

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

December 9, 2014 at 2:00 p.m.

1. 11-39000 -C-13 MARK ALVAREZ AND DAWN ULC-4 LARKINS Julie B. Gustavson	MOTION FOR COMPENSATION BY THE LAW OFFICE OF UNITED LAW CENTER FOR JULIE GUSTAVSON, DEBTORS' ATTORNEY(S) 10-29-14 [82]
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Final Ruling: No appearance at the December 9, 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, parties requesting special notice, and Office of the United States Trustee on October 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

Julie Gustavson, the Attorney ("Applicant") for Mark Alvarez and Dawn Larkins, the Chapter 13 Debtors ("Client"), requests the court permit additional fees pursuant to Local Bankruptcy Rule 2016-1(c)(3).

Local Bankr. Rule 2016-1(c)(3) provides:

December 9, 2014 at 2:00 p.m.

(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 1 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).

Local Bankr. R. 2016-1(c)(3)

Applicant provides the following explanation of services that were substantial and unanticipated post-confirmation work:

- a. Preparation of a post-confirmation motion to incur debt that will grant Debtors authorization to purchase a used vehicle.
- b. Preparation and prosecution of a motion to modify Debtor's chapter 13 plan that will incorporate the purchase of the vehicle and account for an increase in income and household expenditures.

The court finds these post-confirmation services to be sufficiently substantial and unanticipated.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the

administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (4) (A) .

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

CHAPTER 13 TRUSTEE

On November 3, 2014, the Chapter 13 Trustee submitted a statement indicating that he has no opposition to the court granting the relief requested by Julie Gustavson.

DISPOSITION

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

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

Fees	\$3,681
Costs and Expenses	\$50.22

pursuant to this Application 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 Julie Gustavson("Applicant"), Counsel for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Julie Gustavson is allowed the following fees and expenses as a professional of the Estate:

Julie Gustavson, Professional Employed by Chapter 13 Debtors

Fees in the amount of \$ 3,681
Expenses in the amount of \$ 50.22,

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

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 November 3, 2014. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation based on the following:

1. The Plan relies on the Motion to Value the secured claim of Deutsche Bank National Trust Company. If the Motion is not granted, the Debtor lacks sufficient monies to fund the plan. 11 U.S.C. § 1325(A)(6).
2. It is not clear if Debtors can afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6), or if the plan is Debtors' best effort, 11 U.S.C. § 1325(b).

The income listed on Schedule I is not clear. Line 8h is listed as "Recycle Vol. Ret. \$350, Income Tx Refunds \$600."

The income on Line 8h, in Column 1 for Debtor is listed as \$350.

Line 13 states "Tax Refund arrives April 2015, Next tax refund frees up \$500 a month, is not carried through on line 8a because he will retire and spread that money out to pay the trustee \$500 for the 1st 24 months. It will be the last Tax Refund because in his trade, high voltage hazards escalate with age so he must retire next year. Line 8h justification for vol. retirement because of employer matching."

Schedule I is not clear. No specific date is listed for Mr. Nixon's retirement. The Debtors, historically, have received a large federal return.

Form B22C shows that Debtors are above median income and have \$302.07 on line 59, which implies that \$18,124.20 may need to be paid to general unsecured creditors to satisfy the best effort requirements. The plan proposes no less than 8% of \$95,600, which is a total of \$7,648. The present shortfall could be remedied by payment of Debtor's projected tax refunds.

The court is prepared to grant the pending Motion to Value the secured claim of Deutsche Bank National Trust Company. The granting of that motion will resolve the Trustee's first Objection. Debtors have not responded to Trustee's second objection and it remains outstanding. 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 of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on November 25, 2014. Fourteen days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5217 Namath Circle, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$365,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$476,993.00. Caliber Home Loan's second deed of trust secures a loan with a balance of approximately \$78,818.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely

under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Deutsche Bank National Trust Company secured by a second deed of trust recorded against the real property commonly known as 5217 Namath Circle, 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 \$365,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 11, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-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 Avoid Lien is set for an evidentiary hearing on [date] at [time].
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A judgment was entered against the Debtor in favor of Jill Strickland for the sum of \$80,005.87. The abstract of judgment was recorded with Sacramento County on January 29, 2014. That lien attached to the Debtor's residential real property commonly known as 2429 Morrison Lane, Fairfield, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$305,000 as of the date of the petition. The unavoidable consensual liens total \$285,000 on that same date according to Debtor's Schedule D. A different judgment lien was recorded against the property in favor of John Saunderson in the amount of \$11,057.52. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$10,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title

of the subject real property.

