixty months, the total payments are $6,672.12.

Thus, it appears that the substantial risk which SMUD asserts is a basis for denying confirmation of this plan is "worth" $120.81. In seeking this $120.81 of "necessary risk adjustment," is appears that after legal fees and expenses SMUD has increased its risk, as the court cannot envision how SMUD's legal expenses and internal employee costs are less than $120.81. FN.2.

FN.2. If this Creditor was not represented by well know counsel who over the decades has developed a reputation for honestly and proper litigation, a judge might infer that the present Objection was filed at the direction of Creditor to harass Debtor, mislead the court, and improperly impede the prosecution of a bankruptcy case. The court does not so infer in this case.

DEBTOR'S RESPONSE TO SACRAMENTO MUNICIPAL UTILITY DISTRICT'S OPPOSITION

Debtor has filed a response to SMUD's opposition. Debtor argues that the plan will fully repay SMUD's claim as a Class 2 claim and that the 4.25% interest rate is fair, even considering risks. Citing *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), Debtor argues that the 1% increase from the prime rate of 3.25%, as reported by BankRate.com, satisfies 11 U.S.C. § 1325(a)(B)(ii). Debtor state that because SMUD's claim is secured by real property, there is less risk and a 4.25% interest rate is sufficient.

DEBTOR'S RESPONSE TO TRUSTEE'S OPPOSITION

Debtor's attorney, on behalf of the Debtor, filed a response to the Trustee's objection, arguing that the mistakes on the Debtor's schedule was due to Debtor's attorney improperly filling out the New Schedules I and J. The majority of the response is spent by Debtor's attorney explaining the difficulty he has had with the new Schedule I and J.

As to the objections brought by the Trustee, Debtor's attorney argues that the amended Schedules I and J now provide the correct withholdings for Joint Debtor, the correct income and expenses, and the proper childcare expenses. Additionally, the Debtor's attorney alleges that he has provided the Trustee with the necessary documentation to show the childcare expenses outside

the record due to the children's age. Lastly, Debtor's attorney argues that Trustee's classification of expenses of going down as children grow up is incorrect. Debtor's attorney instead argues that because of additional food, clothing, educational expenses, and afternoon care, the expenses for children actually goes up as the children get older.

Debtor's attorney concludes by stating that the Debtor has "corrected mistakes and updated information and upon further investigation agree with the trustee that the Debtors are receiving a discount on their first child in daycare to the tune of $22.70/wk or 98.29/mo and request that the plan payment be increased from the proposed $909.00/mo to $1,007.00/mo for 60 months.

SEPTEMBER 9, 2014 HEARING

At the September 9, 2014 hearing, the court continued the instant motion to 3:00 p.m. on October 21, 2014 to allow the Debtor to file supplemental pleadings. Dckt. 75.

DEBTOR'S SUPPLEMENTAL DECLARATIONS AND EXHIBITS

On October 8, 2014, Debtor's filed supplemental declarations and exhibits in support of the increased childcare expenses. Dckt. 77, 78, 79.

In the Debtor's declaration (Dckt. 78), the Debtor states that the First Amended Chapter 13 Plan was proposed in order to:

1. To address changes to the new forms schedules I & J and changes to Debtor's income/expenses reflected in those forms including an increase in childcare around the time the Debtor filed bankruptcy.

2. Joint Debtor was over withholding on her taxes and had her payroll adjust her withholdings (still an estimate at the time we filed the amended schedules based on 1/12th annual refund).

3. Debtor's childcare expenses have been in transition as their former daycare provider (Debtor's mother) is approaching 66 years old and some of the children are in need of greater care. There are 2 sets of children, one group ages 8 and 10, while the second group is a pair of 4 year old twins. The set of children ages 8 and 10 have different schedules and run in different circles than the pair of 4 year old twins.

4. The original estimate of $600/month to Debtor's mother to take care of the 2 older children and an additional $600/month to take care of the 2 younger children was woefully inadequate. Upon further investigation, Debtor found Vintage Kindercare (which is childcare) at the rate of 227.00/week per child. Only later did Debtor find out that Vintage Kindercare offers a 10% discount to state workers. The additional $98.36/month savings is reflected in our desire to up the plan payment to $1,007/month in the order confirming (a full $252/month increase in the plan payment from our original plan).

5. Finally, Debtor's rental income and expenses have been adjusted

to be more accurately listed in schedules I and J. Instead of stating the net as $3.00/month on schedule I, the schedules now reflect the $1,200/month income on Schedule I and the $1,997/month expense on schedule J.

In Debtor's mother's, Linda Patterson's, declaration (Dckt. 79), she states that due to her age, she is having a more and more difficult time taking care of the four children. In order to aid Ms. Patterson, the Debtor chose to place the set of 4 year old twins in childcare.

The attached exhibits to the declarations (Dckt. 77) are: (1) an attached copy of a $600.00 check made out to Linda Patterson on July 31, 2014; and (2) a copy of the contract for childcare.

TRUSTEE'S REPLY

The Trustee filed a reply to the Debtor's response on October 14, 2014 and continues to recommend the denial of confirmation. Dckt. 81. In opposition, the Trustee states the plan does not provide for all of the Debtors' disposable income for the applicable commitment period and the Plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b).

First, the Trustee alleges that the Trustee found $2,268.00 more income than what is listed by the Debtors. On Debtors' original Schedule I, the Debtors indicate that their gross income totaled $6,851.87 for Debtor Jeffery Patterson and $5,784.00 for Mandy Patterson. After withholding and deductions, Debtors report net income of $5,082.98 for Debtor Jeffrey Patterson and $3,873.55 for Debtor Mandy Patterson. Dckt. 1, Schedule I, pgs. 36-37. On the originally filed Schedule J, Debtors reported total household expenses of $8,204.34, including $1,200.00 for childcare and $1,400 for food, and $1,197.00 for rental property mortgage.

At the 341 meeting held on July 17, 2014, the Trustee raised the following issues concerning their reported income and budget:

1. Debtors provided evidence of only $600.00 per month for childcare. Debtors admitted that the childcare is only $600.00 per month but they expected the expense to increase. Debtors indicated at the 341 Meeting that Debtor Jeffrey Patterson's mother provided the childcare but was not going to be able to continue providing care and that is the reason the expense was estimated at $1,200.00 – The Trustee argues that there is $600.00 additional income.

2. Debtors report only the net income from rental real estate of $3.00 on Schedule I but deducted the full expense of $1,197.00 on Schedule J. Debtors indicate at the 341 Meeting that they receive $1,200.00 per month rents. Dckt. 1, Schedule J, pgs. 38-39. The Trustee argues that there is $1,197.00 additional income.

3. The Trustee also discussed with the Debtors and their counsel the concern that they had received a significant tax refund from the filing of their 2013 Return. Debtors received $5,653.00 in a federal refund. The State return was not

provided. The Trustee is unable to determine what amount, if any, was received from the state return. The refund would create an additional $471.00 per month in disposable income, if the return was divided over the year ($5,653.00/12 months). The Trustee argues that there is $471.00 additional income.

The Trustee further alleges that the Debtors amended (or supplemented) their Schedules in order to avoid contributing the "additional income" found by the Trustee at the 341 Meeting. On July 22, 2014, Debtors filed Amended Schedule I (Dckt. 20, pgs 4-6), which appears to be actually supplemental schedules reflecting Debtors' current financial status, reducing tax withheld from Debtor Mandy Patterson's payroll from $1,110.44 to $639.44. The adjustment provided the Debtors with an additional $471.00 in income on Schedule I. Debtors also added the full amount of rental income to $1,200.00 versus the $3.00 originally listed. This adjustment provided the Debtors with an additional $1,197.00 in income. Net income now is reported as $10,627.53 per month.

On July 22, 2014, Debtors filed Amended Schedule J (Dckt. 20, pgs. 7-9). Debtors increase their expense for childcare from $1,200.00 to $2,469.00, a $1,269.00 increase. Debtors increased their rental property expense by $245.00 from $1,197.00 to $1,422.00.

As to the supplemental declarations and exhibits filed by Debtors in support of the childcare increase, the Trustee notes that the Debtors do not provide any receipts or cancelled checks for services provided to date from Vintage Kindercare, outside of a copy of the contract (Dckt. 77, Exhibit B). The Trustee states that 6 full weeks have passed since the contract with Vintage Kindercare was entered into on August 18, 2014.

The Trustee argues that the Debtors are manufacturing expenses in an attempt to avoid a larger percentage being paid to unsecured claims. At the conclusion of the 341 Meeting, it appeared the Debtors had at least $1,668.00 (rental income and tax refund) in additional income if they were able to prove the additional $600.00 in childcare. Upon receipt of the proposed amended plan, the plan had increased by only $154.00. The Debtors' proposed an additional increase of $98.00 to be presented in the order confirming the plan, if the court approves the plan.

The Trustee then elaborates on his objection to the Childcare stating that the Debtors have provided a disingenuous argument that the expenses for the children will not reduce, but increase other costs such as afterschool care, additional food, and additional clothing. The Trustee argues that the fact the children will be full time students will reduce the childcare expense. According to the Trustee, the Debtors have proposed an adequate budget for household expenses such as food and clothing and the Trustee argues that the plan should increase upon the care expense reducing.

As to the mortgage, the Trustee alleges that the Debtors fail to explain why the expense for the rental property increased by $245.00. The Debtors are losing $797.00 per month by choosing to retain the rental property. The Trustee alleges that by choosing to retain a negative cash flow property, Debtors are costing the unsecured creditors approximately $47,820.00 over the life of the plan.

DISCUSSION

Here, Debtor admits that the plan is no longer a reflection of the true income and expenses of the Debtor. The Debtor in their response to Trustee's objection admits to such. To fix this inaccuracy, the Debtor now state different financial information and propose to increase the plan payments.

While arguing (through the attorney's Response to the Objection) that it was the attorney's fault, Debtor fails to provide any testimony under penalty of perjury (in a simple declaration) explaining how they signed, and stated under penalty of perjury the inaccurate and untruthful information in the Original Schedules.

While Debtor's supplemental declarations and exhibits provide a generalized explanation in the change of expenses and the cost of childcare, the declaration and exhibits leave much still unanswered. The Trustee's concerns over the rental property are well-taken. The Debtors appear to be amending and supplementing schedules, that were filed under the penalty of perjury, to adjust the income and expenses as they are caught. The Debtors do not explain why the math on their initial Schedule I was $3.00 for the rental income, only to then increase to $1,197.00 after the Trustee points this out at the 341 Meeting. This type of "hide the ball" raises concerns about whether this plan is actually feasible or whether the Debtors are presenting numbers merely to have the court confirm a plan.

Furthermore, the Debtors still do not adequately explain how the cost of childcare will increase as some of the Debtors' children enter full time school. The Debtors appear to be arguing in generalities without providing specifics as to why the increases in childcare expenses are justified.

As to the Trustee's argument that the plan fails to provide for all of Debtors' disposable income, the court tends to agree based on the history of this case thus far. Between the time the Trustee objected to the initial motion and Debtors' supplemental declaration and filing, the expenses and income reported dramatically change, providing for a substantial increase in rental increase and excess funds from the lessened tax withholdings. If Debtors are able to change their income so readily, it appears that the Plan may not, in fact, provide for the all of their disposable income as required 11 U.S.C. § 1325(b)(1) and leads the court to question whether this plan is Debtors' best effort.

The court overrules SMUD's objection, determining that the 4.25% interest rate, based on the legal authorities presented by both Debtor and SMUD is proper.

Therefore, upon review of all the pleadings and filings in connection to this motion and case, the modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

11. 10-20518-E-13 JENNINE MOYER
MET-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF WELLS FARGO FINANCIAL NATIONAL BANK, CLAIM NUMBER 1
8-27-14 [46]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that a Motion to Value Collateral and supporting pleadings were served on various parties on two different dates (April 17, 2014 and August 27, 2014). 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.). Because of the conflicting dates and the lack of stating what motion or objection was filed, the court cannot determine if proper service was given.

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

The Objection to Proof of Claim Number 1-1 of Wells Fargo Financial National Bank is overruled.

Jennine Moyer, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Wells Fargo Financial National Bank ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $4,712.75. Objector asserts that the claim erroneously lists Wells Fargo Financial National Bank's claim as secured because the basis for the claim is for "Items Purchased from Window World of Sacramento." Objector asserts that the claim is a Visa account offered by Wells Fargo Financial National Bank.

However, the court, as stated above, is unable to determine whether proper service has been given on the objection. The Proof of Service filed in connection with this objection (Dckt. 49) states conflicting dates and a separate motion being served, making it impossible to determine if the necessary parties have received the objection and supporting documents.

Based on the evidence before the court and the inability to determine if proper service was given, the Objection to the Proof of Claim is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Financial National Bank, Creditor filed in this case by Jennine Moyer, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 1-1 of Wells Fargo Financial National Bank is overruled.

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

ALTERNATIVE RULING

DISCUSSION

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

A review of the Proof of Claim 1-1 shows that Wells Fargo Financial National Bank filed a claim in the amount of $4,712.75. The basis of the claim is listed as a "Retail Install Contract." Under Item 4 for "Secured Claim," Wells Fargo Financial National Bank states that the "Nature of property or right of setoff" as "ITEMS PURCHASED FROM WINDOW WORLD OF SACRAMENTO." The amount of arrearage and other charges as of time case filed included in secured claim is $966.00 and the basis for perfection as "sales contract." Wells Fargo Financial National Bank states that the full $4,712.75 is a secured claim and $0.00 is unsecured. A review of the attached document to the Proof of Claim appears to be a billing statement from "Window World, inc." and states "Offered by Wells Fargo Financial National Bank." Nowhere on the billing statement is

there any indication that the claim is secured nor as to what property it would be secured by. On the second page of the attached billing statement, the "Summary of Finance Charge From Periodic Rates" has the amount of the claim listed as "Regular." Again, there is no indication what this means or whether it is indicating a secured claim.

Without the sales contract in which Wells Fargo Financial National Bank argues perfects the claim as a secured claim, the court cannot determine the nature of the claim.

Seeing as Wells Fargo Financial National Bank has not opposed the instant objection, no further evidence as to the nature of the claim filed, and a review of the Proof of Claim providing no evidence as to how or why the claim is secured, the Proof of Claim cannot stand as a secured claim.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as a secured claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Financial National Bank, Creditor filed in this case Jennine Moyer, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 1-1 of Wells Fargo Financial National Bank is sustained and the claim is disallowed as a secured claim, with the claim stated in Proof of Claim No. 1-1 being an unsecured claim filed in this case.

12. 11-32021-E-13 RAYMOND LITTLE
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY(S)
9-18-14 [94]

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, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Peter Macaluso ("Applicant"), the Attorney for Raymond Little, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period February 15, 2012 through October 24, 2012.

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

Significant Motions and Other Contested Matters: Applicant spent 8.25 hours in this category. Applicant prepared and filed an unanticipated Motion to Modify. Applicant then prepared and filed a second unanticipated Motion to Modify. This includes correspondence with Client and meetings to formulate a new plan.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

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

Id. at 959.

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

"NO-LOOK" FEES

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

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered

> in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 46. The order confirming the Plan was prepared by Applicant.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

Here, Applicant has shown that he has performed substantial and unanticipated work after confirmation of Debtor's first Plan. This is sufficient for the court to grant the Motion.

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:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso	8.25	$200.00	$1,650.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,650.00

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,650.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,650.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso (“Applicant”), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 1,650.00
> Expenses in the amount of $ 0.00,
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the

confirmed Plan.

13. 14-29223-E-13 SDH-2 WILLIAM/TERRY SHOUSE Scott D. Hughes

MOTION TO VALUE COLLATERAL OF HSBC MORTGAGE SERVICES, INC. 9-18-14 [14]

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of HSBC Mortgage Services, Inc., "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Terry & William Shouse Jr., "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2111 Stonebrook Court, Auburn, California, "Property." Debtor seeks to value the Property at a fair market value of $460,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued. Creditor has not filed an opposition.

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $472,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $113,090.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Terry & William Shouse Jr., "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Mortgage Services,

Inc., secured by a second in priority deed of trust recorded against the real property commonly known as 2111 Stonebrook Court, Auburn, California, is determined to be a secured claim in the amount of $00.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $460,000.00 and is encumbered by a senior lien securing claims in the amount of $472,000.00, which exceeds the value of the Property which is subject to Creditor's lien.

14. 13-31228-E-13 JOHN PAUL/KRISTINE LEE MOTION TO SELL
CAH-1 Oliver Greene, C 10-2-14 [45]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Internal Revenue Service, all other creditors, Chapter 13 Trustee, and Office of the United States Trustee on October 2, 2014. By the court's calculation, 19 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is denied without prejudice.

John Paul and Kristine Lee ("Debtors") filed this Motion to Sell on October 2, 2014. Dckt. 45. However, the Motion and its supporting documents

were not served at least 21 days before the hearing date, as required by Fed. R. Bankr. P. 2002(a)(2). Dckt. 49. The court must deny the motion because of its lack of proper service.

ALTERNATIVE RULING

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. 4648 Deer Valley Road, Rescue, California

The proposed purchasers of the Property are Randolph Williams and Sandra Singleton and the terms of the sale are a purchase price of $460,000.00 with a 45-day escrow following acceptance, escrow and title costs to be shared by buyer and seller, and the property will be sold as is. The sale proceeds will pay the first mortgage on the Property, all Class 2 creditors, all Class 5 creditors, and pay a 100% dividend to all unsecured creditors.

The Bank of New York Mellon filed nonopposition on October 10, 2014 stating that it has no opposition to the instant Motion so long as the lien of the Bank of New York Mellon is paid off in full, or the lien of the Bank of New York Mellon approves the proposed short sale in writing. The Bank of New York Mellon states the pursuant to 11 U.S.C. § 363(f), it is entitled to the full payment of its claim.

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 John Paul and Kristine Lee, the Chapter 13 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 John Paul and Kristine Lee, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Randolph Williams and Sandra Singleton or nominee ("Buyer"), the Property commonly known as 4648 Deer Valley Road, Rescue, California, on the following terms:
>
> 1. The Property shall be sold to Buyer for $460,000.00 on the terms and conditions set forth in the Purchase Agreement and Counter-Offer, Exhibits A and B, Dckt. 48, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

**15. 09-34529-E-13 SS-3 | BHUVNESH/CHITRA BAJAJ
Scott D. Shumaker | MOTION TO VALUE COLLATERAL OF CLC CONSUMER SERVICES
9-10-14 [56]**

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were properly served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 10, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of E*Trade Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00..

The Motion to Value filed by Bhuvnesh and Chitra Bajaj ("Debtors") to value the secured claim of E*Trade Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 6021 Jefjen Way, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $380,625.00. Creditor's second deed of trust secures a claim with a balance of approximately $224,556.96. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of E*Trade Bank secured by a second in priority deed of trust recorded against the real property commonly known as 6021 Jefjen Way, Elk Grove, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $300,000.00 and is encumbered by a senior lien securing a claim in the amount of $380,625.00, which exceeds the value of the Property which is subject to Creditor's lien.

16. 11-29436-E-13 JCW-1 | **DONALD IRVING AND FAMMIE HOLMES-IRVING** Martha Lynn Passalaqua | **MOTION TO APPROVE LOAN MODIFICATION** 9-12-14 [101]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and all creditors on September 12, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on November 18, 2014.

The Motion to Approve Loan Modification filed by Nationstar Mortgage, LLC ("Creditor"), with the endorsement of Donald Irving and Fammie Holmes-Irving's ("Debtors") attorney, seeks court approval for Debtors 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 $1,432.90 a month to $902.86 a month. The modification will creates a new principal balance and adjusts the interest rate to 5.750%.

The Motion is not accompanied by a supporting declaration.

REVIEW OF MOTION

This Motion was prepared and filed by Jennifer C. Wong, an attorney with McCarthy & Holthus, LLP, lawyers for Nationstar Mortgage, LLC. Ms. Wong and other attorneys in the McCarthy & Holthus, LLP law firm regularly appear in this court, appearing before all the judges in this District. They are well aware of the Federal Rule of Civil Procedure, Federal Rule of Bankruptcy Procedure, Federal Rules of Evidence, and the basic Constitutional requirements that the court have an actual case or controversy between the real parties in interest before it – not a "proxy party" for some unnamed party.

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which Nationstar Mortgage, LLC and McCarthy & Holthus, LLP base the relief requested from this court:

a. Nationstar Mortgage, LLC, its assignees and/or successors, seek an order from the court. FN.1.

FN.1 The court notes that this Motion carefully excludes any principals of Nationstar Mortgage, LLC from seeking or obtaining any relief. As addressed below, Nationstar Mortgage, LLC is not the creditor, appears to be attempting to hide the existence of a person who is actually the creditor, and if it is acting as the servicing agent for the creditor, to insulate that person from any order issued by the court.

---

b. The order sought is for "Authorizing a Loan Modification Agreement" regarding the real property generally described as 8034 Coronado Coast Street, Las Vegas, Nevada.

c. The basic terms of the Loan Modification Agreement are set forth in Exhibit 1.

d. The Term is 40 years, with an interest rate of 5.750%, with (presumably monthly) principal and interest payments of $902.86.

e. The court should issue an order.

Nationstar Mortgage, LLC and McCarthy & Holthus have filed an exhibit which purports to be a Loan Modification Agreement. Exhibit 1, Dckt. 103, but is unauthenticated. See Fed. R. Evid. 901 et seq. for basic authentication of document requirements in federal court. It is significant that not one person with personal knowledge of this document is willing to state under penalty of perjury what it is, and then be responsible if such document is false.

OPPOSITION

David Cusick, the Chapter 13 Trustee, filed opposition to this Motion on October 6, 2014. Dckt. 105. The Trustee objects to the Motion on the basis that:

1. Neither the Creditor nor Debtors have field a declaration in support of the Motion for Order Authorizing Loan Modification Agreement. While the Trustee is aware the Debtors have signed the agreement and Debtors' counsel has approved the form and content of the Motion, no declaration has been filed to

properly authenticate the loan modification agreement attached as Exhibit 1. Dckt. 103.

2. Creditor's Motion and the Loan Modification Agreement both name Nationstar Mortgage, LLC as the lender for the loan regarding 8034 Coronado Coast Street, Las Vegas, Nevada. Dckt. 101, 103. Debtors' confirmed plan states that the creditor for the property at 8034 Coronado Coast Street is BAC Home Loans Servicing, LP. Notice Mortgage Payment Changes regarding this property were filed on September 27, 2011 and October 4, 2012. Dckt. 69, 72. The first identifies the creditor as Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP. The second identifies the creditor as Bank of America, N.A. as well. The Trustee is uncertain whether Nationstar Mortgage, LLC is actually the creditor having a claim in this case or has the authority to enter into the loan modification. There is no evidence showing that Nationstar is the creditor.

DISCUSSION

Although Debtors have not provided a declaration in support of their motion, this is not fatal to the Motion. However Debtors, through their attorney, have endorsed and consented to the Motion as filed by Creditor.

Though Debtors' counsel has "joined" in the Motion and thereby satisfied the Bankruptcy Code requirement that it is the trustee, debtor in possession, or Chapter 13 debtor who seeks post-petition financing, that "joinder" does not fix two problems,

(1) The proposed loan modification is not with the creditor,

(2) The motion is unsupported by any competent, credible evidence.

Identify of Creditor

Interestingly, no proof of claim for the loan to be modified has been filed in this case. While the Motion and Exhibit 1 state that some unidentified loan for which Nationstar Mortgage, LLC is the creditor is to be modified, there is not a scintilla of evidence that Nationstar Mortgage, LLC is a creditor, as that term is defined in 11 U.S.C. § 101(10) and (5).

It appears that Nationstar Mortgage, LLC and McCarthy & Holthus, LLP are working in concert to hide the identify of the actual creditor from the court and obtain orders for which the actual creditor could later deny any responsibility or that the purported loan modification is effective.

The Loan Modification Agreement itself is suspect. First, it uses the defined term "Lender" to identify Nationstar Mortgage, LLC. The common dictionary definition for lender is "to give (money) to someone who agrees to pay it back in the future." http://www.merriam-webster.com/dictionary/lender. On its face, this Loan Modification Agreement appears to be a representation by Nationstar Mortgage, LLC and McCarthy & Holthus, LLP that it was Nationstar Mortgage, LLC which, somewhere in the past, actually gave money to the Debtors and it is that money upon which the current claim is based.

The unauthenticated document purporting to be a Loan Modification Agreement has another glaring omission – no recording information is provided for the alleged deed of trust, though the "official" Fannie Mae loan modification form has open fields for that information. It may well be that no such deed of trust exists or that Nationstar Mortgage, LLC has no interest in any such deed of trust or the note which is secured by the deed of trust.

The purported Loan Modification Agreement purports to be executed by a Krista Moore, identified as an "Assistant Secretary" of Nationstar Mortgage, LLC. The purported Loan Modification Agreement is signed by Nationstar Mortgage, LLC in its individual, personal capacity, and does not purport to be done pursuant to a power of attorney or as the authorized agent of the actual creditor.

In other cases where loan servicers have been "reluctant" to identify the actual creditor in the Loan Modification Agreement form itself, the court has approved modifications so long as the loan servicer has identified itself as exercising a power of attorney or as the authorized agent in the signature block, with the identify of the principal disclosed in the signature block. With that minimal disclosure it is clear that (1) the loan servicer is not purporting to be the actual creditor, (2) the loan servicer is making the clear representation that there is a principal, and (3) the least sophisticated consumer on these loans (to borrow a concept from the Federal Fair Debt Collection Practices Act which has been necessarily fashioned by the federal courts to protect consumers from unsavory practices from creditors using third-parties to obtain payment from consumers) knows who is then currently the creditor and who the loan servicer is purporting to bind with the loan modification.

The court, left in the dark as to who is the creditor and how Nationstar Mortgage, LLC is now before this court purporting to be the "Lender" and the creditor (acting as the principal and not the servicing agent), continues the hearing to afford Nationstar Mortgage, LLC and the Debtors to address these identity issues relating to the actual creditor. If Nationstar Mortgage, LLC is a creditor, it can file a proof of claim with the necessary attachments to show that it is a creditor. If it is a loan servicer for the actual creditor, it can provide documentation of such (there being nothing improper about providing such services or acting as the authorized agent of the actual creditor) and have the Loan Modification Agreement reflect that it is acting in such agency capacity.

Though the Debtors have consented to the Motion, the court still must have the real parties in interest before it and have an actions "case or controversy" to adjudicate. U.S. Constitution, Article III, Section 2. The level of sophistication of this issue will require the appearances of Nationstar Mortgage, LLC (Telephonic Appearance Permitted), counsel for Nationstar Mortgage, LLC (No Telephonic Appearance Permitted), and counsel for the Debtors (No Telephonic Appearance Permitted) to assist the court in identifying the creditor and insuring that the exercise of federal judicial power in this court complies with the basic, fundamental requirements of the United States Constitution.

The court requires that not only Jennifer C. Wong, the attorney signing the pleadings for Nationstar Mortgage, LLC at issue, but JaVonne M. Phillips, the senior attorney listed on the pleadings to appear. Ms. Wong was admitted

to the California State Bar in December 2006. FN.2. Ms. Phillips was admitted to the California State Bar in January 1997. FN.3. It appears that Ms. Phillips is the law firm partner or senior associate responsible for Ms. Wong's education and practice, and has the ultimate responsibility to explain these pleadings to the court so as to clear up any confusion. Her participation in the hearing with Ms. Wong is critical.

FN.2. http://members.calbar.ca.gov/fal/Member/Detail/246725.

FN.3. http://members.calbar.ca.gov/fal/Member/Detail/187474.

Chambers Prepared Order

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 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 hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on November 18, 2014.
>
> **IT IS FURTHER ORDERED** that Krista Moore, the "Assistant Secretary" for Nationstar Mortgage, LLC appear at the November 18, 2014 hearing. Telephonic appearance is permitted for Ms. Moore and any other officer or managing member of Nationstar Mortgage, LLC (excluding all attorneys).
>
> **IT IS FURTHER ORDERED that** JaVonne M. Phillips (Cal. SBN 187474) and Jennifer C. Wong (Cal. SBN 246725) shall appear in person at the November 18, 2014 hearing, No Telephonic Appearances Permitted for said counsel.
>
> **IT IS FURTHER ORDERED** that Mary Lynn Passalaqua (Cal. SBN 134212), attorney for the Debtors, shall appear in person at the November 18, 2014 hearing, No Telephonic Appearances Permitted for said counsel.
>
> **IT IS FURTHER ORDERED** that on or before November 4, 2014, Nationstar Mortgage, LLC shall (1) file a proof of claim if it is the "creditor" as defined in 11 U.S.C. § 101(10) and (5) in this case for the loan being modified; (2) alternatively, if it is the creditor, file supplemental pleadings, which are properly authenticated and supported by competent, credible evidence, showing that it is the creditor, including all of the attachments and documents which would be filed with a properly prepared proof of claim, or (3) if it is

the agent for the creditor, file supplemental pleadings, which are properly authenticated and supported by competent, credible evidence, documenting that it the loan servicer or agent for the actual creditor and identity of the actual creditor who is purporting to enter into the loan modification agreement with the Debtors.

In addition to the regular service list, the Clerk of the Court shall serve separate copies of this order by United States Mail on the following persons:

A. JaVonne Phillips, Esq.
McCarthy & Holthus, LLP
1770 4th Ave
San Diego CA 92101

B. Jennifer C. Wong, Esq.
McCarthy & Holthus, LLP
1770 4th Ave
San Diego CA 92101

C. Matthew E. Podmenik, Esq.
McCarthy & Holthus, LLP
1770 4th Ave
San Diego CA 92101

D. Mary Lynn Passalaqua, Esq.
1202 Tully Road, Suite H
Modesto CA 95350

E. Krista Moore, Assistant Secretary
c/o McCarty & Holthus, LLC
Attn: JaVonne Phillips, Esq.
1770 4th Ave
San Diego CA 92101

F. Krista Moore, Assistant Secretary
Nationstar Mortgage, LLC
350 Highland Drive
Lewisville, Texas 75067

G. Nationstar Mortgage, LLC
Attn: Managing Member, Officer, Agent for Service of Process
350 Highland Drive
Lewisville, Texas 750670

H. Nationstar Mortgage, LLC
C/O CSC-Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Drive, STE 150N
Sacramento, California 95833

17. 14-28141-E-13 ELIZABETH SPEARS
DPC-1 Mikalah R. Liviakis

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Elizabeth Spears ("Debtor") has not filed California state tax returns during the four years preceding the filing of her case, specifically 2010, 2011, 2012, and 2013. Debtor has also not yet filed her 2011 federal tax return. Debtor's Meeting of Creditors has been continued to November 6, 2014 to allow Debtor to file these returns.

The fact that Debtor has not filed the necessary tax returns with the court indicates that Debtor has not used best efforts in proposing her Plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a)–(b). 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 David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. 10-27043-E-13 JAMES/GLORIA SUTTON MOTION TO SELL
WW-3 Mark A. Wolff 9-22-14 [27]

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, parties requesting special notice, and Office of the United States Trustee on September 22, 2014. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

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. 611 Malone Avenue, Wheatland, California

The proposed purchaser of the Property is Jim Lemaire and the terms of the sale are:

1. The purchase price is $165,000.00.

2. The sale would be a short sale.

3. Through the sale of the Property, all liens and security interests encumbering the Property will be paid in full or paid pursuant to the agreement of the parties. Debtors have obtained consent to the terms of the sale from the holders of the notes secured by first and second trust deeds. Dckt. 30, Exhibits B and C. The consents state that the creditors shall provide lien releases through escrow.

4. All costs of sale such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds.

5. The sale is all cash.

6. Debtors will not relinquish title to or possession of the Property prior to the payment in full of the purchase price.

7. The sale is an arms length transaction. The proposed buyer was located by a real estate agent that was retained for the purpose of marketing the property. The proposed buyer is not a relative or friend of the Debtors.

David Cusick, the Chapter 13 Trustee, filed notice of non-opposition on September 29, 2014.

For this Motion, the Movant has established that the short sale of the Property would be in the best interest of the estate. The purchase price of $165,000.00 appears to be a fair and reasonable price and the terms of the short sale seem fair. The two creditors on the Property, Bank of America and Nationstar, have provided consent to the terms of the short sale, and have agreed to release their liens through escrow. The Trustee has filed non-opposition on the terms of the proposed sale.

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 James and Gloria Sutton, the Chapter 13 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 James and Gloria Sutton, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) known as 611 Malone Avenue, Wheatland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $165,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 30, and as further provided in this Order.

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

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

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

19. 14-28243-E-13 ISIDRO GRAGEDA
DPC-1 Thomas O. Gillis

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Isidro Grageda ("Debtor") lists two separate properties on his Schedule A: his residential real property located at 576 Carroll Avenue, Sacramento, California and his rental property 2990 Stonecreek Drive, Sacramento, California. The value of each of these properties appeared low, based on online web valuations. At Debtor's Meeting of Creditors, Debtor admitted that he is uncertain how he came to the values listed. Debtor has provided insufficient information relevant to the description of each property to assist the Trustee in researching the value of each property.

2. Debtor may be unable to make the payments under the plan or comply with the plan. The income from Debtor's non-filing spouse as reported on Debtor's Schedule I does not correctly reflect tax withholdings and other deductions when compared to Debtor's spouse's paystubs. The paystubs show that Debtor's spouse's net income is about $1,643.42 less than Debtor reported. Additionally, Debtor was unsure whether the reported expenses on his rental property included property tax and insurance. Debtor also failed to report his spouse's personal expenses of about $600.00 per month. The Trustee cannot determine whether Debtor will be able to make plan payments if the Debtor has not disclosed all expenses.

3. Debtor reports on Schedule I that he has been self-employed for eight (8) months. At the Meeting of Creditors, Debtor stated that he has operated his business for much longer than

reported, since at least 2012. On his business questionnaire, Debtor indicated that he is neither licensed nor insured to operate a business. Debtor has disclosed that his net earnings are $610.00 per month and that he maintains eight (8) properties. The Trustee is concerned that income from the business is understated and that Debtor has not reported all income earned. The income reported does not indicate that Debtor can make plan payments or, alternatively, shows that there is additional income that has not been reported.

4. Debtor's Plan fails to provide for two secured claims held by Hyundai Motor Finance against two 2013 Hyundai Sonatas, as 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 the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because he has additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

5. Debtor has failed to complete all questions on the Statement of Financial Affairs. Debtor does not report income from wages for 2012 or 2013, although his Schedule I reports his spouse has been employed for eight (8) years. Also, Debtor fails to report his non-filing spouse, Barbara Hernandez.

6. Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a plan paying $200.00 per month for 60 months, with a 40% dividend to unsecured creditors. Debtor lists a $700 per month expense for childcare, though Debtor admitted that this care is provided by his mother- and father-in-law. Debtor has failed to show any evidence of this expense. Debtor has also admitted that his brother owns and pays for one of the two Hyundai Sonatas listed on Schedule B. The expense for his brother's vehicle is erroneously listed on Schedule J, but is not paid by Debtor himself.

7. Debtor is proposing, through the Plan, to pay 40% to his unsecured creditors while his wife is proposing to pay 100% of her creditors. Debtor has not disclosed the total amount of the non-filing spouse's debts, but the fact remains that those claims will be paid in full while Debtor's will not.

The Debtor filed a nonopposition to Trustee's objection, stating that Debtor will file an Amended Plan and address the issues of the Trustee. Dckt. 22.

The Trustee's objections are well-taken. Debtor's proposed Plan is based on Schedules and Debtor's Statement of Financial Affairs which may not be complete or accurate. This raises doubts as to the feasibility of this Plan and the Debtor's ability to comply with it.

The Trustee's objection regarding the Debtor's failure to provide for the secured claims of Hyundai Motor Finance are similarly well-taken. Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan

provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

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.

20. 14-28443-E-13 PERRY/LOUISE ALLEN **MOTION TO CONFIRM PLAN**
D. Randall Ensminger **8-28-14 [14]**

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, and all creditors on August 26, 2014. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

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

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

Perry Allen, Jr. and Louise Allen ("Debtors") filed the instant Motion to Confirm Chapter 13 Plan on August 28, 2014. Dckt. 14

MOTION

Debtors state that the Plan proposes to pay the secured claim of Safe Federal Credit Union the sum of $275.00 a month as an adequate protection payment while Safe Federal Credit Union considers Debtors' loan modification application. The secured claim of 1st deed of trust holder Safe Federal Credit Union is current and will be paid outside the Plan. There are no unsecured creditors.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed objection to the instant Motion on October 7, 2014. Dckt. 30. The Trustee objects on the following grounds:

1. Debtors' Motion indicates on page 2, line 3 that "A chapter 13 Plan was filed on August 20, 2014." The most recent plan is dated August 28, 2014 and appears to be an amended plan (Dckt. 15). The Trustee is not certain which plan the Debtor seeks to confirm. Debtors Proof of Service (Dckt. 18) lists "Chapter 13 plan," and does not indicate "amended plan" or the date of the plan.

2. Debtors' Motion indicates on page 2, lines 5-7 that Safe Federal Credit Union is considering Debtors' loan modification application. Debtor has not provided any documentation of such an application to the Trustee to date.

3. Debtors' Motion states that the first deed of trust is current and will be paid outside the plan. Debtor lists Safe Federal Credit Union in Class 4 of the plan at a monthly payment of $1,525.22. Creditor filed a secured claim (Proof of Claim 1) indicating mortgage arrears in the amount of $1,651.32 and a regular monthly payment of $1,513.24. The plan does not provide for payment of the mortgage arrearages. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtors either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.

4. Debtors' plan lists 3 debts in section 2.08, Class 1, all to Safe Credit Union. Section 6, Additional Provisions to the plan, indicates that Debtors are seeking to make an adequate protection payment of $275.00 to this creditor and apply for a loan modification. Schedule D (Dckt. 1, pg. 17) lists only one second mortgage to Safe Federal Credit Union in the amount of $50,000.00, but indicates three separate account numbers. Debtor testified at the First Meeting of Creditors held on September 18, 2014, that the debt is for one line of credit, but three separate advances were taken. The Trustee is not certain if this is one debt or three separate debts and what the intended treatment is for each one, or if all three are actually secured. If one or more of the debts is unsecured, the Debtor may be proposing unfair discrimination to unsecured creditors under 11 U.S.C. § 1322(b)(1), and a motion to value may need to be filed.

DISCUSSION

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

However, the Trustee's objection concerning which plan the Debtors are seeking to confirm is well taken. There are two plans docketed in this case. The first being filed on August 20, 2014 (Dckt. 5) and the second being filed on August 28, 2014 (Dckt. 15). Debtors; Motion makes reference to the first plan filed on August 20, 2014 but states terms that are listed in the amended plan filed on August 28, 2014.

Unfortunately, though afforded reply time, Debtors have not responded to this portion of the objection to clarify the plan issue. This case has been filed as a one creditor case – Safe Credit Union being the only creditor listed on the Schedules, Dckt. 1, the only creditor provided in the Original and Amended Plan, Dckts. 5 and 15, and the only creditor served with the pleadings, Dckt. 18. From the court's initial review, the two plans appear almost identical, with the Amended Plan bearing the signatures of the Debtors and the Original Plan having "/s/ signatures" for the Debtors.

It appears that the sole reason for the filing of the bankruptcy case and the plan is to provide a mechanism for the negotiation of a loan modification of the debt secured by a second deed of trust held by Safe Credit Union. The Plan Additional Provisions provides for an adequate protection payment to be made on this claim and provisions for Safe Credit Union obtaining relief from the stay if it does not grant the loan modification or determines that the Debtors are not prosecuting the loan modification in good faith.

On September 17, 2014, Safe Credit Union filed its proof of claim for a $230,299.70 secured claim. Proof of Claim No. 1. The current monthly mortgage payment is stated to be $1,523.65, and that the Debtors have a $1,651.32 pre-petition arrearage. Payment Computation Attachment, Proof of Claim No. 1, Pg. 6. Both Plans provide for a Class 4 Direct Payment to be made by the Debtors in the amount of $1,525.22 (which is slightly more than computed by this Creditor).

As for the arrearage, Proof of Claim lists this as one monthly installment, with the last payment received by the creditor being on July 3, 2014. This bankruptcy case was filed on August 20, 2014. From the proof of claim it appears that the Debtors are in default on this obligation and that it does not quality as a Class 4 Claim.

Proof of Claim No. 1 is filed in the amount of $230,299.70. This is consistent with the amount listed on Schedule D by the Debtors for the "First Mortgage" debt owed to Safe Federal Credit Union (stated to be $241,964.41 on Scheduled D). Safe Federal Credit Union has not filed a proof of claim for the other debt, secured by a "Second Mortgage," in the amount of $50,000.00.

The Additional Provisions with respect to the "Second Mortgage," provide,

1. 6.01.1 - Claim: Safe Federal Credit Union Security for Real Claim: real property commonly known as 114 Boston Commons Place Roseville, California. Creditor has a second deed of trust.

2. 6.01.2 - Adequate Protection Payment: The Debtor has applied for a HAMP Application for modification of this loan. The application requests that the prepetition arrearage, to the extent not waived, be included in a new principal amount to amortized over the life of the loan as modified. During loan modification application process Safe Federal Credit Union shall be paid $275.00 a month as an adequate protection payment pending determination on the loan modification. The monthly adequate protect payment shall be applied to the post-petition-interest on this claim or as specified in a loan modification.

3. 6.01.3 - Loan Modification: Upon completion of a loan modification agreement, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen (14) days of the agreement being signed by the Debtor and Safe Federal Credit Union. The Debtor shall not commence making payments under the terms of the loan modification until it has been approved by the court. For a loan modification which does not provide for any prepetition arrearage cure payments to be made during the life of the Plan, the claim shall be paid by the Debtor as a Class 4 Claim under this Plan pursuant to the terms of the loan modification. For a loan modification which requires arrearage cure payments to be made during the term of this plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class 1 claim.

4. 6.01.4 - Denial of Loan Modification: If Safe Federal Credit Union determines that a loan modification is not approved, it shall communicate the denial of a modification in writing to the Debtors and counsel for the Debtors by USPS First Class Mail, postage prepaid. In the event of a denial, the Debtors shall have fourteen (14) days from the mailing of the denial of the modification to file a modified plan and motion to confirm modified plan to provide for payment of the Safe Federal Credit Union Claim.

5. 6.01.5 - Events of Default: The Debtor shall be in default under the terms of this Plan, and Safe Federal Credit Union entitled to exercise its right to conduct a non0judicial foreclosure sale, as described in the termination of the automatic stay in this Paragraph 6.01, of the Property in the event of any of the following defaults: (1) Default in timely adequate protection payment; (2) Default in the payment terms in a court approved loan modification agreement; (3) Failure to file and serve a modified plan and motion to confirm modified plan within fourteen (14) days of the mailing of the denial of loan modification; (4) Post-petition non monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition property taxes or property insurance.

6. 6.01.6 - Termination of Automatic Stay: If secured creditor Safe Federal Credit Union denies Debtors' pending loan modification in writing and Debtors do not file a Modified Plan and Motion to Confirm Modified Plan within 17 days of the mailing of the written notice of denial, Safe Federal Credit Union may file and serve an ex parte motion for relief from the automatic stay so as to allow it to conduct a non-judicial foreclosure sale and for hte purchaser of the property the sale to obtain possession thereof. The ex parte motion shall be

> served on the Debtors, counsel for the Debtors, U.S. Trustee, and any other persons as required under the Fed. R. Bankr. P. Or who have requested notice thereof. The only issue for consideration by the court is whether one or more of the ground for relief specified in the plan have occurred. The Debtors shall file their opposition, if any, to the motion for relief from the stay within 10 days of service of that motion, and shall set a hearing on their objection to the motion on the first available regular Chapter 13 law and motion date that is at least 21 days after the service of the motion by Safe Federal Credit Union .

These provisions would be the controlling provisions on the treatment of Safe Federal Credit Union's second deed of trust in the Plan. A review of these Additional Provisions shows that the proposed plan provides for built-in mechanisms for events that may happen during the loan modification negotiations. The provisions provide for adequate payment to Safe Federal Credit Union during the negotiations, explicitly define instances of default that would trigger Safe Federal Credit Union's right to foreclose on the property, and the procedures that the parties must take whether the loan modification is granted or denied. Specifically, the Additional Provisions provide a detailed treatment of the claim whether the loan modification, if granted, does or does not provide for the cure of arrearages. The detailed provisions as to this second deed of trust adequately address any and all issues that may arise during the loan modification negotiation periods. These provisions do not hinder Safe Federal Credit Union's rights but instead sets up the steps each party will take following any denial of loan modification and the means in which the Debtors may correct their Plan.

This case presents some a very unique set of facts, well outside of the what could be described as 99.9999999999999% of the cases. Debtors appear to be using the automatic stay to get the Credit Union's attention to deal with what the Debtors stated under penalty of perjury is a debt secured by a second lien against the property. Creditor has not filed a claim from such asserted debt. Though conflicting statements under penalty of perjury appear to have been provided as the First Meeting of Creditors about the nature of this debt, they have little impact on this case and the Plan.