The ownership interest in the subject property is irregular. The property was purchased jointly, with 50% owned by Debtor and his former spouse, and 50% owned by John and Helen Saunderson. The total purchase price was \$200,000, of which approximately \$160,000 was financed through a single loan to all owners. In 2002, all owners took out a \$160,000 line of credit against equity in the property to fund a separate business identified as Globalcrete, Inc., which Debtor and his ex-spouse owned with Saundersons.

In 2004, it is argued that the initial \$160,000 mortgage and subsequent \$160,000 line of credit were refinanced into a \$316,000 World Savings loan obtained solely by the Saundersons, although all owners remained on title to the property. The loan is now with Wells Fargo and has a balance that totals approximately \$272,557.34.

The dissenting creditors to this Motion are John Saunderson and Jill Strickland. Jill Strickland is the former spouse of Debtor.

OPPOSITION - Creditor John Saunderson

Creditor Saunderson objects on the primary ground that he believes the value of the subject property is closer to \$400,000.

Creditor Saunderson explains that on August 1, 2014, he filed an Application for Order of Sale of the subject property in Solano County Superior Court. Soon thereafter, Debtor filed his bankruptcy case. Creditor filed a Declaration in Support of Application for Order of Sale in the state court case which set forth a property value of \$400,000 and Debtor did not dispute that value.

OPPOSITION - Respondent Creditor Jill Strickland

Creditor Strickland argues the Motion should be denied because Debtor misrepresents the nature of his interest in the property, misrepresents the value of the property, and fails to account for the domestic support nature of the underlying obligation.

Strickland argues that Debtor only has a 25% interest in the subject residence and the first deed of trust, held by Wells Fargo Bank, N.A., is only against the Saunderson's interest.

Strickland argues that Debtor "grossly undervalues" the subject property. Strickland suggests the value of the property should be no less than \$535,000

Strickland argues the judgment lien cannot be avoided because it secures a domestic support obligation. Strickland argues that while the Divorce Judgment did not expressly provide for support payments, the decree ordering Debtor to pay Strickland the principal amount of \$80,005.87 was the functional equivalent of a support obligation.

DISCUSSION

After a review of the pleadings, the court is left with three outstanding issues. First, the court was presented three opinions on value,

none of which were supported with verified appraisals. This issue of fact requires an evidentiary hearing to resolve. Second, Creditor Strickland presented an issue of law over whether this court should perceive her \$80,005.87 judgment as a domestic support obligation that should be excepted from avoidance under the Code. Third, Strickland offers testimony and evidence that Debtor is not liable on the Wells Fargo deed of trust while Debtor includes the deed of trust as a consensual lien for which he is responsible to repay.

It is clear from the pleadings that this Motion is the result of a long history of contention between the parties. To ensure that the court has all the relevant and admissible evidence, the matter is to be set for an evidentiary hearing.

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

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

The Motion to Avoid Judicial Lien
pursuant to 11 U.S.C. § 522(f) filed by the
Debtor(s) having been presented to the court,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED the Motion is set for
an evidentiary hearing on **[date]** at **[time]**.

5. [14-30222](#)-C-13 CAMERON ELFORD
PLC-1 Peter G. Macaluso
Thru #6
DAVID SCHOONOVER VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-13-14 [[16](#)]

Tentative Ruling: The Motion for Relief From the 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).

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

Below is the court's tentative ruling.

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

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

The Motion for Relief From the 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). 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 Relief From the Automatic Stay is granted, in part.

David Schoonover and Thuy Bich Van ("Creditors") seek relief from the automatic stay with respect a Sacramento Superior Court Case filed against Debtor and his mother (Case No. 34-2012-00131228). Debtor's mother filed a Chapter 7 bankruptcy on October 20, 2014. (14-30386).