The Plan provides for the direct payment of this Claim as a Class 4 Claim. In so providing the Debtors have terminated the automatic stay. If Proof of Claim No. 1 is accurate, Safe Federal Credit Union would be free to proceed on the defaulted pre-petition and any post-petition payments. The court is surmising, in light of there not being an objection from Safe Federal Credit Union and it having filed a proof of claim, the arrearage may very well have been cured.

As to the asserted second debt, the Plan provides a clear procedure for Safe Federal Credit Union to exercise its rights. The Plan does not modify this Creditor's rights and provides for some adequate protection in exchange for the automatic stay delay (which is only as to a separate, second debt secured by a different lien).

Additionally, if the Debtors and Counsel have provided inaccurate information and the Plan needs to be amended, it is clear that such amendment would not be "unanticipated," thereby limiting Counsel's ability to get

additional fees above the $1,500.00 provided in the Chapter 13 Plan (Dckt. 15).

The Plan, filed on August 28, 2014 (Dckt. 15) does comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is granted and the Chapter 13 Plan filed on August 28, 2014 (Dckt. 15) is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

21. 10-31145-E-13 RAUL/ROBERTA SANCHEZ MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 9-3-14 [54]

Final Ruling: No appearance at the October 21, 201x hearing is required.

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

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

22. 11-30546-E-13 WILLIAM/DENISE NISSEN — MOTION TO INCUR DEBT
LC-5 — Lorraine W. Crozier — 8-29-14 [89]

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

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

Below is the court's tentative ruling.

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

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 August 29, 2014. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is granted.

The motion seeks retroactive permission to purchase a 2013 Honda Fit ($20,049.89), a refrigerator, six tires for Debtor William Nissen's Dodge Ram (approximately $1,600.00), and paying off a $821.36 delinquency in the Debtors' mortgage payments (the "Property") using two 401K loans in the amount of $11,740.00 from Debtor Denise Nissen's 401K and $23,493.33 from Debtor William Nissen's 401K. Debtor Denise Nissen's 401K loan was used to pay off Debtor William Nissen's 401K loan that the Debtors were paying at the time of filing. Debtor William Nissen's 401K loan was used to purchase the Property.

The 401K loan payments are $440.87 for Debtor Denise Nissen's 401K loan and $467.50 per month for Debtor William Nissen's 401K loan. The interest rate on the 401K loans is 4.25%.

In support of these purchases, the Debtors allege that the purchase of the 2013 Honda Fit was necessary because Debtor Denise Nissen's employer discontinued providing a vehicle for her after an accident to the company vehicle. In order to accomplish her job duties, Debtor Denise Nissen alleges that it was necessary to purchase a new vehicle. As to the tires, the Debtors just state that it was for the Dodge Ram. As to the refrigerator, the Debtors state it was necessary because the previous refrigerator was 22 years old. As to the mortgage delinquency, the Debtors argue that the delinquency was less than one payment of the prior mortgage payments.

The Debtors do not provide any information concerning the cost of the refrigerator or an actual bill of sale for the 6 new tires. Furthermore, the Debtors do not provide a receipt of payment to cure the mortgage delinquency. The only evidence provided

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).

This is the Debtors' second attempt at seeking the court's retroactive approval to incur debt for the Property. On August 5, 2014, the court issued an order denying the Motion to Incur Debt. Dctk 81. Much like the first attempt, the Debtors do not provide sufficient information. While the Debtors have given more information on the reasonableness and necessity of the Property purchased prior to getting court approval, the court is still not given comparison costs of used vehicles versus the new 2013 Honda Fit. The Debtors are asking the court to take their word that they negotiated with dealerships in seeking the lowest cost vehicle.

Furthermore, the Debtors have not provided evidence on the actual cost and receipts of the item bought except for the 2013 Honda Fit. The Debtors are asking the court to take their word that the cost of the refrigerator and the actual cost of the tires were reasonable and that the Debtors actually used the $821.36 to cure the mortgage delinquency. Without this information, the court cannot determine whether there were excess funds taken out of the 401K that should be given back to the estate or whether the amount of loans were proper.

The court continues to be troubled at the fact that Debtor completed the purchase of the Property without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

The Debtors have taken money, on their own accord, that creditors were potentially entitled to under a Chapter 13. The Debtors seem to believe that because they concluded that they "needed" the Property, then they did not need to comply with the Bankruptcy Code, their confirmed plan, seek approval from the court, or provide evidence or explanation that the costs of these large purchases were necessary or justifiable that they are entitled to take such acts. The Debtors chose to use their exempt assets to purchase what they wanted, without court approval, and now seek to divert money from creditors to pay for their "needs."

DECISION

The Debtors, through their misconduct, have created a situation where the court cannot "unscramble the egg" and make the Debtors do it correctly. This may well have been part of a preconceived, ill-intentioned, bad faith scheme to get what the Debtors want and "steal" money from the creditors through their bankruptcy plan. However, that issue can be addressed through the Chapter 13 Plan confirmation process in which the Debtors can demonstrate through a plan their "good faith" and making sure that the creditors are treated in the same manner as if the improper loans (or loans in excessive amounts) were not unilaterally obtained by the Debtors and crammed down the throats of the creditors, Chapter 13 Trustee, and U.S. Trustee, as well as imposed on the court as a *fait accompli*.

The court does not find compelling, or even persuasive, Debtor's testimony as to the value of vehicles as an alternative to buying the new 2013 Honda Fit. It appears that the Debtor attempts to justify the purchase of this vehicle by citing the court to "asking prices" for other used vehicles. No attempt is made to support this contention with the recognized trade journals such as Kelly Blue Book or the NADA Vehicle Price Guide. The Retail Installment Contract referenced as Exhibit A in the Debtor's declaration is all but an illegible copy presented to the court. Dckt. 93. This contract states that the Honda had 15 miles on the odometer when the vehicle was purchased. (The court notes that the Debtor's declaration carefully avoids ever stating that this was a new vehicle.)

The court grants the Motion and gives the Debtors what they want (and what they unilaterally took), leaving it to the Debtors to address this in any plan they want to or need to confirm in this case. FN.1.

FN.1. This case demonstrate why an attorney's reputation and good standing is his or her stock in trade. Debtor's counsel has a reputation for always being honest with the court and prosecuting case in good faith. As opposed to some attorneys, she does not have a large percentage of clients who make "mistakes" in obtaining loans or disposing of assets, or "forget" assets to be schedule or the accurate value of the assets. The court accepts that counsel was not part of any scheme to defraud creditors and it was the Debtors who have taken the money and incurred the debt, shocking their own attorney as much as creditors, the Chapter 13 Trustee, and the court.

GThe 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 the court authorizes the following post-petition borrowing

A. Lender: Debtor William Nissen's 401k Plan with DWS/KW Industries

1. $20,049.89 - Purchase of a 2013 Honda Fit;

2. $1,022.19 - Purchase of replacement refrigerator;

3. $1,600.00 - Purchase six new tires;

4. $821.25 - Payment of arrearage on mortgage payment.

B. Lender: Debtor Denise Nissen's 401k Plan with DWS/KW Industries

1. $11,740.00 - To pay off Debtor William Nissen's existing 401k loan.

IT IS FURTHER ORDERED that in granting the relief requested the court does not find or determine that Debtors' conduct in obtaining these loans and incurring the debt was proper or in good faith. The Debtors have unilaterally obtained the loans and sought approval after the fact. They have created a situation where is in untenable for the court to deny the motion, but one in which they can rectify their misconduct through a good faith Chapter 13 Plan.

23. 11-30546-E-13 WILLIAM/DENISE NISSEN MOTION TO MODIFY PLAN
LC-6 Lorraine W. Crozier 8-29-14 [95]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2014. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on October 28, 2014, to schedule an evidentiary hearing and for the Debtors and counsel to appear.

Willam and Denise Nissen ("Debtors") filed the instant Motion to Modify Chapter 13 Plan on August 29, 2014. Dckt. 95. Debtors state the purpose of the modified plan is to increase the plan payments and the percentage to be paid to unsecured creditors. The Debtors allege this increase is possible because the Debtors have been approved for a loan modification on their mortgage. The proposed pan requires payments as: 37 month at $297.00 per month; 2 months at $600.00 per month; 1 payment of $961.80; and 20 months at $958.00 per month. The Debtors state that the plan properly provides for the secured and priority claims as well as proposing no less than a 34% payment of all unsecured claims. The Debtors provide detailed explanation of their food, clothing, and vehicle expenses.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on October 6, 2014. Dckt. 102. The Trustee objections on the following grounds:

1. Debtors' proposed plan relies on a loan modification with Ocwen Loan Servicing, LLC that has yet to been approved. The proposed plan reflects the terms of the loan modification that was denied earlier by the court on July 1, 2014 because there was no credible evidence that Ocwen Loan Servicing, LLC is the creditor or that it is authorized as the named principal to modify the loan. Without the loan modification, Debtors' would

> not have the ability to afford an increased plan payment of $958.00 and Debtors' have not filed another Motion to Approve Loan Modification. The Trustee does note that the Debtors are current on the proposed plan, including the terms of the modification, and that the Trustee believes Ocwen will abide by the proposed modification pending court approval.

DEBTORS' RESPONSE

The Debtors filed a Reply to the Trustee's objection on October 14, 2014. Dckt. 105. The Debtors state that after futile attempts with contacting Ocwen, the Debtors contacted Houser Law who represented Ocwen in the past. The Debtors allege that House Law has agreed to assist Debtors' counsel in obtaining the necessary additional evidence as soon as the information is verified. FN.1.

FN.1. Debtors hold a very powerful tool when a loan servicing company stonewalls them and hides the identity of the creditor – a 2004 examination. Such can be conducted live, in the courtroom, if necessary. Further, written interrogatories can be sent, and if not responded to, sanctions imposed. In ruling on such sanctions or addressing such issues, the court has ordered the loan servicer and purported creditor (and senior officers of both, no telephonic appearances permitted) to attend such hearings.

As to why a motion for loan modification has not been filed as of yet, the Debtors state that Debtors' counsel had a family emergency in August as well as her own medical concerns this past month. However, the Debtors state that counsel has been diligent and that Debtors' counsel will not file another motion for loan modification until proper evidence is gathered.

Debtors conclude by arguing that:

> [T]he lack of court approval at this time is not a bar to the modification of their plan. Both parties to the loan modification are abiding by its terms and the debtors are performing the modified plan. The trustee has even acknowledged the likelihood that Ocwen would abide by the loan modification agreement and he has raised no other objection to the modified plan.

Dckt. 105, pg. 3.

DISCUSSION

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

The Debtors appear to be asking the court to allow the Debtors to not follow the requirements of the Bankruptcy Code and allow them to proceed under an amended plan without following the proper steps to get the loan modification granted. Similar to the Debtors' Motion to Incur Debt (Dckt. 66 and 89) where the Debtors requested that the court approve debts that the Debtors incurred prior to getting court approval, the Debtors are asking the court to approve the plans under the assumption that the terms of the proposed loan modification

will likely be granted. There is no motion to approve loan modification pending. There is no contract signed between the Debtors and Ocwen concerning the loan modification. There is no evidence that Ocwen is the servicer or holder of the debt. The Debtors are again asking the court to take their word that a future loan modification will be finalized and to ignore the requirements of the Bankruptcy Code. FN.2.

FN.1. It is surprising that Debtors, and Counsel, are asking the court to allow these Debtors to "bend the rules" in light of Debtors conduct in this case. The Debtors unilaterally obtained loans and created a situation where they "forced" the court to retroactively approve the loans to prevent further damage to the bankruptcy estate. The court would expect that such Debtors, if they actually obtained the loans in good faith and by "mistake," and their counsel in prosecuting a case in good faith, to not try and cut other corners. Apparently the court is mistaken in such belief as to these Debtors, and unfortunately their counsel.

The proposed plan also troubles the court with respect to the ability to find that this bankruptcy case is being prosecuted in good faith, that the plan has been proposed in good faith, and that the Debtors are seeking to confirm the plan in good faith. The Debtors started this case with their finances encumbered by loans from their retirement plans. This necessitated the Debtors paying themselves back (their retirement plans) ahead of other creditor to whom they owed money.

Now, these Debtors secretly borrowed more money from their retirement plans, reducing the income from which they have to fund a plan. (Reducing it, if the court approves the borrowing rather than denying it and allowing the Debtors to take an early distribution from their retirement plan. But if such a distribution is made, the Debtors may well be incurring taxes and penalties, which will further reduce distributions to other creditors.)

When Debtors filed this case they stated under penalty of perjury their gross income was $9,553.33 a month. From this they had to have deductions of $610.19 to repay pre-petition 401k loans (effectively repaying themselves) and chose to make an additional $392.00 a month further 401k contribution. Together, the Debtors were diverting $1,002.19 a month to themselves before computing their projected disposable income.

Debtors also list $2,128.00 in monthly withholding for taxes and social security. This is 22% of the gross monthly income. Such appears to be high and may be constructed to create an annual tax return for the Debtors. On Schedule J the Debtors list the following necessary expenses: ($800) food, ($425) medical and dental, and ($825) transportation.

On August 28, 2014, the Debtors filed Supplemental Schedules I and J. Dckt. 87. The information disclosed, as compared to the Original Schedules I and J, are as follows.

Income/Deduction	Supplemental Schedule I	Original Schedule I	Increase/(Decrease) Over Original
William Nissen			

Gross	$5,143.00	$4,380.00	$763.00
Tax, Medicare, Social Security	($1,183.00)	($1,000.00)	$183.00
Insurance	($259.07)	($420.00)	$160.93
401k Voluntary Contribution	($103.00)	($225.00)	($122.00)
401k Loan Repayment	($467.50)	($448.56)	$18.94
Health Savings Account	($135.00)	($140.00)	($5.00)
Term Life Insurance	($25.35)	$0.00	$25.35
Denise Nissen			
Gross	$5,442.66	$5,178.33	$264.33
Tax, Medicare, Social Security	($1,251.11)	($1,128.00)	$123.11
Insurance	($24.61)	$0.00	$24.61
401k Voluntary Contribution	($109.00)	($167.00)	($58.00)
401k Loan Repayment	($440.87)	($161.63)	$279.24
Health Savings Account	($135.00)	$0.00	$135.00
Term Life Insurance	($25.35)	$0.00	$25.35
Expenses			Decrease in Mortgage Expense
Mortgage	($1,333.61)	($1,890.00)	($556.39)
Electricity/Gas	($200.00)	($175.00)	$25.00
Water/Sewer	($120.00)	($120.00)	$0.00

Telephone	$0.00	($200.00)	($200.00)
Cable	($222.00)	($100.00)	$122.00
Cell Phones	($250.00)	$0.00	$250.00
Home Maintenance	($308.00)	($100.00)	$208.00
Food/Housekeeping	($950.00)	($800.00)	$150.00
Pet Care	($110.00)	($110.00)	$0.00
Hair Cuts, Household Goods	($70.00)	($125.00)	($55.00)
Clothing		($100.00)	($100.00)
Laundry and Dry Cleaning		($50.00)	($50.00)
Clothing, Laundry, and Dry Cleaning	($170.00)		$170.00
Medical/Dental	($250.00)	($425.00)	($175.00)
Transportation	($931.00)	($825.00)	$106.00
Recreation	($180.00)	($125.00)	$55.00
Auto Insurance	($374.00)	($426.00)	($52.00)
			Net Increase/(Decrease) in Expenses
Total Expenses, Excluding Mortgage	($4,135.00)	($3,681.00)	$454.00
			Net Increase/Decrease in Expenses
Including Mortgage	($5,468.61)	($5,571.00)	($102.39)

This chart is telling with respect to the Debtors, the credibility of their testimony, and whether they are prosecuting this Chapter 13 case in good faith. Though their mortgage expense has been purportedly reduced by ($556.39), it has been "necessary" for the Debtors to increase their total expenses by $883.00 These increased expenses include an additional $208 for home maintenance, $50 for phone, $122 for cable and internet, $150 for food and housekeeping, and $106 for transportation (for a total of $931 a month). Debtors have some surprising expense reductions. These include: ($55) for haircuts and household goods, ($175) for medical/dental expenses, and ($52) for

auto insurance (in light of the Debtors buying a new car, which is more expensive to insure).

Some of the expenses are problematic. On Original Schedule J Debtors attempted to justify an ($825) a month transportation expense because tires and repairs in the amount of $2,200 is necessary for Mr. Nissen's truck. However, the Debtors have unilaterally borrowed the money to pay that expense and are forcing the estate to repay it ahead of creditors by the unauthorized 401k loan they game themselves. See William Nissen's testimony under penalty of perjury in the Declaration in support of motion for retroactive approval of post-petition borrowing from 401k plan. Dckt. 91. Now on Supplemental Schedule J Debtors increase their transportation expense even more, piling on the money they are taking out of the estate.

Taken on its face, the Debtors are representing to the court that some of their prior stated expenses were significant overstated and that they have been paying significantly less a month on their mortgage for a number of months – thus misstating their projected disposable income by which the plan in this case was confirmed. Then, notwithstanding the overstated expenses being inaccurate, the Debtors now ask the court to believe that other expenses are actually higher, so it's a wash.

In the current proposed Second Modified Plan the Debtors purpose to fund it for the remaining twenty months at $968.00 per month. This would be sufficient to fund a 34% dividend to creditors holding general unsecured claims. Dckt. 100. This increases the dividend from the 10% provided for in the confirmed plan in this case. Dckt. 5.

While an increase, it appears to be premised on a faulty calculation and a bad faith prosecution of this case. The $968.00 a month plan payment appears to be based on the calculation of income and expenses from Supplemental Schedules I and J. Dckt. 87. Schedule J shows Monthly Net Income of $958.19. But this is reached not only after the substantial increases in transportation, food and other expenses (apparently increased solely for the purpose of offsetting the ($556.39) reduction in the mortgage, but also forcing creditors to pay back the unauthorized 401k loans the Debtors took out to buy a new car and other purchases they wanted to make – all without court authority.

These unauthorized loans increased the monthly 401k loan repayments which are required (apparently to prevent Debtors incurring even greater tax penalties from a premature 401k withdrawal) to $908.37, an increase of $298.18 a month. In addition, the Debtors want to continue to contribute an additional to $212.00 a month into their 401k plans. In effect, Debtors are paying themselves $1,206.55 a month before determining what in good faith they should, and must, provide creditors.

The $908.37 which the Debtors have committed to be paid into their 401k plans without court authorization aside, it appears that the Debtors, if they were proceeding in good faith to rectify they wholesale violations of the Bankruptcy Code, could well have the additional monies to fund the plan:

Net Monthly Income From Supplemental Schedule J.....$958.19
Monies Not Diverted to 401k During 20 months.....$298.18
Reduction in Mortgage Payment.....$556.39

Monthly Plan Payment for Final 20 Months of Plan.....$1,812.76

The court could further address specific line items which are excessive, such as transportation, food, and other which have been increased in what appears to be a very thinly veiled attempt to divert monies from creditors, but dealing with the reduction in the mortgage payment and the 401k contribution should provide the Debtors with a minimally intrusive impact on their expenses – as based on what they stated under penalty of perjury previously in this case.

The court continues the hearing to afford the Debtors and their attorney to consider this tentative ruling and the Debtors' conduct in this case. Additionally, the court requires that the Debtors and counsel appear at the continued hearing to address these issues and correct any error of the court or to schedule an evidentiary hearing if the Debtors want to proceed with the plan as presented so that they be afforded the opportunity to testify and present evidence which may show the court that they are proceeding in good faith and their current statements under penalty of perjury are credible.

This also affords the Debtors the opportunity to seek and obtain a loan modification.

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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on October 30, 2014.
>
> **IT IS FURTHER ORDERED** that William Gregory Nissen and Denise Marie Nissen, the Debtors, and each of them, shall appear in person at the continued hearing on their Motion to Confirm the Second Modified Plan. No Telephonic Appearances are permitted for the Debtors for the continued hearing.
>
> **IT IS FURTHER ORDERED** that Lorraine W. Crozier, attorney for the Debtors, shall appear in person at the continued hearing on October 30, 2014. No Telephonic Appearances are permitted for Counsel for the continued hearing.
>
> **IT IS FURTHER ORDERED** that the provisions of Federal Rule of Civil Procedure 41(a)(1) and (2), and the related provisions as incorporated by Federal Rule of Bankruptcy Procedure 9014 and 7041, are suspended. This Motion cannot be dismissed without order of the court.

24. 08-36047-E-13 JOHN/CHARLENE JOHNSON **CONTINUED AMENDED MOTION TO**
PGM-6 Peter G. Macaluso **APPROVE LOAN MODIFICATION**
9-24-14 [156]

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 23, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on November 18, 2014.

The Motion to Approve Loan Modification filed by John and Charlene Johnson ("Debtor") seeks court approval for Debtor to incur post-petition credit.

PRIOR HEARINGS

The Motion to Approve Loan Modification was originally set for hearing on August 26, 2014. The court continued the hearing to September 16, 2014 at 3:00 p.m.

At the time of the continued hearing, no party had filed any supplemental responses or objections on the Motion.

The Modification that is the subject of the original motion was with another person named "Lender." On the face of the Motion the court could not identify who this "Lender" is, or if "Lender" actually exists.

The Motion continued to that the agreement with the person named "Lender" provided,

A. The first modified payment will be in the amount of $2,345.19, at 5.000%, will be due on June 1, 2014. Debtor is to make 480 payments. [On its face, the Motion does not state the amount fo any payments other than the first payment, and that the first payment is "at 5.00%."

B. The Modified Principal Balance will be $387,285.19. {Movant does not state the prior principal balance.]

C. There are Unpaid Amounts being added to the Principal Balance. [Movant does not say what amount of "Unpaid Amounts" are being added to the Principal Balance.]

Motion, Dckt. 141.

Though not referenced in the Motion, an exhibit was filed in conjunction with the Motion. This Exhibit is a Home Affordable Modification Agreement. Exhibit A, Dckt. 144. This Loan Modification Agreement is not with the person named "Lender" in the Motion, but is between Nationstar Mortgage, LLC and the Debtors. Buried in paragraph 3 of their declaration, the Debtors state that they have been offered a "loan modification by our lender, Nationstar Mortgage, LLC, under HAMP."

The court was troubled when parties file generic motions which fail to state with particularity the grounds and relief sought (Fed. R. Bankr. P. 9013) and use made-up placeholder names for parties. If the court were to grant the Motion, it would grant the motion for Debtors to enter into a loan modification with a person named "Lender" and no other person. It appears that the Debtors are not seeking to modify a loan with a person named "Lender" but another entity.

The court was also troubled by a motion which hides the terms of the modification. It may well be that the principal balance is being increased from $101,000 to $387,285.19, which the Debtors agreeing to pay a $250,000 document fee, $10,000 processing fee, and $16,285.19 for miscellaneous expenses. If challenged later, the person named "Lender" would blunt any consumer challenges to the propriety of such changes, arguing that the bankruptcy court approve them. This court does not blindly sign order approving secret, unstated, no pleaded terms. FN.1

FN.1. To the extent that Debtors want to argue that it's really simple and all the court has to do is read all of the pleadings to figure out what is being done, the response is – if it is that simple, then the Debtors could have simply stated such grounds and relief with particularity in the Motion.

The court continued the hearing to 3:00 p.m. on October 21, 2014 to allow the Debtors to file and serve an amended motion naming the creditor.

DEBTORS' AMENDED MOTION

Debtors' filed an amended motion on September 24, 2014. Dckt. 156. The Debtors properly name Nationstar Mortgage, LLC as the lender. Additionally, the Debtors list the terms of the modification, including the payment plan, the term of months, principal, and interest rate. The Debtors also state that the Debtors have completed their plan and are awaiting discharge.

Nationstar Mortgage, LLC has agreed to a loan modification which will make the payments amount of $2,345.19 at 5.00% over 480 months. The modification will include all amounts and arrearages as of June 1, 2014 (including unpaid and deferred interest, fees, escrow advances, and other costs, but excluding unpaid late charges) less any amount paid to the Nationstar Mortgage, LLC but not previously credited to the Debtors' loan. Because the Debtors have completed that plan, it will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case.

Unfortunately, the court has no idea whether Nationstar Mortgage, LLC is actually a creditor, as defined in 11 U.S.C. § 101(10) and (5), an authorized agent for the creditor, or merely entering into agreements which are unenforceable against the undisclosed creditor as part of a scheme to defraud consumers and the court.

The court continues the hearing to the same date and time as another matter in which Nationstar Mortgage, LLC and its counsel has been ordered to appear. This continuance will allow the Debtors' counsel and "Nationstar Mortgage, LLC" to correct or supplement the documentation so the court can have a good faith believe that it is approving and authorizing a transaction between the real parties in interest who have a case or controversy before this federal court. U.S. Constitution Article III, Section 2.

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 to Approve the Loan Modification filed by John and Charlene Johnson having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on November 18, 2014.

25. 14-28348-E-13 CAROLYN WILLIAMS
MET-3 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF PORTFOLIO RECOVERY ASSOCIATES, LLC
9-18-14 [28]

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Portfolio Recovery Associates, LLC, "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Carolyn Williams, "Debtor" to value the secured claim of Portfolio Recovery Associates, LLC, "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of a 2001 Honda Accord, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $4,900.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor provided a NADA report which values the Vehicle at $4,900.00 which takes milage and condition into its calculation. Dckt. 31. Exhibit C.

The lien on the Vehicle's title secures a purchase-money loan incurred in 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,200.00. Therefore, the Creditor's claim secured by a lien on the asset's title is

under-collateralized. The creditor's secured claim is determined to be in the amount of $4,900.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Carolyn Williams, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Portfolio Recovery Associates, LLC, "Creditor," secured by an asset described as 2001 Honda Accord, "Vehicle," is determined to be a secured claim in the amount of $4,900.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $4,900.00 and is encumbered by liens securing claims which exceed the value of the asset.

26. 14-23652-E-13 PHILIP/YVETTE HOLDEN MOTION TO CONFIRM PLAN
SDB-3 W. Scott de Bie 9-4-14 [48]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. 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 deny the Motion to Confirm the Amended Plan.

Philip and Yvette Holden ("Debtors") filed the instant Motion for Order Confirming First Amended Chapter 13 Plan on September 4, 2014. Dckt. 48.

MOTION

In support of confirmation, the Debtors state that the sole purpose of the amended plan is to properly provide for the secured claim of Wells Fargo while providing proper distribution to all secured and priority creditors. Debtors state that the Debtors' First Amended Chapter 13 Plan of Reorganization proposes $700.00 per month for 4 months, then $2,014.00 for 1 month and thereafter $2,634.00 per month for 55 months so as to pay in full all priority and secured claims and a 0% dividend to the unsecured creditors.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Debtor, filed an objection to the instant Motion on October 7, 2014. Dckt. 54. The Trustee objects on the following

grounds:

1. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtors are $2,014.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $2,634.00 is due on October 25, 2014. The Debtors have paid $2,800.00 into the plan to date.

DISCUSSION

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

Upon review of the Motion and the Trustee's objection, the court is unable to confirm a plan when the Debtors are delinquent in plan payments. According to the Trustee's accounting, the Debtors are currently $2,014.00 delinquent in payments. Without being current on payments under the plan, the proposed amended plan cannot be confirmed. Debtors has not provided any supplemental evidence or declaration to show that this delinquency has been cured.

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

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

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

27. 11-26254-E-13 NICOLE BROWN **MOTION TO MODIFY PLAN**
PGM-6 Peter G. Macaluso **9-11-14 [111]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. By the court's calculation, 40 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.

Nicole Brown ("Debtor") filed the instant Motion to Confirm the Modified Plan on September 11, 2014. Dckt. 111.

MOTION

In support of the Motion, the Debtor states that due to the passing of her father, she had to help with the costs for the services. The Debtor proposes that the total amount of missed payments equaling $755.00 be forgiven and plan payments of $290.00 will begin September 2014 to complete the Plan within the maximum term allowed by law. Debtor filed supplemental Schedules I and J to reflect Debtor's current financial situation.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on October 7, 2014. Dckt. 117. The Trustee objects on the following

ground:

1. The Debtor is delinquent $290.00 under the proposed plan. The Plan states: “$7,295.00 through 8/2014, $290.00 x 19 months starting 9-2014.” The case was filed March 14, 2011, and 42 payments have come due under this plan; payments totaling $7,585.00 have become due under the proposed modified plan. The Debtor has paid the Trustee $7,295.00 with the last payment of $250.00 posted June 17, 2014.

DISCUSSION

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

While the court sympathizes with the unfortunate loss of Debtor’s father, the court cannot confirm the plan because the Debtor is delinquent under the terms of the proposed modified plan. As stated by the Trustee, the Debtor has not paid the $290.00 monthly plan payment under the terms of the proposed plan. Debtor has not provided any supplemental evidence or declaration to show that this delinquency has been cured.

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

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

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

28. 14-27456-E-13 JENNIFER LINN-KIDWELL
WT-1 Scott D. Hughes

MOTION TO DISMISS CASE AND/OR OBJECTION TO CONFIRMATION OF PLAN BY JUNE LINN
9-11-14 [33]

Final Ruling: No appearance at the October 21, 2014 hearing is 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, parties requesting special notice, and Office of the United States Trustee on September 11, 2014 or October 2, 2014. Since proper service on all necessary parties was not done until October 2, 2014, the court will use that date to determine if proper service was given. By the court's calculation, 19 days' notice was provided. 14 days' notice is required for this Chapter 13 case under Local Rule 9014-1(f)(2).

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

The hearing on the Motion to Dismiss is continued to 3:00 p.m. on October 28, 2014, due to calendar scheduling issues of the court.

This Motion to Dismiss the Chapter 13 bankruptcy case of Jennifer Ann Linn-Kidwell ("Debtor") has been filed by June Linn ("Movant"), a creditor.

MOTION

Movant argues that the Debtor's case should be dismissed because the amount of the Debtor's unsecured debt exceeds the debt limit set forth in 11 U.S.C. § 109(e). In support, the Movant asserts that the Debtor, Movant's daughter, misappropriated at least $370,167.00 by:

1. Writing checks to herself from Movant's account at Washington Mutual Bank and making unauthorized cash withdrawals using the automated ATM machines;

2. Making unauthorized credit card charges on her mother's American Express Gold account;

3. Making unauthorized charges on Movant's Bank of America Visa account ending in xxxx7208;

4. Making unauthorized charges on Movant's American Express "Blue Cash" account;

5. Making unauthorized charges on Movant's Bank of America Harrah's Total Rewards Visa;

6. Making unauthorized withdrawals from Movant's accounts at

Downey Savings;

7. Making unauthorized withdrawals or liquidations of her mother's Certificates of Deposit and Downey Savings.

On September 11, 2014, the Movant filed a Proof of Claim No. 7 in the amount of $1,133,021.63. The Movant states that the principal among of the claim, $270,167.00, is based upon the Debtor's unauthorized use of Movant's cash, credit cards, and certificate of deposits. Double damages amounting to $740,334.00, and attorneys' fees of $22,520.63, pursuant to California Probate Code § 4231.5(c), were added.

DEBTOR'S OPPOSITION

Debtor file opposition to the instant motion on October 1, 2014. Dckt. 44. The Debtor argues that Movant's claim has never been liquidated and cannot be counted towards the Debtor's debt limits. In support of this conclusion, the Debtor argues that the claim is based on a complex state court lawsuit that has never been litigated. Debtor argues that non of the allegations in the state court action have been proven and that the Debtor has not had the opportunity to defend herself on those allegations. The Debtor argues that there are affirmative defenses that Debtor would raise in the state court action as well as that the standard to prove elder abuse must be proven by clear and convincing evidence. The Debtor argues that the there is a dispute on liability and amount. The Debtor denies that the transactions alleged in the claim were not authorized and that Debtor denies that she owes Movant anything. Debtor states that the liability of the Debtor and the alleged amounts owed are not subject to ready determination without a complex trial on the merits of the case. The Debtor also notes that the instant motion was not properly served, prior to the amended proof of service on October 2, 2014.

APPLICABLE LAW

Questions of dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219,

1224 (9th Cir. 1999).

Pursuant to 11 U.S.C. § 109(e), an individual with regular income that owes, on the date of the filing of the petition, “noncontingent, liquidated, unsecured debts of less than $383,175" may be a debtor under Chapter 13.

The Ninth Circuit has held that a debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999). In *In re Fostvedt*, the Ninth Circuit Court of Appeals stated that the question of whether a debt is liquidated "turns on whether it is subject to 'ready determination and precision in computation of the amount due.'" 823 F.2d 305 (9th Cir. 1987) (quoting *Sylvester v. Dow Jones and Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (B.A.P. 9th Cir. 1982)). Further, the Ninth Circuit Court of Appeals in *In re Wenberg* affirmed the reasoning in the Bankruptcy Appellate Panel opinion: "The definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *In re Wenberg*, 94 B.R. 631 (B.A.P. 9th Cir. 1988). The Ninth Circuit expanded on the *In re Wenberg* language in *In re Slack*, stating that “Whether the debt is subject to ‘ready determination’ will depend whether the amount is easily calculable or whether an extensive hearing will be needed to determine the amount of the debt, *or the liability of the debtor*.” *In re Slack*, 187 F.3d 1070, 1074 (9th Cir. 1999); *accord In re Ho*, 274 B.R. 867, 874-75 (B.A.P. 9th Cir. 2002).

DISCUSSION

Here, the $1,133,021.63 claim was being litigated in state court at the time this bankruptcy case was filed. At this time, the automatic stay has prevented Creditor from prosecuting that state court case. The movant has not sought relief from the automatic stay to prosecute that state court litigation.

The court’s analysis begins with what Creditor is asserting as a claim. Proof of Claim No. 7 states the Claim as follows:

A. Amount of Claim.....$1,133,021.63.

B. Basis of Claim.....Damages Arising From Elder Abuse.

C. Dollar Damages as of Filing.....$ 370,167.00.

D. Cal. Probate Code § 4231.5(c) Damages.....$ 740,334.00.

E. Cal. Probate Code § 4231.5(c) Atty Fees...$ 22,520.63.

A copy of the State Court Complaint (Because it is in connection with a proceeding in the Probate Court the Complaint is titled a “Petition.” For clarity of discussion, the court will refer to it as a “Complaint.) is attached to Proof of Claim No. 7. The Complaint states the damages being asserted as,

A. Debtor charged at least $84,000.00 to Movant’s credit cards and paid the unauthorized charges with Plaintiff’s money.

B. Debtor, without authorization, $29,344.34 in monies from Movant's bank accounts (through checks written to Debtor). The checks are detailed in the Complaint.

C. Debtor withdrew, without authorization, $6,609.00, in monies through ATM transactions from Movant's bank accounts.

D. Debtor withdrew, without authorization, $250,000.00 from Movant's bank accounts at Downey Savings.

These dollar amounts are specifically identified and the amount of damages being asserted are "liquidated." The court has little more to do than add up the numbers for the various transactions which are specifically identified in the Complaint and Proof of Claim No. 7.

Movant also asserts the right to $740,334.00 of damages pursuant to California Probate Code § 4321.5(c). This code section provides,

> (c) If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property that belongs to a principal under a power of attorney, or has taken, concealed, or disposed of property that belongs to a principal under a power of attorney by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action to recover the property or for surcharge. In addition, except as otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs to the prevailing party. The remedies provided in this section shall be in addition to any other remedies available in law to the principal or any successor in interest of the principal.

The damages under this section are simply computed as two-times the actual damages arising from the "elder abuse." The state provides for the additional damages to be twice the actual damages, and does not provide that such damages are in some amount, in the discretion of the trial court of up to twice the actual damages. Further, the status provides that the violating party "shall" (not may) be liable for the additional damages.

Again, the amount of the additional damages sought to be required can be readily determined by the court merely multiplying the action damages by two.

This Code section also provides that attorneys' fees may (not "shall"), but are not required, to be awarded to a party prevailing in a recover of damages. While the right to attorneys' fees (the same as the other damages) may be disputed, the amount claimed can be readily determined by the court. As with routine fee applications the court can look at the simple fee statements, add up the amounts which relate to the dispute, and state the number.

Opposition

The Debtor opposes the Motion asserting that the claim is (1) contingent, (2) disputed, and (3) not liquidated. While saying the word "contingent" in the Opposition, no clear contention is made as to why or how the obligation is contingent. No unfulfilled condition precedent is asserted which must be satisfied before Movant could assert the alleged rights. *Fostvedt v. Dow (In re Fostvedt)*, 823 F.2d 305, 306-307, (9th Cir. 1987). Rather, Debtor makes it clear that she disputes the obligation and that no court has "liquidated" the final amount which may be owed. What is clear is that Movant asserts that Debtor engaged in wrongful conduct in the past, that wrongful conduct has resulted in damages, and based on the wrongful conduct which occurred Debtor is obligated to Movant for a significant amount of money. All of the events have occurred by which Debtors liability or non-liability will be determined. The obligation, if any, is not contingent.

It is clear that Debtor "disputes" that Movant is entitled to relief. However, "disputed" is not a statutory element in making the 11 U.S.C. § 109(e) determination. See the plain language of 11 U.S.C. § 109(e).

The final element is whether the amount of the alleged debt is "liquidated." As discussed above, the Ninth Circuit Court of Appeals and other Courts of Appeals have address this issue in a pragmatic manner. The debt is liquidated, for 11 U.S.C. § 109(e) purposes,

> "if the amount of the creditor's claim at the time of the filing the petition is ascertainable with certainty, a dispute regarding liability will not necessarily render a debt unliquidated. Whether the debt is subject to "ready determination" will depend on whether the amount is easily calculable or whether an extensive hearing will be needed to determine the amount of the debt, or the liability of the debtor. See *In re Wenberg*, 94 B.R. at 634. Therefore, the mere assertion by the debtor that he is not liable for the claim will not render the debt unliquidated for the purposes of calculating eligibility under § 109(e).
>
> According to Black's Law Dictionary, a liquidated debt is one in which "it is certain what is due and how much is due." Black's Law Dictionary 930 (6th ed. 1990). "**Therefore, the concept of a liquidated debt relates to the amount of liability, not the existence of liability**." *Verdunn*, 89 F.3d at 802. Even if a debtor disputes the existence of liability, if the amount of the debt is calculable with certainty, then it is liquidated for the purposes [*1075] of § 109(e). See *In re Mazzeo*, 131 F.3d at 304; *Verdunn*, 89 F.3d at 802; *In re Knight*, 55 F.3d at 235."

Slack v. Wilshire Ins. Co., 187 F.3d at 1074. [Emphasis added.]

In *Slack* the Ninth Circuit Court of Appeals concluded that the debt was "liquidated" in light of the stipulation of the parties. The court rejected the debtor's contention that the prior Ninth Circuit Decision *In re Fostvedt* stands for the proposition that merely because a debtor "disputes" a debt, that renders the debt "unliquidated."

Some cases which have applied this standard include the following:

Sharp v. Brandman, 2006 U.S. Dist. LEXIS 89824 (N.D. Cal. 2006).

Creditor asserted the right to receive consequential damages for out of pocket expenses to finance a business based on an oral agreement to purchase a partnership interest for $125,000.00. Creditor asserted that the court could add up the receipts to determine the amount of damages at issue. For the claim at issue, the District Court concluded that the damages which could be claimed only to the extent "special or particular circumstances from which they arise were actually communicated to or known by the breaching party [citations omitted]." Further, that a party asserting a breach of contract claim must do everything reasonably possible to minimize his losses and reduce the damages. The District Court concluded that since a key element of the amount of any damages was whether the business would have succeeded, for which an extensive trial would be required.

Additionally, the District Court concluded that the creditor had not shown that the expenses were for the alleged business, but also could well have been for personal use.

United States v. Ahmed (In re Ahmed), 362 B.R. 445 (C.D. Cal. 2006).

In *Ahmed* the court addressed an asserted tax debt claimed by the Internal Revenue Service. Though no determination of the tax liability had been made and the debtor disputed both the liability and amount, "The calculation of the amount owed was explained in the notices of deficiency and readily ascertainable through calculations based on the fixed legal standards of the tax law. As previously discussed, a tax assessment is an established liability with the force of a judgment in the amount of the assessment. Taxpayers owe assessments to the IRS unless and until they can prove otherwise." *Id.* at 450.

Sullivan v. Java Oil Ltd. (In re Sullivan), 2006 U.S. Dist. LEXIS 43734 (E.D. Cal.

Though the debtor asserted that the creditor's claim was based on a "complex tort theory," the District Court affirmed the Bankruptcy Court's determination that the debt was "liquidated" for 11 U.S.C. § 109(e) purposes. At issue were fees and costs being sought by the Plaintiff in the non-bankruptcy action which had not yet been awarded by the court. Civil Minutes, *In re. Sullivan*, Bankr. E.D. Cal. 05-30714, Dckt. 67. Attorneys' fees and costs are damages asserted which "are readily calculable by the court." The amount of fees and costs sought were in excess of $1,000,000.00, but were still "readily calculable by the court."

Braun v. Argi-Systems, 2005 U.S. Dist. LEXIS 37604, *18, (E.D. Cal. 2005).

Though the debtor asserted that the debt was "unliquidated," because it was subject to an asserted offset for defective products provided by the creditor, the Bankruptcy Court concluded and the District Court affirmed that such an offset did not render the debt "unliquidated." This was true even though an offset has the effect of reducing the creditor's debt.

The Readily Calculable Claim in This Case

Movant asserts, in substance, that Debtor stole $ 370,167.00. This was done in the context of the Debtor being Movant's daughter and having control over Movant's bank accounts and credit cards. Movant provides the court with a "punch list" of credit card changes, checks, and ATM withdrawals from the Movant's account which Movant states were not authorized. In addition, Movant claims statutory double additional damages and attorneys' fees and costs.

Debtor contends that the damages claimed are "based on a complex state court lawsuit which has never been litigated." Further, that Debtor has not yet been given the opportunity to defend herself in that suit. (Presumably, Debtor means that the trial has not occurred and not that because of this bankruptcy filing and the automatic stay Movant has been precluded from proceeding with that litigation and Debtor has been forced to present her defense in that action.)_

On its most basic level, the dispute is not what Movant asserts was taken, but whether Debtor was authorized to take the monies. Debtor has filed a pleading titled "Objection to Claim," which purports to "objection" to Movant's Proof of Claim No. 7. Dckt. 39. In it, Debtor states her "objections" as follows,

a. "The allegations of liability and amounts have never been proven."

b. "The debtor has never had her day [sic.] court to defend herself."

c. "The claim also includes double damages and attorney's fees that have never been litigated."

d. "Because the claim is based on complicated allegations of liability and amounts that have never been proven and because the causes of action in the complaint are subject to affirmative defenses, the claim is contingent, disputed and unliquidated."

e. "June Linn is not entitled to any of the amounts in the claim until she proves she is entitled to it. Debtor therefore requests that the claim be completely disallowed."

f. "The complaint is not based on a bill or a contract signed by the debtor. The liability and the amounts alleged to be owing in the complaint have never been proven in a court of law. Why should this creditor be allowed to file a claim, triple the amount allegedly owed, add attorney's fees and then expect the claim to be allowed when it has never gone to court?"

g. "If the claim were allowed, it could be not be paid in chapter 13 because of the debt limits. Because of that the claim should be completely disallowed."

h. "The alleged claim is also subject to multiple affirmative defenses that must be actually litigated before June Linn is automatically entitled to an allowed claim."

i. The plaintiff is the debtor's 88 year old mother and there are issues of competence that should also be litigated before any liability or amounts can be determined. June Linn should be forced to take the witness stand and prove up her case."

j. "However, June Linn is dead wrong when she alleges that the amount of her claim is subject to ready determination with certainty. She still has to prove the allegations before any liability or amounts can be determined."

Id.

While long on rhetoric, the Objection to Claim is short on several essential items. The first is legal authority for Debtor's contentions. The second is stating any actual "objection" to the claim. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm),* 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The "Objection to Claim" appears merely to be a rehash of the opposition to the Motion to Dismiss – contending that the state law claim is so complex as to render it "unliquidated."

The $ 370,167.00 portion of the claim is "liquidated," as that term is used in 11 U.S.C. § 109(e). The court can simply determine what dollar amounts are being claimed, with the evidence, to the extent Debtor disputes the amount being claimed, from third party records (bank statements, credit card statements) for which no significant hearing would be required.

It is further contended that Debtor "in bad faith, wrongfully took, concealed, and/or disposed of property [of Movant], and/or took, concealed and/or disposed of property by the use of undue influenced in bad faith and/or through the commission of elder financial abuse as defined in section 15610.30 of Welfare and Institutions Code, therefore justify an award of damages equal to twice the value of the property pursuant to Probate Code section 859, as wells as attorneys' fees and costs pursuant to Probate Code section 859." Complaint, Proof of Claim No. 7 attachment. The "elder abuse" provided for in California Welfare & Institutions Code § 15610.30 requires that the conduct be done for a "wrongful use or with intent to defraud," or by "undue influence" (defined in Cal. Wel. & Inst. Code § 15610.70 as being conduct which causes another person's free will to be overcome and creates an inequity).