The nature of the civil lawsuit against Debtor is negligent operation of a motor vehicle that resulted in movant suffering bodily injury, pain, mental anguish, loss of enjoyment of life, medical expenses, loss of earnings, etc. There was evidently a criminal case associated with the civil case, in which Debtor admitted to driving under the influence.

Trial in the civil case was set for October 27, 2014.

Debtor is represented by counsel through his automobile insurance company. Movant wishes to proceed with the civil action so the claim against the estate can be liquidated and they can share in the distribution to creditors. Movant also anticipates filing an adversary proceeding seeking a determination that the claim is non-dischargeable under 11 U.S.C. § 523(a)(6) and 11 U.S.C. § 523(a)(9).

TRUSTEE'S RESPONSE (Dkt. 37)

Trustee states that to the extent Creditors seek relief from stay to determine the amount of the claim, he does not oppose the motion. If Creditors seek relief from the stay to collect the debt from the Debtor and not a third party, then Trustee does oppose the relief requested. Trustee would oppose on the basis that Debtor has a pending plan attempting to address the debt.

DEBTOR'S OPPOSITION (Dkt. 41)

Debtor argues that no cause exists for the court to grant relief from the automatic stay. Debtor argues that the Motion seeks to liquidate the personal injury claim in state court. Debtor asserts that Creditor has not demonstrated sufficient basis for the court to grant relief from stay.

DISCUSSION

From the pleadings, the court concludes that Creditors are requesting relief from the stay to "liquidate damages and liability for Personal Injuries received in an auto accident in which Debtor has admitted he was driving under the influence of alcohol" Dkt. 26.

The court has no opposition to Creditor pursuing the claim to determine the amount of the claim. The court also does not oppose granting relief from stay for Creditor to pursue collection of the claim against Debtor's insurance carrier, if any. However, the court does not find cause to grant relief from the stay to permit Creditors to pursue any liquidated claim resulting from the state court case against Debtor personally.

The court shall issue a minute order terminating and vacating the automatic stay to allow Creditors, and their agents, representatives and successors, to pursue the subject state court action (Case No. 34-2012-00131228) to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtor's third-party insurance carrier.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow David Schoonover and Thuy Bich Van, and its agents, representatives and successors, to pursue the Sacramento Superior Court Case action (Case No. 34-2012-00131228) to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtor's third-party insurance carrier.

No other or additional relief is granted.

6. [14-30222](#)-C-13 CAMERON ELFORD
PLC-1 Peter G. Macaluso

MOTION TO DISMISS CASE AND/OR
MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-13-14 [[20](#)]

DAVID SCHOONOVER, THUY BICH
VAN VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 13, 2014. By the court's calculation, xx days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

Despite this motion being captioned as a Motion to Dismiss and Alternatively a Motion for Relief from Stay, Movants docketed both this Motion and a separate Motion for Relief from Stay. Therefore, the court will only address the Motion to Dismiss for Docket Number 20. The Motion for Relief from Stay will be treated under Docket 16.

Creditors, David Schoonover and Thuy Bich Van, argue that Debtor's case should be dismissed because it was not filed in good faith. 11 U.S.C. § 1307(c).

In support of its motion, Creditors provide the following:

1. The totality of the circumstances require the court to dismiss the case.
2. Debtor filed his Chapter 13 case on the eve of a trial where

the creditors are seeking to hold him liable for personal injuries resulting from an automobile accident.

3. Debtor did not list Creditors a claimants, but merely listed them as notice recipients for the County of Sacramento.
4. Debtor has no secured creditors and only one unsecured creditor with a small claim that was not related to the automobile accident or the conviction for driving under the influence of alcohol.
5. Debtor's sole reason for filing is to delay the state court proceeding and avoid the liquidation of a debt that is most likely non-dischargeable under 11 U.S.C. §§ 523(a)(6) & (a)(9).

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee clarifies that not filing in good faith is not an express reason for the court to dismiss a case under 11 U.S.C. § 1307(c). However, under 11 U.S.C. § 1325(a)(7), the Debtor must prove that the action of the Debtor in filing the petition was in good faith to be able to confirm a Chapter 13 plan, and the court cannot presume it, although the court can presume the plan was proposed in good faith in the absence of an objection.

DEBTOR'S RESPONSE

Debtor argues there is no express reason for dismissing Debtor's case under 11 U.S.C. § 1307(c). Debtor informs the court that the Meeting of Creditors has yet to take place, argues there is a reasonably possibility of reorganization and that Debtor is current under the proposed plan, which is confirmable.

DISCUSSION

A review of Debtor's schedules A & D reveal that he has \$0.00 in secured debt. Debtor's unsecured claims total \$338,071, which consists of \$337,969 due to the County of Sacramento for, what appears to be, non-dischargeable criminal restitution. A second claim is listed of \$102.00 due to Capital One. Subject Creditors are also provided for on Schedule F for notice purposes.

Creditors are the Plaintiffs in a civil lawsuit stemming from injuries sustained when Debtor operated a motor vehicle under the influence of alcohol. Their claim is currently unliquidated and prepped for trial in the Superior Court.

Debtor's proposed plan includes a plan payment of \$150.00. The payment is solely being made on Class 7 claims, which total \$338,071, consisting of the non-dischargeable criminal restitution debt.

Ultimately, the good faith question is one for the court to evaluate at the time of plan confirmation. When that time arises, the question the court will consider is whether filing this case and proposing a plan solely to reduce the amount of payment to creditors over the time of the plan is a

good faith use of Chapter 13, especially considering both major debts are likely non-dischargeable.

At this time, the court does not find cause to dismiss the case and the motion is denied without prejudice.

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

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

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

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

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on November 17, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of PNC Bank, "Creditor," is denied.

Debtors seek an order valuing the collateral securing the claim of PC Bank ("Creditor"); however, Debtors did not service the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor PNC Bank, National Association 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 institutions, 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 and after service upon the institution by certified mail or 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.

In this instance, Debtor served PNC at the following address:

2730 Liberty Ave.
Pittsburgh, PA 15222

However, the address that is appropriate for service, per the FDIC website is the following:

222 Delaware Avenue
Wilmington, DE 19899

The court also notes that "PNC Bank" does not appear to be the proper name for the entity at issue. If Debtor intends on altering the legal rights of "PNC Bank, National Association," the entity should be properly named in the motion and served pursuant to the Federal Rules of Bankruptcy Procedure.

As it stands, the court cannot determine that PNC, Bank is the holder of the secured claim Debtor is seeking to adjust. Further, if PNC Bank, National Association does hold the secured claim, the court will not adjust its legal rights without first ensuring it was adequately served with notice of this 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 Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The court's decision is to deny the Motion to Confirm the Chapter 13 Plan as moot. Debtor filed the instant Motion and Plan on October 14, 2014 (Dkts. 24 and 25). The Chapter 13 Trustee filed an objection to confirmation on October 29, 2014 (Dkt. 29). Thereafter, the Debtor filed an amended Chapter 13 plan (Dkt. 34) and a concurrent Motion to Confirm the amended plan (Dkt 35).

The filing of an amended plan is perceived as a *de facto* withdrawal of the formerly pending and file plan, rendering the current motion moot.

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

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

The Motion to Confirm 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 as moot.

9. [13-31627](#)-C-13 DAVID/KAREN BORBA
JLB-3 James L. Brunello

OBJECTION TO CLAIM OF OCWEN
LOAN SERVICING, LLC, CLAIM
NUMBER 4
10-22-14 [[63](#)]

Final Ruling: No appearance at the December 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 22, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Claim of Ocwen Loan Servicing, LLC sustained.

David and Karen Borba, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$971,848.69 with \$4,561.02 in arrears. Objector asserts that payments are current on the claim and there are no pre-petition arrears.

The claim was originally filed on October 16, 2014 by Deutsche Bank National Trust Company and later transferred to Ocwen Loan Servicing, LLC on March 17, 2014.

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).

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Debtors submitted a letter from Ocwen Loan Servicing, LLC that states the following: "Our records indicate that the loan is current and is due for the 07/01/2014 payment." The letter is dated June 04, 2014 and references the loan number that matches the loan number on the transfer of claim.

Debtors filed a Declaration stating their objection and referecing the letter they received from Ocwen Loan Servicing, LLC concerning the state of the loan.

Ocwen Loan Servicing, LLC was served at the address provided on the transfer of claim and has not responded to the Objection.