While the $370,167.00 in damages are "liquidated," the additional damages and the right to attorneys' fees are limited to those which arise from conduct which was the "wrongful use [of the asset] or with intent to defraud," or by "undue influence" is a bit more complicated. These additional damages have a knowledge component, and some portions of the claim may have been with such knowledge and some may not have been with such knowledge. See *Teselle v. McLoughlin*, 173 Cal.App. 4th 156 (2009), reh'g denied 2009 Cal.App. LEXIS 796 (2009). The right to attorneys' fees flows form a finding of "elder financial abuse" under California Welfare & Institutions Code § 15610.30, which includes this intent component (as opposed to an unauthorized but mistaken taking).

Cal. Wel. & Inst. § 15657.5.

Therefore, for purposes of 11 U.S.C. § 109(e) the double additional damages and attorneys' fees are "unliquidated."

On Amended Schedule F Debtors list $75,022.78 in general unsecured claims (excluding Movant). Dckt. 15. When added to Movant's "liquidated" unsecured claim of $370,167.00, the total non-contingent, "liquidated" unsecured claims for purposes of 11 U.S.C. § 109(e) is $445,189.78. This exceeds the $383,175.00 maximum proscribed by 11 U.S.C. § 109(e) for the Debtor to be eligible for relief under Chapter 13.

The Debtor being ineligible for relief under Chapter 13, the court grants the Motion and orders the case dismissed.

Debtor Not Left Without Bankruptcy Relief

Though the magnitude of Debtor's debt preclude relief under Chapter 13, the Debtor is not left out in the cold. She could proceed under Chapter 11. The court can well envision a good faith plan which affords Movant the opportunity to prosecute her claim in state court (or in this court) to determination and allows the Debtor to preserve and maximize her assets (which ultimately Movant would look to if she prevails).

The parties may well want to contemplate their reasonable, good faith alternatives during the one week continuance.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on October 28, 2014.

29. 14-27360-E-13 EDITH INGRAM **MOTION TO CONFIRM PLAN**
NUU-1 Chinonye Ugorji **9-2-14 [28]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

30. 13-32861-E-13 JAMES/BETH FRY — **MOTION TO APPROVE LOAN MODIFICATION**
PGM-5 Peter G. Macaluso — **9-23-14 [108]**

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.

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 Green Tree Servicing, LLC, Ocwen Loan Servicing, LLC, Wells Fargo Bank, N.A., Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for 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 denied without prejudice.

The Motion to Approve Loan Modification filed by James and Beth Fry ("Debtors") seeks court approval for Debtors to incur post-petition credit. Green Tree Servicing ("Green Tree"), 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 $806.58 a month to $797.63 a month. The modification will create a new principal balance of $109,774.61 and set the interest rate at 5.125%.

The Motion is supported by the Declaration of James and Beth Fry. The Declaration affirms Debtors' desire to obtain the post-petition financing and

provides evidence of Debtors' ability to pay this claim on the modified terms.

However, the court cannot determine from the evidence presented what, if any, legally recognized entity is the creditor to be bound by this Motion. Green Tree is a servicing company, not the real secured creditor. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract. It is not too much, and is Constitutionally mandated, that the true parties appear in federal court to have their rights and interests determined, and the relief they seek issued.

As this court has stated on many occasions, the fundamental requirement for any federal court to exercise federal court judicial power is that there must be a case or controversy between the parties for whom relief is sought. U.S. Constitution Article III, Sec. 2. Here, there is nothing to indicate that there are two real parties in interest whose rights are being impacted. While the Debtors are before the court, it appears that a servicing company is being inserted into the Loan Modification Agreement as a "placeholder," who may or may not be authorized to modify the creditor's rights and claim.

If the court were to approve this loan modification, it would be ineffective, potentially subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes an as yet unknown creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but his counsel as well – most likely leaving the Debtor unable to have the benefit of paying a reduced secured claim. The modified plan cannot be approved without the proper documentation showing that Green Tree has the authority to modify loans on behalf of the true creditor.

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 James and Beth Fry 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 denies the Motion to Approve the Loan Modification Agreement without prejudice.

31. 14-25561-E-13 MARCELO/HAZEL LOPEZ
SJS-3 Scott J. Sagaria

MOTION TO CONFIRM PLAN
8-27-14 [50]

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 dismissed as moot, the case having been dismissed.

32. 10-39863-E-13 SDB-3 — ALEXANDER TAYLOR AND CAROLINE GUERRERO-TAYLOR — W. Scott de Bie — MOTION TO VALUE COLLATERAL OF NATIONSTAR MORTGAGE, LLC — 9-19-14 [73]

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

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, Bank of America, N.A.. Mortgage Electronic Registration Systems, Inc., BAC Home Loans Servicing, LP, Nationstar Mortgage, LLC, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Nationstar Mortgage, LLC ("Creditor") is denied without prejudice.

The Motion to Value filed by Alexander Taylor and Caroline Guerrero-Taylor ("Debtors") to value the secured claim of Nationstar Mortgage, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 220 Bella Vista Way, Rio Vista, California ("Property"). Debtors seek to value the Property at a fair market value of $225,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the court is unable to determine if proper service on the Motion has taken place. A review of the proof of service shows that Chapter 13

Trustee, Bank of America, N.A.. Mortgage Electronic Registration Systems, Inc., BAC Home Loans Servicing, LP, Nationstar Mortgage, LLC, and Office of the United States Trustee were served. However, The Bank of New York Mellon, listed on the Proof of Claim as the creditor.

The Transfer of Claim Other Than for Security (Dckt 78), filed on October 6, 2014, appears to transfer some right to Nationstar Mortgage, LLC but the court cannot discern if it is for just servicing or for the entire lien. There is no supporting evidence to elaborate on what rights are being transferred, particularly since the Transfer lists both The Bank of New York Mellon, the presumed creditor, and BAC Home Loans Servicing, LP, the presumed servicer. The court further notes that this "transfer" did not take place until nearly a month after the instant Motion was filed listing Nationstar Mortgage, LLC as the lender for purpose of the Motion to Value. It raises questions as to whether the parties themselves are fully aware of who the actual creditor is.

The court will not value a claim prior to ensuring that all proper and necessary parties were served, especially when the relief sought in the motion is seeking to alter the rights of a creditor.

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 Alexander Taylor and Caroline Guerrero-Taylor ("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.

33. 10-44663-E-13 MARY MANNER **MOTION TO INCUR DEBT**
AJP-5 Al J. Patrick **Al J. Patrick 10-1-14 [76]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 1, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

The motion seeks permission to purchase an automobile of some make and model, which the total purchase price is $19,500.00.

The Motion to Incur Debt does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief (the purchase of a mysterious automobile) is based. The motion merely states that Mary Manner ("Debtor") seeks a court order authorizing the purchase of a vehicle to replace Debtor's now-inoperable vehicle, describes the purchase price, and states the interest rate. This is not sufficient to establish the right to incur debt, which also requires disclosure of the kind of automobile involved and the proposed monthly payment for the new loan.

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

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

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

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

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494

(Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

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

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

Debtor's exhibit in support of the Motion, the purchase agreement, is of no help to the Motion. Dckt. 78. The scanned copy is of such low quality that the court cannot read the operative terms and information in the agreement.

The court also notes that it treated this Motion as one set for hearing under Local Bankruptcy Rule 9014-1(f)(2). However, Debtor's attorney, in the Notice accompanying the Motion attempted to ste the hearing under Rule 9014-1(f)(1). Dckt. 77 (stating that objections must be "made in writing" and filed "no lass than fourteen (14) calendar days prior to the hearing..."). That would have required the motion to be served and filed 28 days before the hearing, not 20 days before as this motion was filed.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

34. 14-21465-E-13 THOMAS/DEBORAH LUPTON — AMENDED MOTION TO APPROVE LOAN MODIFICATION
PGM-6 Peter G. Macaluso — 9-26-14 [96]

Tentative Ruling: The Motion to Approve Loan Modification 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, Chapter 13 Trustee, Wells Fargo Bank, N.A., and Office of the United States Trustee on September 26, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Thomas and Deborah Lupton ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage ("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 $1,268.61 a month to $1,262.45 a month. The modification will modify the principal balance to includes all mounts and arrearages past due on the Modification Effective date. The interest rate will be 4.625%.

The Motion is supported by the Declaration of Thomas and Deborah Lupton. 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.

OPPOSITION

David Cusick, the Chapter 13 Trustee, filed opposition to this Motion on October 6, 2014. Dckt. 107. The Trustee objects to the Motion on the basis that:

1. Debtors are requesting court approval of a permanent loan modification. The motion states that the principal balance of the Note will include all amounts and arrearages past due as of the modification effective date, including unpaid and eferred interest, fees, and escrow costs, but excluding unpaid late charges. The Trustee could not locate these terms in the Modification Proposal filed as Debtors' Exhibit A. Dckt. 90. Debtor's Declaration then states that the modification was offered under HAMP. The Trustee cannot locate this term in Exhibit A. Finally, the Trustee believes that the document in Exhibit A is a proposal for a modification from Wells Fargo Bank, N.A., but does not appear to be the actual contract for a modification.

2. Debtors' Motion and Declaration identify the lender as Wells Fargo Home Mortgage. Debtors' amended motions identify the lender as Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage. No evidence has been filed showing that the actual lender and holder of the note is Wells Fargo Home Mortgage and not Claimaint Wells Fargo Bank, N.A. The Wells Fargo Home Mortgage Escrow Account Disclosure Statement attached to the proof of claim filed by Wells Fargo Bank, N.A., as well as Debtors' Exhibit A to the instant Motion, identify Wells Fargo Home Mortgage as a division of Wells Fargo Bank, N.A.

3. The Trustee does not oppose the terms of the modification.

DEBTORS' REPLY

Debtors filed a reply to the Trustee's opposition on October 14, 2014. Debtors note the Trustee's objections but state that since the Trustee does not object to the loan modification, the Motion should be granted.

DISCUSSION

The Trustee is correct that the document in Exhibit A is a proposed loan modification. However, Debtors state in their motion that they are "requesting permission to enter into a loan modification agreement." Dckt. 96. Debtors seek approval of the loan modification proactively, before they execute a modification contract with Wells Fargo Bank, N.A. Because of this, the Modification Proposal in Exhibit A is sufficient, as it describes the main terms of the forthcoming modification agreement. The Trustee goes on to state in his opposition that he does not oppose the terms of the agreement as listed in the Modification Proposal.

Again, the Trustee is technically correct that the lender and holder of the note in this instance is Wells Fargo Bank, N.A. and not Wells Fargo Home Mortgage. However, the court recognizes that the semantic difference between "dba" and "a division of" do not create an issue here. Both the court and the Chapter 13 Trustee are savvy enough to understand the what was meant in the Motion. Indeed, this error could even be a scrivener's error. Debtors' Amended Certificate of Service shows that Wells Fargo Bank, N.A. was properly served on September 26, 2014. Dckt. 97. This error in naming the creditor does not cause the Debtors' Motion to fail.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtors' ability to fund that Plan. The motion complies with the provisions of 11 U.S.C. § 364(d) and 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 Thomas and Deborah Lupton 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 Thomas and Deborah Lupton ("Debtors") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 19965 W. Mitchell Mine Road, Pine Grove, California, on such terms as stated in the Modification Proposal filed as Exhibit A in support of the Motion, Dckt. 90.

35. 14-21465-E-13 THOMAS/DEBORAH LUPTON
PGM-7 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF CHASE HOME FINANCE AND/OR JPMORGAN CHASE BANK, N.A.
10-1-14 [98]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 1, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Value is denied without prejudice

The Motion to Value filed by Thomas and Deborah Lupton ("Debtor") to value the secured claim of Chase Home Finance and/or JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 19965 W. Mitchell Mine Road, Pine Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $200,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173

(9th Cir. 2004).

However, the court is unable to determine who, in face, Chase Home Finance, LLC is and whether it exists. A review of the California Secretary of State business search turned up no companies or LLCs with that name. With no Proof of Claim filed, the court looks at the petition and the motion to determine the actual holder of the lien. The Debtor does not provide a copy of the note nor any evidence of who the creditor actually is. In fact, the Debtor in their Motion state "Chase Home Finance and/or JPMorgan Chase Bank, N.A.," appearing to ask the court to guess which entity is the holder of the lien. The court will not haphazardly alter the rights of a party in interest when even the Debtor appears to not know who is the actual creditor.

The court will not begin rubber stamping orders granting motions to value when the actual creditor is not readily identifiable. Instead of filing a motion with an "and/or," in an attempt to throw all potential creditors in the motion, the Debtor should have taken the time to figure out who the actual holder is and properly serve the motion on that entity. Blindly sending out notices of the motion to any entity that may hold the lien is not proper motion practice.

Furthermore, this is the Debtor's second attempt to value this claim, the first attempt being denied for failure of identifying the actual creditor. Dckt. 106. The court does not understand how the Debtor makes the same mistake a second time as to correctly identifying the creditor. The court in its civil minutes (Dckt. 103) on the first attempt to value the claim went into a detailed discussion on the importance of properly naming the creditor, particularly when attempting to value a claim under 11 U.S.C. § 506(a). The Debtor appears to have ignored the court's discussion and filed a nearly identical motion, merely adding "and/or" between Chase Home Finance and JPMorgan Chase Bank. The "and/or" does not cure anything.

Because of the inability to conclusively state who the creditor is, the Motion to Value is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas & Deborah Lupton, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

36. 14-21465-E-13 THOMAS/DEBORAH LUPTON
PGM-5 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
7-1-14 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

Thomas and Deborah Lupton ("Debtors") filed the instant Motion to Confirm Debtors' Second Amended Plan on July 1, 2014. Dckt. 55.

AUGUST 19, 2014 HEARING

On August 19, 2014, the court continued this matter to 3:00 p.m. on September 30, 2014. Civil Minutes, Dckt. No. 82.

SEPTEMBER 30, 2014 HEARING

On September 30, 2014, the court continued this matter to 3:00 p.m. on October 21, 2014.

TRUSTEE'S OBJECTION

The Trustee states that Debtors' plan relies on the Motion to Value the

Secured Claim of "Chase Home Finance/JPMorgan Chase Bank, N.A.," and the Motion for Order Approving Trial Loan Modification. If the motions approving the valuation and trial loan modification are not granted, Debtors' plan does not have sufficient monies to pay the claims in full.

OPPOSITION BY CREDITOR

Wells Fargo Bank, N.A., which identifies itself as the creditor of Thomas B Lupton and Deborah A Lupton ("Debtors"), objects to the Chapter 13 Plan filed by Debtors on the basis that it fails to properly provide for Creditor's claim pending the finalization of a loan modification.

Creditor's claim is evidenced by a promissory note executed by Debtors Deborah A. Lupton and Thomas B. Lupton, and dated October 19, 2005, in the original principal sum of $350,000.00. The Note is secured by a Deed of Trust encumbering the real property commonly known as 19965 West Mitchell Mine Road, Pine Grove, California 95665.

The Creditor argues that the Debtors' Plan fails to provide for the cure of Creditor's pre-petition arrears and reduces the ongoing post-petition payment pursuant to the terms of a trial loan modification to begin on July 1, 2014. While the Creditor does not oppose the inclusion of the trial loan modification's terms in Debtors' Plan, Creditor states that the Plan does not include any provisions should the Debtors fail to make the payments under the terms of the loan modification and modification be denied.

Creditor states that the Debtors' Plan does not indicate if the Debtors will amend their Plan to provide Creditor's pre-petition arrears and full post-petition payments, or surrender the property should the modification be denied. Thus, Creditor believes that the Debtors' Plan should not be confirmed as proposed because it fails to properly provide for the cure Creditor's pre-petition arrears and full ongoing post-petition payment should the Debtors default under the terms of the trial loan modification, failing to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii).

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan on the basis that the Plan relies on two pending motions. Trustee states that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Creditor objects on the basis that it fails to properly provide for Creditor's claim pending the finalization of a loan modification.

As to the Creditor's objection, the Motion to Approve Loan Modification has been granted on October 21, 2014. Dckt. 96. Because the loan modification has been approved, Creditor's objection is overruled as moot.

However, as to the Trustee's objection concerning the Motion to Value, the court denied the Motion to Value Collateral of Chase Home Finance And/Or JPMorgan Chase Bank, N.A., the court denied the Motion on October 21, 2014. Dckt. 98. Because the court denied the Motion to Value, it appears that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Therefore, the court sustains the Trustee's objection.

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

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

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

37. 14-21066-E-13 WALTER/PATTY KNOWLES **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
TSB-1 Darrel C. Rumley **3-13-14 [28]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to overrule the Objection.

The court decided to continue the hearing on this matter from April 8, 2014, so that the matter could be heard conjunction with the hearing on the motions to value secured claims. Civil Minutes, Dckt. No. 32. The hearing was again continued from April 22, 2014, because the Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, was continued to July 22, 2014. Civil Minutes, Dckt. 36. The court continued the hearing again to this hearing date. Civil Minutes, Dckt. 55.

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that the Plan relies on the pending Motions to Value the Secured Claim of

Golden One Credit Union and Litton Loan Servicing, which are set for hearing on April 22, 2014.

On April 22, the court granted the Motion to Value the Secured Claim of Golden One Credit Union, on a second deed of trust recorded against Debtors' 2009 Chevrolet Malibu Hybrid.

The Debtors' Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, which was the remaining pending Motion to Value in Debtors' case at the time of the initial hearing on the Objection, was continued to allow the court to examine agents of Ocwen Loan Servicing, LLC pursuant to Federal Rule of Bankruptcy Procedure 2004(a), so that the Debtors and the court may ascertain the identity of the owner of the claim secured by the second deed of trust against Debtors' property.

On July 22, 2014, the Trustee's Objection to Plan was continued so that Trustee's remaining Objection can be heard after the Debtors' Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, has been resolved.

On September 24, 2014, the Debtors filed a "Stipulation to Strip the Lien of Junior Lien Holder, U.S. Bank, N.A., as Trustee for Ownit Mortgage Trust 2006-0T1, Asset-Backed Certificates, Series 2-6-0T1 (Ocwen loan 0058)." Dckt. 59. The Stipulation clarifies that U.S. Bank, NA is the actual holder of the second deed of trust and not Litton Loan Servicing as originally listed on the Motion to Value. The Stipulation, in relevant part, provided for the treatment of the second deed of trust as unsecured claim.

On October 7, 2014, the court issued an order valuing the secured claim, properly naming U.S. Bank, N.A., as Trustee for Ownit Mortgage Trust 2006-0T1, Asset-Backed Certificates, Series 2-6-0T1 (Ocwen loan 0058)as the creditor, at issue in DCR-1. Dckt. 61. Because of the Debtors correctly naming the holder of the second deed of trust and the court granting the motion to value as to U.S. Bank, N.A., the pending Motion to Value the Secured Claim of Litton Loan Servicing is moot. This resolved the matter and allows the court to address the Trustee's remaining Objection to Plan.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Walter and Patty Knowles's ("Debtors") Plan relies on pending Motions to Value Collateral of Golden 1 Credit Union and Litton Loan Servicing. If the motions to value are not granted, Debtors plan does not have sufficient monies to pay the claims in full and therefore should be denied confirmation.

The Motion to Value Collateral of Golden 1 Credit Union has been granted on April 22, 2014. Dckt. 24. The Motion to Value the Secured Claim of Litton Loan Servicing has been rendered moot after the Debtors successfully named U.S. Bank, N.A., as Trustee for Ownit Mortgage Trust 2006-0T1, Asset-Backed Certificates, Series 2-6-0T1 (Ocwen loan 0058) as the proper party in interest. On October 7, 2014, the court granted the Motion to Value the Secured Claim of U.S. Bank, N.A., as Trustee for Ownit Mortgage Trust 2006-0T1, Asset-Backed Certificates, Series 2-6-0T1 (Ocwen loan 0058). Dckt. 61.

Because both the pending motions to value have been granted and the Motion to Value the Secured Claim of Litton Loan Servicing is moot, the Trustee's objections are overruled.

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

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

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

38. 14-29067-E-13 EARLINE MILES **MOTION TO VALUE COLLATERAL OF**
MET-1 Mary Ellen Terranella **NATIONSTAR MORTGAGE, LLC**
9-17-14 [15]

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

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, Nationstar Mortgage, LLC, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Nationstar Mortgage, LLC ("Creditor") is denied.

The Motion to Value filed by Earline Miles ("Debtor") to value the secured claim of Nationstar Mortgage, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4605 April Court, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $290,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the court cannot discern who the actual creditor is on the second deed of trust. According to Schedule D, the second mortgage is held by "Nationstar Mortgage." However, no proof of claim has been filed, no copies of the note or deed of trust have been provided – in fact, no evidence as to whether or not Nationstar Mortgage is the creditor has been provided to the court at all. As the court has said on numerous occasions, the court will not alter the rights of creditors without ensuring that the real party in interest on a lien is in fact noticed and have the opportunity to object or respond. Here, all the court has is "Nationstar Mortgage" listed on Debtor's Schedule D.

A review of the Proof of Claim No. 1, Nationstar Mortgage, LLC is explicitly listed as the servicer and The Bank of New York Corporation as the creditor. No evidence has been provided otherwise to show a transfer of claim or any documentation that Nationstar Mortgage, LLC is the holder of the claim.

With that minimal disclosure it is clear that (1) the loan servicer is not purporting to be the actual creditor, (2) the loan servicer is making the clear representation that there is a principal, and (3) the least sophisticated consumer on these loans (to borrow a concept from the Federal Fair Debt Collection Practices Act which has been necessarily fashioned by the federal courts to protect consumers from unsavory practices from creditors using third-parties to obtain payment from consumers) knows who is then currently the creditor and who the loan servicer is purporting to bind.

The court, left in the dark as to who is the creditor and how Nationstar Mortgage, LLC is now before this court purporting to be the "Lender" and the creditor (acting as the principal and not the servicing agent). Because of this failure to properly list the actual holder of the lien, the court denies the Motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Earline Miles ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

39. 14-25670-E-13 CHARLES/TAMMY RAETZ — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 C. Anthony Hughes — 7-10-14 [31]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

OCTOBER 21, 2014 HEARING

The hearing on the Objection to Confirmation is continued to allow the court to conduct the hearing on the Motion to Value the claim of Sierra Central Credit Union and issue a ruling thereon.

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

1. It appears that the Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value the Secured Claim of Sierra Central Credit Union, which is set for hearing on July 22, 2014. The matter has been set for an evidentiary hearing on October 16, 2014, at 9:30 am. Debtors' plan does not have sufficient monies to pay the claims in full.