Based on the evidence before the court, the pre-petition arrears in creditor's claim are disallowed and the claim is allowed as a secured claim in the amount of \$967,287.67. 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 Ocwen Loan Servicing, LLC, Creditor filed in this case by David and Karen Borba, 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 objection to Proof of Claim Number 4 of Ocwen Loan Servicing, LLC is sustained and the claim is allowed as a secured claim in the amount of \$967,287.67 with pre-petition arrears totaling \$0.00.

10. [13-31028](#)-C-13 FELOMINO/LAARNI SUMPO
GG-2 Gerald B. Glazer

OBJECTION TO CLAIM OF
WILMINGTON TRUST, N.A./OCWEN
LOAN SERVICING LLC, CLAIM
NUMBER 4
10-18-14 [[29](#)]

Tentative Ruling: 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).

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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 18, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Claim of Wilmington Trust, N.A. is overruled.

Felomino and Laarni Sumpo, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Wilmington Trust, National Association, c/o Ocwen Loan Servicing, LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$96,052.86. Objector asserts that the claim should be disallowed because it was filed late.

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)*,

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On October 24, 2013, the court entered an order pursuant to 11 U.S.C. § 506(a) finding that Wilmington Trust, National Association holds a second deed of trust against 11846 Herodian Drive, Rancho Cordova, California 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. No action of the court removed Wilmington's lien, the court merely valued the amount of the creditor's secured claim.

Debtors' plan was confirmed on October 18, 2013 and proposes a \$100 monthly payment with a 0.00% dividend to be paid to Class 7 unsecured claims.

The result of the 11 U.S.C. § 506(a) motion was that Claimant was determined to have a general unsecured claim of \$96,052, to be paid through the plan with other unsecured creditors.

The court is perplexed as to Debtors' motivation in seeking to disallow the instant unsecured claim, as Debtors' confirmed plan is paying a 0.00% dividend on general unsecured claims. Debtors' pleadings and declaration shed no light on their motivation and without further discussion the court is not prepared to sustain the objection.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. 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 Wilmington
Trust, National Association, Creditor filed in
this case by 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 objection to
Proof of Claim Number 4 of Wilmington Trust,
National Association is overruled.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain of the proposed plan payment. Sections 6.01 and 6.02 of the proposed modified plan are inconsistent. Section 6.01 states that plan payments will be \$3,085 for 37 months, then \$560 for 23 months beginning October 25, 2014. Section 6.02 state that through October 2014, Debtors would need to have paid the Trustee a total of \$115,265, when Debtors have actually paid \$127,844.
2. The modified plan proposes to reclassify Nationstar Mortgage,

LLC regarding ongoing mortgage payments from Class 1 to Class 4, based on a loan modification. Debtors' Motion to Approve Loan Modification is set to be heard on November 25, 2014. Trustee objection to the Motion on the basis that he is uncertain whether Nationstar Mortgage, LLC is the owner or holder of the existing note.

3. Trustee argues that Debtors' Declaration (Dkt. 43) is insufficient and does not adequately explain the changes in their expenses. The only explanation provided is that Debtor increased some expenses because some of them have increased in the case was filed.

Debtors did not file an Amended Schedule I, but state in their Declaration that their income has not changed.

The court shares the same concerns as the Trustee. As to the Loan Modification, the court issued an order on December 3, 2014 denying the Motion to Approve the Loan Modification. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

Final Ruling: No appearance at the December 9, 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 October 28, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtor's Chapter 13 Plan filed on
October 28, 2014 is confirmed, and counsel for
the Debtor shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the

December 9, 2014 at 2:00 p.m.

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

Final Ruling: No appearance at the December 9, 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 October 31, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on October
31, 2014 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the

December 9, 2014 at 2:00 p.m.

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

14. [14-23635](#)-C-13 ROY/CHERISE WHITAKER
RMW-6 Pro Se

MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL
10-14-14 [[68](#)]

CASE DISMISSED 10/21/14

Final Ruling: No appearance at the December 9, 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 Value 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.

Final Ruling: No appearance at the December 9, 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 October 29, 2014. 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. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on October
29, 2014 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if

December 9, 2014 at 2:00 p.m.

so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [14-29837](#)-C-13 GEM BARRIA
AF-1 Arasto Farsad
Thru #17

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK AND/OR
MOTION TO AVOID LIEN OF JP
MORGAN CHASE BANK
10-31-14 [[15](#)]

Final Ruling: No appearance at the December 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 31, 2014. Twenty-eight days' notice is required. That requirement was met.

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 J.P. Morgan Chase Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7037 Gullane Way, El Dorado Hills, California. The Debtor seeks to value the property at a fair market value of \$608,868 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$621,060. J.P Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$132,289. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 7037 Gullane Way, El Dorado Hills, 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 \$608,868 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 November 3, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor cannot make the payments called for under the plan or comply with the plan. 11 U.S.C. § 1325(a)(4). Debtors plan calls for plan payments of \$350.00 for 12 months, then increasing to \$7,133 for 48 months. The plan payments are insufficient to fund the Class 1 on-going mortgage payment, Class 1 and 2 monthly dividends totaling \$9,078, which includes 5.2% Trustee compensation. Debtors lists a debt for Chase Bank on Schedule D, but this debt is not provided for in the plan.
2. A motion will be required for attorneys' fees. The Disclosure of Compensation of Attorney for Debtors lists in item 6 that

the services do not include some services required under LBR 2016-1. Unless the Disclosure is amended, the Trustee will oppose any order approving attorneys' fees unless a motion to approve the fees is set for hearing.

The court's decision is to sustain the objection. The debt due to Chase Bank that is referenced by the Trustee is a second deed of trust that is the subject of a Motion to Value the court is prepared to grant at the hearing on December 9, 2014. The remaining issues pointed out by the trustee remain outstanding and unresolved. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. Debtor is \$197 delinquent under the terms of the proposed modified plan. According to the proposed plan, payments of \$128,051 have become due. Debtor has paid a total of \$127,854 to the Trustee with the last payments totaling \$3,744 having posting November 3, 2014.
2. Section 2.15 of Debtor's modified plan proposed to pay unsecured creditors no less than a 30% dividend where unsecured claims are estimated at \$62,781. Under the confirmed plan, Debtor is paying 100% of unsecured claims,

where claims were estimated at \$6,075. Debtor's Motion and Declaration both indicate the modified plan pay unsecured creditors a total of 30%. It would appear Debtor has included in the unsecured claims the unsecured debt owed to Great Lakes Higher Education, in the amount of \$56,705, which was to be paid outside at \$250 per month, pursuant to a pre-petition contract Debtor executed with the creditor.

3. Section 2.06 of the modified plan proposes attorneys' fees of \$0.00 paid prior to filing the case and \$2,000 to be paid through the plan. Section 6.01 states, "The Debtor paid her previous attorney \$2000 through her chapter 13 plan. An additional \$2000 will be paid to current attorney David Foyil pursuant to section 2.07(c) in month 36." Under the confirmed plan, attorneys' fees were \$1,500, paid prior to the filing of the case, with \$2,000 paid through the plan. The Trustee has disbursed \$2,000 in attorneys' fees.

Debtor's Motion states that Debtor will be filing a motion to approve the additional fees. A review of the docket did not show this motion on the date that Trustee filed this opposition.

The Trustee notes that a Motion to Substitute Counsel was filed November 13, 2014 (Dkt. 125) but no order has been filed to date.

4. Debtor has not filed Amended Schedules I & J to support the plan payments proposed. Debtor's Motion and Declaration indicate income and expenses were filed as Exhibit J. Debtor's Exhibits include 61 pages of documentation that ends with the cover page for Exhibit J, but does not include the exhibit.

Pursuant to the reasons outlined by the Trustee, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The court notes that an order granting the substitution of counsel was entered on November 21, 2014.

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

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

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

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

December 9, 2014 at 2:00 p.m.

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 October 8, 2014. Fourteen days' notice is required. That requirement was met.

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

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

PRIOR HEARING

The court first hearing this matter on Novemebr 4, 2014. The matter was continued for Debtor to bring his plan into compliance based on the Trustee's objection.

OBJECTION TO CONFIRMATION

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

1. Debtor is \$3,245 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,245.00 is due on

October 25, 2014. Debtor has paid \$0.00 into the plan to date.