Pursuant to the Stipulation of the Parties, the Evidentiary Hearing has been continued to October 31, 2014. Order, Dckt. 58. Sierra Central Credit Union argues that their appraisers have valued the collateral at $180,000 to $205,000 in value, which leaves value in the property to secure the claim at issue. (Debtors seeking to value the secured claim at $0.00, asserting that the senior lien exhausts the value of the collateral.) Creditor's Hearing Brief, Dckt. 61.

Debtors assert that the property has a value of only $150,000, which is less than the debt secured by the senior lien. Debtors initially provide their own owner opinion of value and are providing the testimony of an

appraiser for the Evidentiary Hearing to support their contention that the value is $150,000.

2. The Debtor has a pending Motion to Value the Secured Claim of Wells Fargo Bank that is set to be heard on this date. 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of WFS Financial in Class 2, but has not filed a motion to value for that claim. The Motion to Value the Secured Claim of Wells Fargo Bank, N.A., CAH-2, has been granted pursuant to the terms of the Debtors' and that Creditor's stipulation, thus resolving this part of the Trustee's Objection.

3. Trustee argues that the plan is not Debtor's best effort, under 11 U.S.C. § 1325(b). According to the Trustee, Debtor is under the median income with proposed plan payments of $342.00 for 60 months and a 0% dividend to the unsecured creditors. Debtors admitted at the First Meeting of the Creditors held on July 3, 2014, that their 26 year old son listed on Schedule J is employed at Best By full time. The Debtors failed to list son's income on their Schedule I or Form B22C despite listing him on their Schedule J and claiming a household of 3 on Form B22C, Line 24, which states: Son live with debtors. Earns his own money and pays his own expenses.

RESPONSE TO TRUSTEE'S OBJECTION

Debtors request the confirmation hearing to be continued with either the briefing schedules or the evidentiary hearings that will be set in order to determine the value of their property.

Additionally, the Debtor has filed a declaration and response addressing their 26 year old son. The Debtors testify that their 26 year old son lives with them and works at Best Buy. Debtors state that over the past 6 months, they received a total of $100 from their son, but that "this is not regular or expected income and cannot be relied upon." Currently Debtors' son uses his money to pay for his own expenses, therefore Debtors did not list their son's expenses on their Schedule J.

While the Debtors state this in their Declaration, they have stated under penalty or perjury on Schedule J (Dckt 1. At 34) that their son is a dependant. On the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income Debtors state under penalty of perjury that they have a household of three persons and used that household size to support a contention that these two debtors are under median income. Dckt 1 at 53.

The U.S. Trustee chart for two person's median income in California is $62,917 and for a family of three it is $66,618.00. http://www.justice.gov/ust/eo/bapcpa/20140501/meanstesting.htm. The Debtors, in not disclosing the additional income for the additional family member that they have taken the "benefit" of in computing the applicable commitment period, that calculation is invalid. If the Debtors want, and have stated under penalty perjury, to assert that they have a family of three for these purposes, then they need to state all of the income that the family of three is generating.

AUGUST 5, 2014 HEARING

The evidentiary hearing for the Motion to Value the Secured Claim of Sierra Central Credit Union has been set for October 16, 2014, at 9:30 am. The court will continue the Trustee's Objection so that the Motion to Value the Secured Claim of Sierra Central Credit Union may be resolved before the court determines whether the Debtors' plan is or is not confirmable and complies with 11 U.S.C. §§ 1322 and 1325(a).

TRUSTEE'S TRIAL BRIEF

The Trustee filed a brief on September 12, 2014. Dckt. 63. The Trustee notes that the Motion to Value the Secured Claim of Sierra Central Credit Union has not yet been resolved. The motion has been set for an evidentiary hearing on October 31, 2014. The Trustee does not object to his Objection to Confirmation being continued to the next available hearing date after the October 31, 2014 evidentiary hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to 3:00 p.m. on November 18, 2014.

40. 14-27971-E-13 KENDALL/CYNTHIA BERTRAND MOTION TO CONFIRM PLAN
TAG-1 Ted A. Greene 9-3-14 [23]

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 3, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant motion on October 7, 2014. Dckt. 35. In this limited objection, the Trustee states that the Debtors' plan calls for payments of $115.00 for 60 months with a guaranteed dividend of no less than 52.21% to general unsecured claims. The Trustee argues that in order for the plan to complete in 60 months paying all claims as proposed, the plan payment must be $165.00 per month, which is Debtors' disposable income on Schedule J. The Trustee notes that Debtors' instant motion recites the plan terms as $165.00 per month for 60 months with 52.21% to unsecured. The Trustee states that at the 341 meeting held on September 11, 2014, Debtors admitted the plan payment was inteded to be $165.00 and it was a typographical error in the plan. The Trustee states that on September 26, 2014, the Trustee received the first plan payment of $165.00.

With the only discrepancy in the plan appearing to be a scriveners' error, the amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. To remedy the error, the court will order that the order confirming the plan reflects the correct $165.00 per month plan payments.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 3, 2014, as amended to state that the monthly plan payments are $165.00 per month for 60 months, is confirmed, with the amendment stated in the order confirming the Plan. 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.

41. 09-48372-E-13 TANYA/BENJAMIN MONARQUE
PGM-7 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
9-17-14 [113]

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Tanya and Benjamin Monarque ("Debtors") seek court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, 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 $1,023.71 a month to $1,003.22 a month. The modification will modify the principal balance on the note to include all amounts and arrearages past due on the Modification Effective Date. The interest rate will be 4.25%.

The Motion is supported by the Declaration of Tanya Monarque. 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.

OPPOSITION

David Cusick, the Chapter 13 Trustee, filed opposition to this Motion on October 6, 2014. Dckt. 118. The Trustee objects to the motion on the basis that Creditor, JPMorgan Chase Bank, N.A., was not properly served under Federal Rule of Bankruptcy Procedure 7004(h). This rule requires a federally insured financial institutions must be served by certified mail, on an officer of the institution, at the address on file with the Federal Deposit Insurance Corporation (FDIC). Debtors' certificate of service does not indicate that Creditor was served via certified mail. The addresses served for Creditor are not those on file with the FDIC. The Trustee states that once the Motion is properly served on Creditor, the Trustee does not oppose the terms of the modification.

DEBTORS' REPLY

Debtors filed a reply to the Trustee's opposition on October 14, 2014. Dckt. 122. Debtors state that the service issues raised by the Trustee refer to Creditor, who offered the loan modification and has required the approval of the court.

DISCUSSION

Although Creditor, as a federally insured financial institution, should have been served according to Rule 7004(h), the failure to so serve is not fatal to the instant Motion. Creditor offered the loan modification to Debtors, indicating that it both knows and understands the terms of the agreement and how its interests will be affected. Creditor's rights have not been infringed upon in this situation ans service, though lacking, will not be enough for the court to deny this Motion.

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 Tanya and Benjamin Monarque 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 Tanya and Benjamin Monarque ("Debtors") to amend the terms of the loan with JP Morgan Chase Bank, N.A., which is secured by the real property commonly known as 7545 Skelton Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 116.

42. 11-20572-E-13 JOHANNES GIORGISE
WW-5 Mark A. Wolff

MOTION TO VACATE DISMISSAL OF CASE
9-22-14 [234]

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, parties requesting special notice, and Office of the United States Trustee on September 22, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

Yohannes Giorgis ("Debtor") filed the instant Motion to Vacate Dismissal of Case on September 22, 2014. Dckt. 234.

MOTION

In support of the Motion, the Debtor states that at the time Debtor received the Trustee's Notice of Default and Application to Dismiss case, he anticipated that he would be able to pay the past due payments within the 30 days as required to prevent dismissal of the case. As a result, the Debtor did not set an appointment to meet with his attorney for a modification of his Chapter 13 plan.

In mid-July, Debtor's brother was hospitalized. After being hospitalized for five days, Debtor's brother returned home where he lives with his mother. Debtor's mother is 81 years old and is in need to regular attention and assistance with daily activities. Around the same time as the brother's illness, Debtor's mother also fell ill. Due to both family members being ill, the Debtor had to make multiple trips to the bay area to assist his family.

With the medical issues of his family along with a contentious divorce proceeding that the Debtor is currently involved with, the deadline to become current to the Chapter 13 Trustee payments passed without the Debtor making the required payments.

On August 22, 2014, Debtor obtained a cashier's check in the amount of $1,756.91 to become current under the Plan. Upon receipt of such funds, the Trustee returned the payment to Debtor since the Trustee filed a declaration of default on August 20, 2014. The court entered an order dismissing the case on August 20, 2014. (Dckt. 231).

Debtor states that he has retained the funds and will be able to pay all payments that came due after the Trustee's Notice of Default. Debtor alleges that he is prepared to pay $2,929.55 to the Chapter 13 Trustee to cure all delinquencies in his plan, including the September 2014 payment.

TRUSTEE'S NONOPPOSITION

David Cusick, the Chapter 13 Trustee, filed nonopposition to the instant motion on October 1, 2014. Dckt. 240. The Trustee states that the Notice of Default was filed on July 11, 2014 and the Motion refers to two events that occurred in July as a reason for the delay.

The Trustee states that "[w]here the plan is 45 months in and any monies received are being disbursed to unsecured after Trustee fees, the Trustee does not oppose the motion."

DISCUSSION

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

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

Red. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton*

v. Alton S.S. Co., 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

While the Debtor does not specifically state specifically under Fed. R. Civ. P. 60(b) he is basing the Motion on, the extenuating circumstances surrounding the illness of two family members seems to place the Debtor in (b)(1) or (b)(6) as legitimate grounds for vacating the dismissal. The court is sympathetic that life happens and the fact that the Debtor attempted to cure his deficiencies as soon as he was able to settle his family affairs is evidence that this was an inadvertent mistake. Additionally, the fact that the Debtor states that he is prepared to cure the deficiencies and also to pay the missed payments since the dismissal is evidence of the Debtor's commitment to the plan and indicates that this was a mistake.

As the Trustee notes in his nonopposition, the fact Debtor is 45 months into his plan and has the funds to cure the deficiencies, it appears to be in the interest of justice and equity to vacate the dismissal and allow the Debtor to finish his Chapter 13 plan, as long as he remains current and cures all past due amounts.

Therefore, upon review of the pleadings and evidence, the court finds that there are justifiable reasons under Fed. R. Civ. P. 60(b) to vacate the dismissal of the case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reconsider Dismissal 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 Vacate the Dismissal is granted and the court's order filed on August 20, 2014, Dckt. 231, vacated. This case shall proceed in this court.

43. 12-24074-E-13 CURITS/SHELLY GRAVANCE MOTION TO MODIFY PLAN
PLG-6 Chelsea A. Ryan 9-9-14 [137]

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. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 9, 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.

44. 12-41175-E-13 MALAI KHAMVONGSA **MOTION TO MODIFY PLAN**
MMN-3 Michael M. Noble **9-2-14 [73]**

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, and Office of the United States Trustee on September 2, 2014. By the court's calculation, 49 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.

Malai Khamvongsa ("Debtor") filed the Motion to Confirm Modified Plan on September 2, 2014. Dckt. 73. The mortgage arrears were about $7,000.00 higher than expected, so the Plan must be modified. The Debtor's income is lower than before she lost her job, her expenses have decreased, and she has a small amount of savings to carry her through the plan.

OPPOSITION

David Cusick, the Chapter 13 Trustee, objects to Debtor's Motion on the basis that:

1. The proposed plan is not Debtor's best effort. Debtor's Declaration is inconsistent with earlier testimony. Dckt. 75. In Debtor's prior declaration filed July 21, 2014, Debtor states that she paid off loans on her retirement and cashed out that retirement for $13,000.00. Dckt. 60.

2. In Debtor's amended declaration filed August 21, 2014, Debtor states that she paid off loans on her retirement totaling $8,600.00 and received two checks of about $15,658.00 and $5,802, respectively, for cashing out her retirement. Dckt. 64.

3. **Debtor's present declaration states that after she paid off loans on her retirement account, she received $15,658.00 in January and $5,802.00** in February for a total of $21,460.00 on which she will pay taxes. That amount is the net of the $11,128.00 loan paid on the 401k plan and a loan of $6,108.00 she paid on her pension. Dckt. 75.

4. Debtor stated that her retirement was worth $43,000.00 at the time of filing, including the $17,000.00 loan. Dckt. 75. Only $13,000.00 remains in the pension. Dckt. 75. Debtor's Retirement Statement from Bank of America in January 2014 (Exh. K, Dckt. 76) and Debtor's Schedule B also provide figures that conflict with each other and Debtor's declarations. The Trustee is not sure what amount Debtor received in retirement funds or how much the loans were against them.

5. Additionally, Debtor's amended Schedule B appears to be missing page 2. Debtor's prior amended Schedule B was missing page 1. Dckt. 29. Debtor's current declaration states that she used her unemployment benefits to pay for her son's oral surgery, glasses and contacts, and sent $3,986.00 went to her sister to pay off Debtor's car. The declaration also states that Debtor transferred money to her family members for funeral expenses and paid $4,000.00 for a trip to Hawaii in February. This information was not disclosed in any prior declarations.

6. Debtor's modified plan proposed a monthly dividend of "***" for mortgage arrears in Class 1. The additional provisions of the confirmed plan provide for payments of $236.00 per month beginning in month 15 through 43, then $310.00 for months 44 through 60. The additional provisions of Debtor's proposed plan do not address arrears payments.

7. Debtor's Declaration states she started a new job on or around September 8, 2014 as a junior underwriter. Debtor states that her gross income is expected to be $45,000.00 yearly, with similar deductions to her prior job. Debtor's actual income is unclear. The Trustee requests Debtor to supply the Trustee with copies of her tax returns throughout the life of the plan accompanied by six months of pay stubs immediately preceding the filing of the taxes.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. However, the proposed modified plan must be Debtor's best effort. 11 U.S.C. § 1325(b). The Trustee's objections indicate that the Debtor has made several inconsistent statements about her expenses and retirement payout. The Modified Plan is not Debtor's best effort.

Debtor has also failed to state in her modified plan how much the arrears payment in Class 1 will be. This is concerning, because Debtor states in the instant Motion that the reason a modified plan is being proposed is to address the higher-than-anticipated amount of mortgage arrears. This also indicates that the instant modified plan is not Debtor's best effort.

The court cannot be certain that the modified plan is feasible for Debtor to complete. 11 U.S.C. § 1325(a)(6). Debtor has stated what she expects her income to be at her new job, but she has not supplied evidence supporting her new income. Without this information, the court is not convinced that Debtor will be able to make the plan payments and otherwise comply with her modified plan.

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

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

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

45. 11-32476-E-13 PLEXICO MICHAUX **MOTION TO MODIFY PLAN**
PGM-4 Peter G. Macaluso **9-11-14 [72]**

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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 11, 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.

46. 14-28078-E-13 GUADALUPE GONZALEZ
DPC-1 Julius M. Engel
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-17-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

on the basis that:

1. Guadalupe Gonzalez's ("Debtor") Plan relies on a future motion to value. Debtor proposes to value the secured claim of Consumer Portfolio, but has not yet filed a motion to value collateral. Debtor's Plan does not have sufficient monies to pay the claim in full and should be denied confirmation.

2. Debtor's Plan fails to indicate in section 2.06 whether the Debtor proposes to pay attorney's fees in accordance with Local Bankruptcy Rule 2016-1(c) or whether the Debtor will be filing and serving motions for fees in accordance with 11 U.S.C. §§ 329 and 330.

3. Debtor's Plan also indicates that attorney's fees total $2,000.00, $500.00 of which was paid prior to filing. Dckt. 5 This information conflicts with Debtor's Rights and Responsibilities, filed August 8, 2014 (Dckt. 7), which indicates that attorney's fees total $4,000.00 with $500.00 being paid prior to filing.

4. While the plan appears to propose to pay the attorney $3,500.00 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtor (Dckt. 1) appears to list in item 6 that the attorney services do not include some serviced required under Local Bankruptcy Rule 2016-1(c), such as relief from stay actions. The Trustee believes that the attorney is effectively opting out of Rule 2016-1(c) and will oppose attorney's fees being granted under that section.

5. The Debtor has failed to list all debts on her schedules. Debtor lists on Schedule J $219 per month for rental of a TV and refrigerator. At her Meeting of Creditors, Debtor indicated that she pays Rent to Own for the television and refrigerator. The Trustee requests the schedules be amended to add Rent to Own as a creditor on either Schedule D or G.

The Trustee's objections are well-taken. While the first objection concerning the motion to value is overruled because it was granted, the Objections cast doubt on whether Debtor will be able to make her plan payments. A plan cannot be confirmed if the Debtor cannot make plan payments. 11 U.S.C. § 1325(a)(6). Additionally, the plan may not be Debtor's best effort, given the inconsistencies regarding the way in which she will pay her attorney's fees and her failure to disclose all of her debts.

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.

47. 14-28078-E-13 GUADALUPE GONZALEZ
JME-1 Julius M. Engel
MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES
9-24-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 26, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Consumer Portfolio Services, "Creditor" is granted and the secured claim is determined to have a value of $2,500.00.

The Motion filed by Guadalupe Gonzalez ("Debtor") to value the secured claim of Consumer Portfolio Services (Creditor"). The motion is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Ford F-150 Truck ("Vehicle") The Debtor seeks to value the Vehicle at a replacement value of $ as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on August 19, 2005, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,575.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $2,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Guadalupe Gonzalez, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Consumer Portfolio Services, "Creditor," secured by an asset described as 2004 Ford F-150, "Vehicle," is determined to be a secured claim in the amount of $2,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $2,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

48. 14-23079-E-13 DONALD/JULIENNE WOODWARD
SDH-1 Scott D. Hughes

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
9-5-14 [23]

Tentative Ruling: The Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 5, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required. However, Notice was not provided as required by Federal Rule of Bankruptcy Procedure 7004(h).

The Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. 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 Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. is overruled.

Donald and Julienne Woodward ("Debtors") objects to the Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. on August 11, 2014 in the amount of $750.00. The notice alleges that the Debtor owes: (1) $375.00 for Attorney fees; (2) $275.00 for Bankruptcy/Proof of claim fees; and (3) $100.00 for Fee Notice Preparation.

The Motion on its face identifies the creditor as being JPMorgan Chase Bank, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this

contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served JPMorgan Chase Bank, N.A., but neglected to serve by certified mail to an officer as required by the Federal Rules of Bankruptcy Procedure. Instead, the Debtor merely serves the address "ATTN: CORRESPONDENCE MAIL." None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. is overruled.

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

ALTERNATIVE RULING

Donald and Julienne Woodward ("Debtors") objects to the Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. on August 11, 2014 in the amount of $750.00. The notice alleges that the Debtor owes: (1) $375.00 for Attorney fees; (2) $275.00 for Bankruptcy/Proof of claim fees; and (3) $100.00 for Fee Notice Preparation.

Debtors argue that they are not in default and are current at the time the case was filed and

remain current on the loan payments. Debtors allege that JPMorgan Chase Bank, N.A. did not object to the plan and has done no work in this case to justify $750.00 in additional fees.

The only evidence before the court is the Declaration from the Debtors stating that they were current on the loan at the time the case was filed and is still current. The Debtors state that there was not work to be done to justify the $650.00 in additional fees, as they did not object to the plan. Debtors argues that since she has never been in default, she should not have to pay the alleged attorney's fees.

No evidence has been presented by JPMorgan Chase Bank, N.A. or Pite Duncan, LLP, JPMorgan Chase Bank, N.A.'s counsel.

Upon review of the notice, JPMorgan Chase Bank, National Association, through their attorney Bryan Fairman, an attorney at Pite Duncan LLP, list the following:

1. Attorney fees - August 8, 2014.....$375.00

2. Bankruptcy/Proof of claim fees - August 8, 2014.....$275.00

3. Fee Notice Preparation - August 11, 2014.....$100.00

As to the attorney's fees, the court will reduce the amount allowed to $250.00, which equates to approximately an hour worth of work for an average attorney in the community that charges at a rate of $250.00 an hour. The court recognizes that when a debtor voluntarily files for bankruptcy, creditors, through their attorneys, must review the case and determine what steps, if any, need to be taken in order to serve the creditor's interest. Regardless of whether the creditor ends up objecting to a plan or not, the creditor still must have an attorney review the plan to determine whether an objection is proper. The mere fact that a creditor does not object to a plan is not dispositive to the fact on whether the creditor and their attorneys have done any work to make that determination. The court must balance the interest of the creditors on how much disclosure is necessary to justify reasonable fees and requiring too much disclosure which would result in more attorney's fees. If the fees requested were substantial, the court would expect the creditor and their attorneys to submit supplemental information to justify higher than normal costs. However, when the fees are reasonable and low in light of the normal rate for attorneys in the community, such evidence is not necessary. Here, after reviewing the plan and the case docket, an hour of attorney's fees seem proper and the court will allow $250.00 for Attorney Fees.

As to the Bankruptcy/Proof of claim fees, the court will reduce the amount allowed to $150.00, which equates to approximately 30 minutes of attorney work. Realistically, the information in a proof of claim is provided by the creditor and is put together by non-attorney, clerical staff. The attorney themselves, in most cases, do a review and final edit on the proof of claim to ensure all the proper paperwork and information is listed. Here, JPMorgan Chase Bank, N.A. are seeking $275.00 for what the court believes would be a final review and edit on the proof of claim. Using the same $250.00 standard rate for attorneys in the community, the court will allow $150.00 for the Bankruptcy/Proof of claim fees.

As to the Fee Notice Preparation, the court will allow the full $100.00 amount. Approximately 4/10ths of an hour seems appropriate for the preparation and filing of the Notice of Post-petition Mortgage Fees, Expenses and Charges.

While the court does appreciate the fact that the Debtors are current on their mortgage and have a confirmed plan, the court must not only balance the interest of the Debtors and their "fresh start" but also the interest of the creditors to ensure that they are not disadvantaged merely because the Debtors chose to file a bankruptcy. A total of $350.00 in post-petition mortgage fees, expenses and charges seems

appropriate in the instant case.

Based on the evidence presented by the Debtors, the court sustains the objection in part and disallows $250.00 in fees and allows a total of $500.00 in post-petition mortgage fees, expenses, and charges.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Notice of Post-Petition Mortgage Fees, Expenses& Charges Filed by JPMorgan Chase Bank, N.A. is sustained to disallow $250.00 of the fees, with the court overruling the balance of the objection to the Notice of Post-petition Mortgage Fees, Expenses, and Charges filed by Creditor JPMorgan Chase Bank, N.A. on August 11, 2014, for the following amounts:
>
> Attorney fees.....$250.00
>
> Bankruptcy/Proof of claim fees.....$150.00
>
> Fee Notice Preparation.....$100.00

49. 14-28181-E-13 JAYMESON MITCHELL AND ELIZABETH
Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY LOANCARE
9-22-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2014. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Loancare as servicer for Summit Funding, Inc. opposes confirmation of the Plan on the basis that:

1. The Debtors' Plan understates the pre-petition arrearage owed to LoanCare. The Plan provides for repayment of only $21,663.39 to LoanCare, but the pre-petition arrears due and owing to LoanCare total approximately $27,089.17. Therefore, the plan fails to comply with 11 U.S.C. § 1322(b)(5) and § 1325(a)(5).

However, Loancare has not provided any declarations or proof of claim

as evidence on the amount of arrearages in question. With no evidence supporting Loancare's claim that $27,089.17 are due in pre-petition arrears, the court cannot determine whether the plan fails to comply with 11 U.S.C. § 1322(b)(5) and § 1325(a)(5). The court cannot just accept Loancare's assertion on the motion's face and deny confirmation of a plan to the detriment of the Debtors and, potentially, other creditors.

Because Loancare failed to provide any evidence to support its claim of $27,089.17 pre-petition arrears, the court overrules the Obejction. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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 Loancare as servicer for Summit Funding, Inc. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled.

50. 14-28181-E-13 DPC-1 JAYMESON MITCHELL AND ELIZABETH Julius M. Engel

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Jaymeson and Elizabeth Mitchell ("Debtors") are proposing to pay Safe Credit Union in Class 2 for a 2009 Infiniti FX 35 at 15% interest in the amount of $418.68 per month. Where Debtors propose to pay this creditor an interest in excess of that required by law under *Till v. SCS Credit Corp.*, 541 U.S. 465, 479 (2004), prime rate plus a risk premium of 1% to 3%, the Debtors are not paying unsecured creditors what they should receive based on Debtors' projected expenses. The expense for

a higher interest rate for this creditor is not required.

2. While the plan proposes to pay Debtors' attorney $2,500.00 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtors appears to list that the attorney services do not include some services required under Rule 2016-1(c), such as relief from stay actions. The Trustee believes that the attorney is effectively opting out of Rule 2016-1(c)(1) and will oppose attorney fees being granted under that rule.

3. Debtors' Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). In Schedule A, Debtors list their real property at 2752 McCarran Lane, Lincoln, California with a value of $395,408.00. After deducting costs of sale, liens, and Debtors' exemption in the property, the non-exempt value of the property is $33,613.68. It appears that Debtors erroneously double-deducted the 8.5% cost of sale on Schedule A. The Debtors' Plan proposes to pay a 19% dividend to unsecured creditors, paying approximately $10,401.00 to unsecured claims.

4. Debtors cannot comply with the plan. Debtors propose to value the secured claim of Safe Credit Union, but have not filed a motion to value collateral. Debtors' Plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

5. Debtors' Plan filed August 12, 2014 (Dckt. 5) is not dated. The Trustee is unable to determine when Debtors signed the Plan.

6. The Trustee objects to the allowance of no-look attorney fees in this case and requests that counsel be required to file a motion for payment of any additional fees in this case. Debtors' plan calls for payment of $2,500.00 in attorney fees through the plan and indicates that $1,500.00 was paid prior to filing.

In Debtors' prior case, number 14-20250, counsel for Debtors was ordered to refund Debtors fees paid and file a statement under penalty of perjury that the payment was or was not made by September 15, 2014. On September 8, 2014, Steele Lanphier filed a declaration indicating that the refund had not been made, but that Debtors would continue in the case, represented by the Engel Law Group. However, Debtors are currently represented by Lanphier & Associates (Dckt. 1). At the Meeting of Creditors, Julius Engel appeared (which he had done in the prior case, as well) and both counsel and Debtors were unclear of the terms for the current fee arrangement as well as the status of the refund.

The Trustee's objections are well-taken. The proposed Plan may not be Debtors' best effort, given the confusing and concerning attorney fees provisions. Additionally, the Plan does not pay unsecured creditors at least what they would receive in a Chapter 7. Such a plan cannot be confirmed. 11

U.S.C. § 1325(a)(4). Though the Debtors' failure to sign the Plan is a serious oversight, it alone is not enough for the court to deny confirmation.

Overall, 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.

51. 14-28181-E-13 MBW-1 JAYMESON MITCHELL AND ELIZABETH Julius M. Engel — OBJECTION TO CONFIRMATION OF PLAN BY SAFE CREDIT UNION 9-18-14 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Safe Credit Union ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Creditor's claim cannot be crammed down and must be paid in full. Creditor argues that the Debtor Elizabeth Lynn Glassmaker-Mitchell entered into a Retail Sale Contract on March 23, 2013 with Sacramento Infiniti to purchase the 2009 Infiniti FX35. The agreement was assigned to the Credit Union and its security interest perfected with the California Department of Motor Vehicles which Creditor alleges means it

has a purchase money claim and a purchase money security interest in the vehicle. Debtors filed the instant Chapter 13 case on August 12, 2014, 502 days after the agreement was executed. Creditor argues that the claim cannot be crammed down because, under the hanging paragraph of 11 U.S.C. § 1325, Creditor has a purchase money security interest securing the debt of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition and the collateral for that debt consists of a motor vehicle acquired for the personal use of the Debtor. Since the plan does not provide for the full balance of the claim, Creditor argues that the plan cannot be confirmed.

2. Debtors' Chapter 13 plan fails to provide for the Creditor's secured claim. Creditor alleges that the Debtors' propose to pay the Creditor an amount less than the full claim amount. Because the Debtors' Chapter 13 plan has failed to provide for the Creditor's secured claim, the plan does not comply with the provisions of 11 U.S.C. § 1325(a)(5) and should not be confirmed.

Debtors have not filed any oppositions or responses to Creditor's objection.

Upon review of the proposed plan, the Creditor's objections are well taken. According to the Proof of Claim No. 5 filed by Creditor, the total secure amount of the claim is $32,826.58. Under the proposed plan, the Creditor is listed as a Class 2 creditor and lists the amount claimed by creditor as $29,200.88. The plan appears to be proposing to pay Creditor $3,625.70 less than the amount listed on Creditor's Proof of Claim. The Debtors have not filed any objection to Creditor's claim. Because the Debtors' plan fails to provide for the full amount of Creditor's claim, the plan does not comply with the provisions of 11 U.S.C. § 1325(a)(5).

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

52. 11-41387-E-13 STEVE/ROBIN GRIGSBY
PLC-2 Peter L. Cianchetta

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
9-2-14 [24]

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 2, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Steve and Robin Tracy ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6151 26th Street, Rio Linda, California, "Property." Debtor seeks to value the Property at a fair market value of $270,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a**

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $296,350.00. Creditor's second deed of trust secures a claim with a balance of approximately $80,915.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. FN.1.

FN.1. A Motion to Value order was obtained for this claim on October 26, 2011. Dckt. 19. Debtor has filed the current motion to ensure that Wells Fargo Bank, N.A. is properly served and has proper opportunity to be heard. Debtor listed Wells Fargo Bank, N.A. as the creditor in the prior motion as well. Dckt. 5.

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 Steve and Robin Grigsby, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo N.A., secured by a second in priority deed of trust recorded against the real property commonly known as 6151 26th Street, Rio Linda, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured

claim to be paid through the confirmed bankruptcy plan. The value of the Property is $270,000.00 and is encumbered by senior liens securing claims in the amount of $296,350.00, which exceed the value of the Property which is subject to Creditor's lien.

53. 12-27387-E-13 ERROL/MELANI LAYTON MOTION TO CONFIRM PLAN
MET-4 Mary Ellen Terranella 9-9-14 [102]

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

The Debtors, through Debtors' Counsel, having filed a "Notice of Withdrawal" for the pending Motion to Confirm Modified Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an *ex parte* motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Confirm Modified Plan the Bankruptcy Case having been filed by the Debtors, the Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm Modified Plan the Bankruptcy Case is dismissed without prejudice.

54. 14-28890-E-13 JOANN ARTIAGA
CAH-1 Oliver Greene

MOTION TO VALUE COLLATERAL OF BOSCO CREDIT II TRUST SERIES 2010-1
9-16-14 [18]

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 Bosco Credit II Trust Series 2010-1, Bosco Credit LLC, Franklin Credit Management Corporation, Quick Loan Funding, Chapter 13 Trustee, HSBC Bank USA, N.A., and Office of the United States Trustee on September 16, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bosco Credit II Trust Series 2010-1 ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by JoAnn Artiaga ("Debtor") to value the secured claim of Bosco Credit II Trust Series 2010-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1160 Bronco Drive, Plumas Lake, California ("Property"). Debtor seeks to value the Property at a fair market value of $204,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $302,709.94. Creditor's second deed of trust secures a claim with a balance of approximately $104,121.71. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by JoAnn Artiaga ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bosco Credit II Trust Series 2010-1 secured by a second in priority deed of trust recorded against the real property commonly known as 1160 Bronco Drive, Plumas Lake, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured

claim to be paid through the confirmed bankruptcy plan. The value of the Property is $204,000.00 and is encumbered by a senior lien securing a claim in the amount of $302,709.94, which exceeds the value of the Property which is subject to Creditor's lien.

55. 14-28890-E-13 JOANN ARTIAGA
CAH-2 Oliver Greene

MOTION TO VALUE COLLATERAL OF NATIONAL CAPITAL MANAGEMENT, LLC
9-16-14 [23]

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 16, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of National Capital Management, LLC, "Creditor" is granted and the secured claim is determined to have a value of $5,500.00.

The Motion filed by JoAnn Artiaga, "Debtor", to value the secured claim of National Capital Management, LLC, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Chevrolet Trailblazer, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $5,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred

on October 30, 2004, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,675.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $5,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by JoAnn Artiaga, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of National Capital Management, LLC, "Creditor," secured by an asset described as 2005 Chevrolet Trailblazer, "Vehicle," is determined to be a secured claim in the amount of $5,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

56. 14-29493-E-13 RODNEY/CHANDRA LAMBERT
KO-1 Richard L. Jare

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION THAT THE CURRENT FILING WAS PART OF A SCHEME TO DELAY, HINDER OR DEFRAUD CREDITORS
10-2-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 2, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Confirm Termination or Absence of Stay is granted.

Landmark Bank, N.A. ("Creditor") filed the instant Motion to Confirm Termination or Absence of Stay on October 2, 2014. Dckt. 24. It is supported by a Memorandum of Points and Authorities. Dckt 27. Creditor holds a lien on the property commonly known as 1071 Little River Drive, Miami, Florida ("Property"), owned by Rodney Lambert ("Debtor").

MOTION

Creditor's Motion alleges the following:

1. On or about October 23, 2012, Valley Bank, the predecessor in interest to Creditor, filed a complaint against Rodney and Chandra Lambert ("Debtors") in Miami-Dade County, Florida seeking foreclosure of the mortgage deed encumbering the Property (case number 12-41705CA21). Debtors then filed multiple bankruptcy cases, preventing Creditor from obtaining judgment against Debtors in that case. Debtors, in their Motion to Impose the Automatic Stay state that Creditor is the "primary creditor targeted by this filing."

2. Debtors filed the current bankruptcy case on September 23, 2013. Debtors previously filed a Chapter 13 petition on August 2, 2013 (Case No. 13-30287), but this case was dismissed on January 8, 2014 for Debtors' failure to timely file and serve an amended plan. Debtors also filed a Chapter 13 petition on February 1, 2014 (Case No. 14-20995). This case was dismissed on September 17, 2014 for Debtors' delinquency in plan payments.

3. Debtors' three most recent bankruptcy cases involve the Property and each filing has been timed to prevent Creditor and its predecessor in interest from pursing collection against Debtors. All of the cases have been pending and two have been dismissed in the past year. This indicates that the automatic stay is not in effect. 11 U.S.C. § 362(c)(4).

4. In both of the two cases immediately preceding the current case, Debtors have been unable to confirm a plan, causing the cases to be dismissed. Debtors' financial affairs have not significantly changed since the second bankruptcy case. Creditor alleges that Debtors have filed the current bankruptcy case as part of a scheme to delay, hinder, or defraud Creditor. 11 U.S.C. § 362(d)(4).

The Creditor seeks:

1. The court to enter an order confirming that the automatic stay did not go into effect upon the filing of the instant bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A) such that the Creditor may pursue any and all remedies available to it under the terms of the loan documents which are the subject of is claim in this matter, including, but not limited to, foreclosure of its mortgage deed and security agreement and the prosecution of any remedies available to it under state law in order to obtain possession of and sell the Property.

2. The court find that Debtors' three most recent bankruptcy cases each involve the Property, that Debtors have filed the instant bankruptcy case to delay, hinder, or defraud creditors, and issue an order including language consistent with that finding and consistent with 11 U.S.C. § 362(d)(4).

3. The court waive the 14-day stay period of Fed. R. Bankr. P.

4001(a)(3).

OPPOSITION

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

APPLICABLE LAW

Under 11 U.S.C. § 362(c)(4)(A)(I), the automatic stay does not go into effect of a later filed case if a debtor has had 2 or more single or joint cases pending within the previous year but were dismissed. A party in interest may request the court to "promptly enter an order confirming that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(ii).

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

DISCUSSION

Here, the Creditor has established that the Debtors have filed 2 cases that were pending within the previous year but were dismissed. The Debtors filed the first Chapter 13 case on August 2, 2013 (Case No. 13-30287) which was dismissed on January 8, 2014 for Debtors' failure to timely file and serve and amended Chapter 13 plan and motion to confirm. Case No. 13-30287, Dckt. 76. The Debtors filed the second Chapter 13 case on February 1, 2014 (Case No. 14-20995) which was dismissed on September 17, 2014 for Debtors' delinquency in plan payments to the Chapter 13 Trustee and for unreasonable delay that was prejudicial to creditors. Case No. 14-20995, Dckt. 167. While the Debtors have filed a Motion to Impose the Automatic Stay (Dckt. 13) which was heard in conjunction with the instant motion, the court denied the Debtors' motion because they failed to provide clear and convincing evidence to rebut the presumption of the instant filing not being in good faith. Furthermore, the Debtors have not filed any opposition in the instant motion.

Furthermore, the court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Creditor has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject Property.

The "scheme" envisioned by 11 U.S.C. § 362(d)(4) is intentional conduct, not mere inadvertence or misadventure. *In re Duncan & Forbes Development, Inc.*, 368 B.R. 27 (Bankr. C.D. Cal. 2007). It is something other than the "ordinary" hindrance or delay which is inherent in any one or two bankruptcy filings in a good faith attempt to prosecute them. The multiple filing of bankruptcy cases, which are not prosecuted, which work to repeatedly delay a creditor from enforcing its rights can be a "scheme" to delay creditors sufficient to warrant relief pursuant to 11 U.S.C. § 362(d)(4). *In re Wilke*, 429 B.R. 916 (Bankr. N.D. Ill. 2010).

The court finds that the filing of the present bankruptcy petition works as part of a scheme to improperly delay or hinder Creditor with respect to the Property. Debtors have filed multiple bankruptcy cases, none of which

have been effectively prosecuted. This is particularly evident given the fact that the instant bankruptcy was filed merely five days after the dismissal of the Debtors second bankruptcy case.

Debtors have sought relief under the Bankruptcy Code with the assistance of counsel in all three cases. (A different attorney in the first case and the same attorney in the second case and the Current Case.)_ Debtors have daisy chained bankruptcy filings to provide continuous protection within bankruptcy as follows:

Case 13-30287		**Case 14-20995**	**Case 14-29493 (Current Case)**
Filed	August 2, 2013		
Dismissed	January 1, 2014		
Filed		February 1, 2014	
Dismissed		September 17, 2014	
Filed			September 23, 2014

These Debtors have been in bankruptcy protection for fifteen months without being able to not only confirm a plan, but unable to even make the monthly payments on the plan they proposed. Civil Minutes, 14-20995, Dckt. 164; case dismissed because Debtors were $6,000.00 delinquent in plan payments, for proposed plan which required $2,000.00 a month payments.

This court is not shocked by, and finds it to be in the proudest bankruptcy tradition, that a bankruptcy case be filed on the eve of (or just minutes prior to) a foreclosure sale. Such is expected once, and possibly twice when a pro se debtor files bankruptcy, crashes on the shoals of federal court practice, and then hires an experienced consumer attorney to represent him or her in the good faith prosecution of a case.

While the Creditor request for the waiver of the 14-day stay of enforcement under Fed. R. Bankr. P. 4001(a), the court having found that the automatic stay was never in place at the time of filing the instant case, there is no need for an order waiving the 14-day stay.

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 to Confirm Termination or Absence of Stay filed by Landmark Bank, N.A. (“Creditor”) having been

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

IT IS ORDERED that no automatic stay went into effect upon the commencement of Case No. 14-29493 under the provisions of 11 U.S.C. § 362(c)(4)(A)(I) and Landmark Bank, N.A., their agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1071 Little River Drive, Miami, Florida

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived as moot because no automatic stay was ever in effect.

No other or additional relief is granted.

57. 14-29493-E-13 RODNEY/CHANDRA LAMBERT
RJ-1 Richard L. Jare

AMENDED MOTION TO IMPOSE AUTOMATIC STAY
9-23-14 [13]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 23, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Rodney and Chandra Lambert ("Debtors") filed the instant Amended Motion to Impose the Automatic Stay on September 23, 2014. Dckt. 13.

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

A. The motion requests an order binding only the following creditors which have been served: Landmark Bank, Golden 1 Credit Union, Internal revenue Service, Franchise Tax Board, America's Servicing Company.

B. The motion incorporates the Declaration of the Debtors.

C. The motion is being made pursuant to 11 U.S.C. § 362(c)(4)(B).

D. The debtors filed this Chapter 13 bankruptcy case on September 23, 2014.

E. The debtors had only two prior bankruptcy cases pending during the one year period prior to the filing of this case.

F. One prior case was Case Number 13-30287-A-13 J and it was filed on August 2, 2013. The other Prior case was Case Number 14-29493-E-13C and it was filed on February 1, 2014.

G. The first case was dismissed by the Court after attorney Scott J. Sagaria was unable to confirm a plan for the debtors. The second case was dismissed after the debtors made substantial good faith efforts. They made substantial payments in both prior cases. The difficulty in the second case, was that the roof on the Florida rental house started leaking badly, causing the tenant to not pay rent. We spent $3,500 on repairs thinking that the tenant would then pay withheld rent. The tenant did not pay rent ever again, so they were stuck. In about 2 weeks, a new tenant will move in. The new tenant proposes to pay $1,350 each month. Then Mr. Lambert's new job with Neillo Audi did not work out. He changed jobs and he is now working at Maita Nissan of Sacramento. The new job is working out really well.

H. The debtors made the payments in the prior cases by paying the aggregate sum of $2,500.00 over the 5 month life of the first prior case. The debtors made the payments in the prior cases by paying the aggregate sum of $5,800.00 over the 7.7 month life of the second prior case.

I. The debtors income is finally stable and they are past their prior problems with their first tenant. This time we were more careful in selecting a responsible new tenant.

J. Also, the debtors now understand that they may have been the victim of unconscionable and predatory lending practices, and with this new filing they stand ready to address that.

K. The primary creditor targeted by this filing, Landmark Bank (successor to Valley Bank as the result of a FDIC takeover) is not prejudiced much by this 3rd bankruptcy filing. In the first bankruptcy filing, case number #13-30287-A-13 J, Valley Bank accepted a payment after relief from the automatic stay was granted. The debtors have reviewed the website disbursement printout from Jan P Johnson's office. In early December 2013, Valley received a disbursement, accepted a partial payment from the trustee. Valley Bank already had relief from stay at that time. Valley Bank accepted the payment and never returned the money. By accepting a partial payment, Valley Bank's action constituted a "waiver of the default". Therefore, it is possible that Valley bank cannot even legally foreclose on the Florida rental house. Consequently, imposing the automatic stay does not seriously prejudice Landmark Bank. The debtors just need the peace of mind that they have bankruptcy protection so that they can go about the business of making money in order to support their family anc concentrate on paying our debts under

Chapter 13.

L. They are filing this new case in good faith. They are just some middle class folds who got caught up in the recent economic recession.

The "facts" alleged in the motion is merely a verbatim copy of Debtor's declaration with the word "I" substituted with "the debtor."

LANDMARK BANK, N.A. OPPOSITION

Landmark Bank, N.A. ("Creditor") filed opposition to the instant Motion on October 1, 2014. Dckt. 19.

The Creditor begins the opposition by reviewing Debtors' prior bankruptcies. The Creditor states that the Debtors filed a Chapter 13 bankruptcy on August 2, 2013, as Case No. 13-30287. The Creditor states that this case was dismissed on January 8, 2014 due to Debtors' failure to timely file and serve an amended Chapter 13 plan and motion to confirm. Case No. 13-30287, Dckt. 76. The second Chapter bankruptcy case was filed on February 1, 2014, as Case No. 14-20995. This case was dismissed on September 17, 2014 for Debtors' delinquency in plan payments to the Chapter 13 Trustee and for unreasonable delay that was prejudicial to creditors. Case No. 14-20995, Dckt. 167.

The Creditor then moves onto the objections to the Motion. The Creditor frames the objections as if the Debtors were moving for the imposition of the automatic stay under 11 U.S.C. § 362(c)(3). However, the amended motion actually cites to 11 U.S.C. § 362(c)(4) as the grounds for relief. This error was presumably because the Creditor was relying on the originally filed motion. Fortunately, § 362(c)(3)(C) and § 362(c)(4)(D) are mirrors of each other for only a few minor organizational differences in subsections.

Creditor first argues that Debtors did not file the current bankruptcy case in good faith under 11 U.S.C. § 362(c)(4)(D)(i)(I) because more than two cases filed by Debtors under Chapter 13 has been pending within the preceding 1-year period. In support, the Creditor states that the Debtors filed the instant bankruptcy case on September 24, 2014. Debtors' first bankruptcy case was dismissed on January 8, 2014 and the second bankruptcy case was dismissed on September 17, 2014. The Creditor argues that the first and second cases were pending within the year previous to the instant bankruptcy petition date.

Next, Creditor argues that Debtors did not file the current bankruptcy case in good faith under 11 U.S.C. § 362(c)(4)(D)(i)(II) because a previous a previous case filed by Debtors under Chapter 13 was dismissed within the preceding 1-year period after Debtors failed to file an amended plan without substantial excuse. In support of this conclusion, Creditor states that the fist Chapter 13 case was dismissed after Debtors failed to confirm a plan within 30 days of the court's conditional dismissal of the first Chapter 13 case.