2. Debtor has not paid the filing fee installment of \$77.00 due on October 2, 2014.

DEBTORS' RESPONSE

Debtors state they will be caught up on plan payments by December 9, 2014.

TRUSTEE'S RESPONSE

Trustee confirms that on October 28, 2014, Debtors made the final installment payment toward their Chapter 13 case. However, as of December 2, 2014, Debtors remain delinquent under the terms of the proposed plan.

DISCUSSION

The court docket reflects that the installment fee was paid October 28, 2014. Although Debtors responded to the Trustee and indicate that they will become current by the hearing date, they currently are delinquent in plan payments. 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. [14-29550](#)-C-13 TRISHA MEJIA DONNELL OBJECTION TO CONFIRMATION OF
DPC-1 Mary Ellen Terranella PLAN BY DAVID P. CUSICK
11-3-14 [[23](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on December 1, 2014, no prejudice to the responding party appearing by the dismissal of the Objection, the parties, having the right to dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Objection from the calendar.

Tentative Ruling: The Motion to Confirm Termination or Absence of the 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Confirm Termination or Absence of the 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 the Stay is granted

Deutsche Bank National Trust Company seeks an order confirming that the automatic stay is not in effect under 11 U.S.C. § 362(c)(4)(A)(ii) and for *in rem* relief pursuant to 11 U.S.C. § 362(d)(4).

Debtor filed his first bankruptcy petition on May 1, 2014 under Chapter 13 of the Code (14-24629). The case was dismissed on June 3, 2014. Debtor filed his second bankruptcy petition on June 30, 2014 (14-26775). The case was dismissed on September 4, 2014. Debtor filed the instant case on October 29, 2014 (14-30657). This is Debtor's third case pending within one year.

CHAPTER 13 TRUSTEE

On December 4, 2014, the Chapter 13 Trustee filed a statement

indicating that he has no opposition to the court granting the requested relief.

DISCUSSION

Pursuant to 11 U.S.C. § 362(c)(4)(A)(I), if two or more cases of a debtor were pending within the previous year but were dismissed, other than a case filed under section 707(b), the stay under § 362(a) shall not get into effect upon the filing of the latter case. Under 11 U.S.C. § 362(j), upon request of a party in interest, the court shall issue an order confirming that not automatic stay is in effect.

A review of the record confirms that Debtor had two previous cases pending within the past year that were dismissed. Further, Debtor has not filed a Motion requested the automatic stay be extended for cause despite his repeated filings.

Movant further argues that it is entitled to an *in-rem* order on the basis that the Debtor's successive bankruptcy filings are in bad faith. Movant is requesting relief pursuant to 11 U.S.C. § 362(d)(4)(B).

A review of the docket in this case confirms the filing history detailed by Movant. 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.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect Debtor's real property located at 4501 Shenango Way, Elk Grove, California. Movant is the holder of the first deed of trust on the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by the filing of multiple bankruptcy cases.

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 Relief From the
Automatic Stay filed by the creditor having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED pursuant to 11 U.S.C. §
362(j) that under 11 U.S.C. § 352(c)(4)(A)(ii),
there is no automatic stay in effect in case
number 2014-30657 of Eddie Cabrera.

IT IS 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

December 9, 2014 at 2:00 p.m.

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 file during that period.

No other or additional relief is granted.

Final Ruling: No appearance at the December 9, 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 October 15, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

The court previously continued the hearing on the Motion because insufficient notice was provided. The continuance remedied the notice period issue and the court is satisfied with the record. Further, the chapter 13 trustee filed a statement indicating no opposition to the court granting the motion on November 4, 2014.

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

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

The Motion to 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 October 15, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2014. Forty-two days' notice is required. That requirement was met.

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

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

PRIOR HEARING

The court previously heard this matter on November 4, 2014. The matter was continued to December 9, 2014 for Debtor to submit a declaration resolving the Trustee's objections.

As of December 5, 2014, Debtor has not submitted a supplemental declaration and the Trustee's objections remain outstanding. The court maintains its previously ruling denying the motion to confirm.

SUMMARY OF OBJECTION

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor's plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor testified at the 341 Meeting that Debtor receives \$1,500 per month in rental income. This income is not included on Schedule I.