The Creditor next argues that Debtors did not file the current bankruptcy case in good faith under 11 U.S.C. § 362(c)(4)(D)(i)(III) because there has not been a substantial change in the financial or personal affairs of the Debtors since the dismissal of the second Chapter 13 case. In support,

the Creditor alleges that as of the date of filing its opposition, Debtors have not yet filed their schedules but have provided information about their financial and personal affairs in the declaration attached to the instant motion. Creditor argues that the information concerning the new tenant for the rental property does not provide sufficient information and that the new tenant only "proposes" to pay monthly rent. It also does not provide with a definite date of when the tenant will be moving in. Furthermore, the Creditor states that the information concerning the Debtor's new job at the Nissan dealership does not sufficiently show a change in affairs because there is no information on the monthly income. The Creditor notes that the declaration was executed only six calendar days after the second Chapter 13 case was dismissed and Debtors have not demonstrated that the current bankruptcy case will be concluded with a confirmed plan that will be fully performed.

The Creditor further argues that, as to the Creditor, Debtors did not filed the current bankruptcy case in good faith under 11 U.S.C. § 362(c)(4)(D)(ii) because Creditor commenced an action under 11 U.S.C. § 362(d)(2) in the first bankruptcy case that, as of the date of dismissal of that case, has not been resolved by terminating the stay as to actions of the Creditor. Creditor states that in the first Chapter 13 case, the predecessor-in-interest to Creditor obtained relief from the automatic stay as to the Florida rental property by an order dated November 27, 2013, entered before the first Chapter 13 case was dismissed. Case No. 13-30287, Dckt. 68.

Lastly, the Creditor argues that Debtors make legal conclusions and factual statements unsupported by any evidence and such conclusions and statements should not be considered by this court. First, the Creditor states that in the motion and declaration the Debtors state that they may be been the victims of "unconscionable and predatory lending practices," which they stand ready to address with this new filing. Creditor argues that Debtors offer no further explanation and do not state how such alleged practices may be relevant to the instant motion. Additionally, Creditor points out that Debtors state that Valley Bank, the predecessor-in-interest to Creditor, waived the default of Debtors by accepting a disbursement from the Chapter 13 Trustee in the first Chapter 13 case and therefore "Valley bank [sic] cannot even legally foreclose on our Florida rental house." Creditor argues that Debtors offer no legal authority for their "waiver of the default" argument, no legal authority for the legal conclusion that the Creditor cannot legally foreclose on the rental property, or any explanation of how that may be relearnt to the instant motion.

DISCUSSION

Under 11 U.S.C. § 362(c)(4)(A)(i), the automatic stay does not go into effect of a later filed case if a debtor has had 2 or more single or joint cases pending within the previous year but were dismissed. Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). A case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the

> individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or
>
> (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

The presumption of not in good faith may be rebutted by clear and convincing evidence to the contrary. 11 U.S.C. § 362(c)(4)(D).

Here, Debtors have presumptively filed the instant case not in good faith under multiple subsections of 11 U.S.C. § 362(c)(4)(D)(i). the Debtors have filed two cases pending within the previous year of the filing of the instant case but were both dismissed. Case No. 13-30287 and 14-20995. Therefore, the presumption of not good faith is attached to the instant case.

Furthermore, the presumption is attached because the first Chapter 13 case was dismissed after the Debtors failed to file an amended plan without a substantial excuse. Case No. 13-30287 was dismissed on January 8, 2014 for failing to obtain confirmation of a plan. Case No. 13-30287, Dckt. 76. The Debtors in their motion argue that it was the fault of their previous attorney, Scott J. Sagaria, "was unable to confirm a plan for the debtors." However, the Debtors provide no further explanation on how Mr. Sagaria was the cause of the failure. A conclusory statement in order to fall under the "negligence of the debtor's attorney" exception to 11 U.S.C. § 362(c)(4)(D)(i)(II) is not clear and convincing evidence to rebut the presumption of the instant filing not being in good faith.

Additionally, the presumption is attached to the instant filing because the Debtors have not provided sufficient information on any "substantial change in the financial or personal affairs of the [Debtors] since the dismissal of the next most previous case." As the Creditor pointed out in its opposition, the Debtors have not filed any schedules or declarations on the financial

situation of the Debtors. While the Debtors do give generalized information on Debtors' rental property and Debtor Rodney Lambert's new job, neither the motion nor the declaration provide tangible information for the court to determine if, by clear and convincing evidence, the Debtors have had a "substantial change in [their] financial or personal affairs."

Lastly, a review of the opposition and the dockets of the previous cases does show that Valley Bank, the predecessor-in-interest of the Creditor, did in fact obtain relief from stay in the first Chapter 13 case on November 27, 2013, before the first Chapter 13 case was dismissed. Case No. 13-30287, Dckt. 68. Under 11 U.S.C. § 362(c)(4)(D)(ii), this triggers the presumption that the instant bankruptcy case was filed not in good faith. The Debtors do not address this provision in their motion or declaration. The Debtors do discuss a "waiver of default" which the court presumes is meant to rebut this presumption. However, the Debtors do not provide any legal basis on how the predecessor-in-interest to Creditor's acceptance of a disbursement under a prior case's plan acts as a "waiver" or how that is clear and convincing evidence that the instant case was filed in good faith.

The court has reviewed the motion to extend the automatic stay in the prior bankruptcy case. 14-20995, Dckt. 26. As of the February 11, 2014 filing of that Motion, Debtors asserted (subject to Federal Rule of Bankruptcy Procedure 9011) that,

A. Debtors made significant efforts and payments in the first bankruptcy case, which totaled $2,500.00. (Those payments were over a five month period, with Debtor's original plan requiring payments of $6,250.00 over that period and Debtors' proposed amended plan requiring payments of $10,278.00 over that period. 13-30287, Dckts. 7 and 50.)

B. Debtors have taken "certain measures which already have changed the Financial circumstances." They state that a rental tenant has been obtained for the Florida property (which is the subject of the present motion) and this "enhances the income situation immensely."

C. Debtors may have been the victim of "unconscionable and predatory lending practices, and with the new filing address stand ready to address that." [Emphasis added.]

Motion to extend automatic stay in second bankruptcy case. 14-20995, Dckt. 26. That motion was supported by the declaration of Debtor Rodney Lambert. *Id.*, Dckt. 28. He testified that his new attorney (who is also the attorney in the Current Case) has instructed the Debtors to take certain measures to change their finances, which include having a tenant in the Florida property. The court ordered that the automatic stay be extended, for all purposes and parties, in the second bankruptcy case. *Id.*, Dckt. 63.

The grounds stated in the Motion to Impose a Stay in the Current case is very similar to the motion to extend the stay in the second case. With respect to the Florida Property, the tenant upon whom Debtors' finances were based in the second case stopped paying rent because the roof leaked. Debtors then repaired the home, but the tenant left. Debtors spent $3,500.00 to repaid the roof. A new tenant is scheduled to move in. While the Debtors were not

careful in selecting a responsible tenant before, the Motion represents that they have now selected a responsible tenant.

Debtor Rodney Lambert has a new job, as his prior "new job" did not work out.

The Debtor still believe that they may have been the victim of "unconscionable and predatory lending," and "with this new filing they stand ready to address that." (They do not explain how they have not addressed that since the prior February 2014 filing when they were "ready to address that.").

Debtors assert that there has been a "waiver of default" by the Movant based on payments made in the prior case after creditor was granted relief from the stay. As discussed above, Debtors do not provide legal authority for this contention or assert that the payments were not required to be made by the Chapter 13 Trustee under the plan they proposed in the prior case.

Overall, the court cannot find any information in the Debtors' motion or declaration that raises to the level of clear and convincing evidence to rebut the four separate grounds in which the presumption of not filing in good faith has attached to the instant case. Merely regurgitating generalized and unsupported conclusions in a motion is not evidence that can rebut this presumption. It requires more. Here, the Debtors have not provided such information.

While the Debtors posture themselves in this third bankruptcy case as merely "some middle class folks who got caught up in the recent economic recession" (Motion to Impose Stay ¶ 9, Dckt. 13), they have exhausted fifteen months in prior Chapter 13 case and this Current Case, unable to perform the multiple plan they proposed. Quite possibly the Debtors' finances fell with the economy, but it appears that they are continuing in a downward spiral without regard to their current economic reality.

Though the Debtors were unable to timely file Schedules in this Current Case (the court granting their request to extend the time to file to October 21, 2014), few debts can have been reduced from the Schedules and claims filed in the second bankruptcy case. Debtors list $35,683.19 in priority tax debt and $21,039.00 in non-priority tax debt. 14-20995, Schedule E, Dckt. 47 at 13. For general unsecured claim Debtors list $208,004.22. Schedule F, *Id.* at 27. None of these listed claims appear to be deficiency claims following a foreclosure on property as part of the "Great Recession" in the mid-2000's.

Therefore, because the presumption of the instant bankruptcy being filed in bad faith has not been rebutted by clear and convincing evidence, the Motion to Impose the Automatic Stay is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose Automatic Stay filed by Debtor(s) having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Impose Automatic Stay is denied without prejudice.

58. 14-29493-E-13 RJ-4 RODNEY/CHANDRA LAMBERT Richard L. Jare MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION 10-7-14 [35]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Golden 1 Credit Union, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 7, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Golden 1 Credit Union ("Creditor") is granted and the secured claim is determined to have a value of $13,805.00.

The Motion filed by Rodney and Chandra Lambert ("Debtors") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2006 BMW X3 3.0i Sport Utility 4D with 88,000 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $13,805.00 as of the petition filing date. FN.1. 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).

FN.1. Debtors' declaration states that the replacement value is $13,805.00, though their Motion states that the replacement value is $15,005.00. Since the declaration is evidence and the Motion is not, the value asserted in Debtor's declaration will be used for the court's calculations.

The lien on the Vehicle's title secures a purchase-money loan to secure a debt owed to Creditor with a balance of approximately $18,251.55. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $13,805.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Rodney and Chandra Lambert ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden 1 Credit Union ("Creditor") secured by an asset described as 2006 BMW X3 3.0i Sport Utility 4D with 88,000 miles ("Vehicle") is determined to be a secured claim in the amount of $13,805.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $13,805.00 and is encumbered by a lien securing a claim which exceeds the value of the asset.

59. 14-29493-E-13 RODNEY/CHANDRA LAMBERT
RJ-3 Richard L. Jare

MOTION TO VALUE COLLATERAL OF LANDMARK BANK, N.A.
10-8-14 [42]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 7, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Landmark Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Rodney and Chandra Lambert ("Debtor") to value the secured claim of Landmark Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1071 Little River Dr., Miami, Florida ("Property"). Debtor seeks to value the Property at a fair market value of $74,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor has not filed a claim in this case.

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

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

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

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

DISCUSSION

Creditor's deed of trust secures a claim with a balance of approximately $118,000.00. Therefore, Creditor's claim secured by a senior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $74,000.00, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Rodney and Chandra Lambert, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Landmark Bank, N.A. secured by an undersecured deed of trust recorded against the real property commonly known as 1071 Little River Dr., Miami, Florida, is determined to be a

secured claim in the amount of $74,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $74,000.00 and is encumbered by the Creditor's undersecured lien in the amount of $118,000.00, which exceeds the value of the Property which is subject to Creditor's lien.

60. 14-28195-E-13 MARK/KRISTI MERTEN — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Mohammad M. Mokarram — 9-17-14 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. Debtors' plan relies on the Motion to Value Collateral of Bank of America (Dckt. 17) which was set for hearing on September 30, 2014. If the motion to value was not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

2. Debtors' propose to avoid the lien of Portfolio Recovery but have not filed the motion to avoid lien. Debtors plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

Upon review of the court's docket, the Motion to Value Collateral of Bank of America was granted on September 30, 2014. Dckt. 40. Additionally, the Debtors did file a Motion to Avoid the Lien of Portfolio Recovery which was heard and granted on September 30, 2014. Dckt. 44.

Seeing that the Trustee's objections have been rendered moot by the court granting both the Motion to Value and the Motion to Avoid the Lien, the objection is overruled and the Plan is confirmed.

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

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

61. 14-28195-E-13 MARK/KRISTI MERTEN — OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, N.A.
PD-1 Mohammad M. Mokarram — 9-18-14 [33]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-7 ("Creditor") opposes confirmation of the Plan on the basis that the Plan cannot be confirmed as proposed because it fails to properly provide for the cure of the Creditor's pre-petition arrears in the amount of $2,612.08. The proposed plan only provides for the ongoing post-petition payments to be made on the loan directly by the Debtor but does not provide for the pre-petition arrears listed on Creditor's Proof of Claim No. 9.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts

$2,612.08 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-7 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.

62. 14-27096-E-13 LAURA RUBY
DPC-1 Bruce Charles Dwiggins

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-17-14 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 17, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtor is $288.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $288.00 is due on September 25, 2014. The Debtor has paid $0.00 into the plan to date.

2. The Debtor has failed to provide the Trustee with proof of income for the 60 days preceding filing of their bankruptcy. 11

U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I).

3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, specifically, the 2013 Tax Return, or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I).

4. The Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. Debtor proposes to pay $288.00 per month for 60 month with a 0% dividend to unsecured creditors. Debtor lists on Schedule I, $191.93 deduction for child support, reported as "child" on the schedule. Debtor admitted at the 341 Meeting held on September 11, 2014 that this deduction is for child support which is projected to end within 12 months as her son will be turning 18. Debtor has failed to propose increase the plan upon the end of the support.

5. The Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. Debtor proposes to pay $288 per month for 60 month with a 0% dividend to unsecured creditors. Debtor lists in Section 3 of the plan, Winfrey Storage payment toward arrearages owed on a storage unit in the amount of $360.00 which is equal to 15 payments of $24.00 per month. Debtor proposes to pay ongoing payments direct and the expense is listed on Schedule J. When questioned at the 341 Meeting, Debtor indicated that the storage unit is approximately a 5 x 10 unit in Iowa, which holds property that belonged to her deceased parents and some of her brothers belongings as well. Debtor indicated she is not certain what all is in the unit or what if anything holds value. It does not appear to be in the best interest of the Debtor or other parties in this case to retain and continue to pay $30.00 ($24.00 ongoing and $6.00 toward arrears) per month for toward a storage unit holding property which the debtor has no intention of using or has no idea what is stored.

The Trustee's objections are well-taken. The Debtor's delinquency and failure to pay any monies into the plan, failure to provide the necessary documents, and not appearing to be the Debtor's best efforts, this plan is not confirmable.

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.

63. 14-28099-E-13 ADS-1 YASWANT/KAMINI SINGH Len ReidReynoso OBJECTION TO CONFIRMATION OF PLAN BY RUDOLPH SATTERFIELD AND EVELYN L. SATTERFIELD 9-14-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 14, 2014. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

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

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The court's decision is to sustain the Objection.

Rudolph and Evelyn Satterfield ("Creditor") oppose confirmation of Yaswant and Kamini Singh's ("Debtors") Plan on the basis that:

1. Debtors have incorrectly listed the amount of Creditor's secured claim for the property commonly known as 13711 Cherokee Lane, Galt, California. Debtors list the amount as $175,000.00. The current amount due under the loan as modified in November 2013 is $375,350.94. That amount includes late fees, taxes paid by Creditor, foreclosure costs, and insurance costs. The unpaid principal of the loan is $296,893.54. Creditor will file a proof of claim reflecting the total amount due.

2. Debtors propose payments under the Plan of $76 per month. Over the 60 month term of the Plan, this will total only $4,560.00. This amount will not adequately compensate Creditor for the current amounts owed to them for arrearages. There is some mention of $25,000.00 payment in the proposed plan, but the Debtors' Schedule I does not reflect the ability to make these payments.

3. The property is not currently insured.

4. The instant case was filed with a presumption of bad faith. Debtors are in their 6th bankruptcy case involving Creditor. In each case, the purpose of filing was to avoid a trustee's sale of the property listed above. Exh. 3 and 4, Dckt. 18. The Summary of Schedules from each case are very similar, showing that there has not been a significant change on the Debtors' circumstances to overcome the presumption of bad faith. A Chapter 13 Plan cannot be approved if Debtor did not file the case in good faith. In case 11-40337 (Exh. 5, Dckt. 18), Creditor received relief from stay. The current case was filed one business day before the sale date only to prevent the sale.

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

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

Although the real property subject to Creditor's claim is not necessarily depreciating, the total monthly payments to Creditor under the Plan to cure arrearages is much lower than the amount of arrearages on the loan. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too.

These Debtors, with the assistance of multiple attorneys in multiple bankruptcy cases, have obtained the extraordinary relief available under the Bankruptcy Code. However, they have uniformly failed to fulfill their obligations as debtors to prosecute a Chapter 13 Plan, which they could perform, in good faith. The court has addressed in detail the misconduct of the Debtors and their multiple filings in ruling on this Creditors' motion for relief pursuant to 11 U.S.C. § 362(d)(4). See Civil Minutes for October 21, 2014 hearing on Creditors' Motion, DCN: ADS-1. The court incorporates those findings herein by this reference.

Debtors' repeated bankruptcy filings, all within days of scheduled trustee's sales (including a sale pursuant to Creditor's relief from stay in a prior bankruptcy case (Exh. 5, Dckt. 18)), indicate that Debtors did not file the instant case in good faith. This is grounds to deny confirmation of the Plan. 11 U.S.C. § 1325(a)(7).

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 Rudolph and Evelyn Satterfield 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.

64. 14-28099-E-13 YASWANT/KAMINI SINGH — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Len ReidReynoso — 9-17-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor Yaswant Sing failed to appear at the First Meeting of Creditors held on September 11, 2014, which was continued to October 2, 2014 at 10:30 a.m.

2. It appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6).

a. Debtors' plan calls for payments of $3,188.00 per month and additional lump sum payments of $24,000 in months 3, 9, 15, 21, 27, and 33. At the 341 held on September 11, 2014, Debtor Kamini Singh, indicated the source of the lump sum payments are anticipated bonuses from her spouse's employment with Cal Valley Solar. Mrs. Singh did also admit that Debtor has not yet received any bonuses in the three years being employed with Cal Valley Solar.

b. Debtors' plan relies on $1,000.00 per month income from farming, Debtor Kamini Singh admitted at the 341 held on September 11, 2014 that the Debtors farm summer crops only, which they currently hold very little stock. The farming income does not appear to be a reliable source of income year around. Debtors do not report having sufficient money held or saved on Schedule B to cover the $1,000.00 per month projected on Schedule I to last the Debtors until next summer's crop.

c. On Schedule I, Debtors report $1,200.00 per month in pension or retirement income. Debtor Kamini Singh, admitted at the 341 held on September 11, 2014, that this income was reported in error and that she has no such income

3. In Section 6 of Debtors' plan, they have altered the language of the plan, which should have no effect on the plan. Debtors have entered the following: "The monthly plan payment will be $3,188.00 per month for 60 months. No late than the end of the 3rd, 9th, 15th, 21st, 27th, and 33rd month of the plan, the debtor will pay $24,000.00 each time into the plan, totaling $144,000.00 separate plan payments." Based on the provisions in Section 6 of the plan: "Other than to insert text into designated spaces, expand tables to include additional claims, or change the title to indicate the date of plan or that the plan is a modified plan, the preprinted text of this form has not been altered. In the event there is an alteration, it will be given no effect. . . All additional provisions shall be on a separate piece of paper appended at the end of this plan. Each additional provision shall be identified by a section number beginning with section 6.01 and indicate which section(s) of the standard plan form have been modified."

4. The Debtors may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

a. Debtor Kamini Singh admitted at the 341 held on September 11, 2014 that debtors hold at least one bank account at F&M Bank. This account is not disclosed on Schedule B and any balance in the account is not exempt.

b. Debtors fail to report on Schedule B interest in their farming business. Debtor Kamini Singh provided the Trustee with sufficient information to determine that the Debtors

operate a farming business and have one employee.

c. Debtors also admitted that Debtors currently hold crops which they are selling. These residual crops are not listed on Schedule B or exempt on Schedule C.

The Debtors have not filed any response to the Trustee's objection.

These Debtors, with the assistance of multiple attorneys in multiple bankruptcy cases, have obtained the extraordinary relief available under the Bankruptcy Code. However, they have uniformly failed to fulfill their obligations as debtors to prosecute a Chapter 13 Plan, which they could perform, in good faith. The court has addressed in detail the misconduct of the Debtors and their multiple filings in ruling on this Creditors' motion for relief pursuant to 11 U.S.C. § 362(d)(4). See Civil Minutes for October 21, 2014 hearing on Rudolph Satterfield and Evelyn Satterfield Motion for Relief From the Automatic Stay, DCN: ADS-1. The court incorporates those findings herein by this reference.

The Trustee's objections are well-taken. While failure to appear at a 341 meeting in and of itself is not sufficient to deny confirmation, the fact that Debtors appear not to be able make the plan payments as evidenced by the testimony at the 341 meeting and the Debtors' Schedule I and that the Debtors have not provided all the necessary information in the plan or schedules concerning the farming business, there are sufficient grounds to sustain the Trustee's objection.

The conduct of Debtors, with the assistance of counsel in four of the cases, is of detriment not only to the creditors, but to all debtors who seek relief in this case. The aiding and abetting of such conduct by counsel works to decrease the reputation of all consumer attorneys.

The fact that Debtors would pay an attorney $4,000.00 to file a bankruptcy case does not mean that the attorney should file the case. A quick review of the Schedules filed in this case raise significant questions. Schedule J, listing expenses, appears to significantly understate expenses. Though Debtor's proposed plan purports to retain five acres of real property with a mobile home, Schedule J makes no provision for payment of property taxes or property insurance. The address of this Property (Schedule A, Dckt. 1 at 9), is the same address as the "street address" for Debtors on the Petition (Dckt. 1 at 1). Though this is five acres of property, there do not appear to be any expenses relating to the care and maintenance of the five acres.

On Schedule I Debtors state under penalty of perjury that they have $1,000.00 a month in farm income. Dckt. 1 at 23. However, on Schedule J there are no expenses relating to generating farm income. Dckt. 1 at 24-26.

It appears that Schedule J, upon which the Debtors support the contention that they can make $3,188.00 a month payment is what the court has referred to as a "Liar Declaration." This is where debtors will manufacture expense numbers based on a pre-determined net monthly income number to create the illusion that the Debtors can perform a plan. The defect in Liar Declaration is apparent on the face of the document to everyone – creditor, the court, debtors, and counsel for debtors.

The court will refer this case to the Office of the U.S. Trustee for her review and determination of what additional action, if any, or referral to the U.S. Attorney, if any, is appropriate. The court does not order that the U.S. Trustee take any specific action or referral, and leaves such determination to that Office and the exercise of their discretion.

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.