2. Debtor and Debtor's spouse are both self-employed. Schedule I, line 8 lists net income of \$1,000 for Debtor and \$5,000 for Debtor's spouse. Line 8a requires an attached statement for each property or business, showing gross receipts, expenses, and total monthly net income. Debtor did not file the attached statement and it is not clear to the Trustee if the \$6,000 on Schedule I is gross or net income.
3. Debtor did not select the correct box in section 2.06 of the plan, which should be marked as "complying with LBR 2016-1(c)" or filing a motion for attorneys' fees.
4. The plan does not pass Chapter 7 Liquidation. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$21,288.00 and Debtor is proposing a 0% dividend to unsecured creditors. Debtor is married and Debtor's spouse is not included in the bankruptcy. Debtor has not filed a spousal waiver for use of the California State Exemptions under C.C.P. § 703.140.
5. Trustee is uncertain whether Debtor's plan has been proposed in good faith or if it reflects Debtor's best efforts. 11 U.S.C. §§ 1325(a)(3) & 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line 3b, Debtor listed ordinary and necessary business expenses totaling \$5,721.33. Debtor is over the median income and has not properly completed the CMI.

DEBTOR'S RESPONSE

Debtor filed Amended Schedules I and J that allegedly more clearly and properly reflect income and expenses of Debtor. Debtor and her husband operate as independent contractors, she is a beautician and her spouse is operates a pool cleaning business.

Debtor asserts that the Plan was filed and inadvertently did not include checking the box concerning LBR 2016-1(c). Debtor clarifies that the attorneys' fees in the plan were incorrect and should be listed at \$1,810, as shown on the Disclosure of Attorney Compensation and the Rights and Responsibilities form. Debtor requests these items be clarified in the order confirming the Chapter 13 plan.

Debtor is unclear on the liquidation objection and argues there is no non-exempt equity, per Schedule C. Further, Debtor filed the spousal waiver on October 21, 2014.

Debtor filed Amended Form B22C on October 21, 2014, demonstrating that Debtor passes the means test.

DISCUSSION

Amended Schedules I & J

On October 21, 2014, Debtor filed Amended Schedules I & J. Schedule I includes income listed on Line 8a of \$1,000 for Debtor and \$4,100 for Debtor's spouse. Debtor still did not attached a statement for the properties and/or businesses. Schedule I does not address the \$1,500 in rental income testified

to at the 341 Meeting.

While Debtor did file the spousal waiver, appears to have remedied the Trustee's concerns regarding attorneys' fees, and filed an Amended Form B22C, Debtor still lacks sufficient evidence supporting Schedule I. Therefore, the court's decision is to deny the motion.

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

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

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

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

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

24. [14-29281](#)-C-13 RITA NORTH-JONES
DPC-1 Mohammad M. Mokarram
Thru #25

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-29-14 [[28](#)]

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 October 29, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that it relies on a pending Motion to Value, which is set for a continued hearing on December 9, 2014 at 2:00 pm. If the Motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full.

The court continued the matter to be heard at the same time as the pending Motion to Value.

The court is prepared to grant the Motion to Value and; therefore, the Trustee's objection is resolved.

The court's decision is to overrule the objection and confirm the Chapter 13 plan.

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 Motion is granted, Debtors' Chapter 13 Plan filed on September 16, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

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

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

The Motion to Value is granted.

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

The first deed of trust secures a loan with a balance of approximately \$225,888.00. Partners for Payment Relief DEII, LLC's second deed of trust secures a loan with a balance of approximately \$39,477.67. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the

amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

OPPOSITION & WITHDRAWAL OF OPPOSITION

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

The court continued the Motion for Creditor to submit an appraisal on the value of the property. On November 19, 2014, Creditor filed a Notice of Withdrawal of it's limited opposition.

DISCUSSION

The objecting creditor having withdrawn it's limited opposition, the court perceives no further impediments to the granting of 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 Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Partners for Payment Relief DEII, LLC secured by a second deed of trust recorded against the real property commonly known as 1443 Utah Street, Fairfield, 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 \$200,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 November 7, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to continue the Objection to [date] at [time].

The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor cannot make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor is proposing to value the secured claim of Capital One Auto Finance; however, a motion to that effect has not been filed. Without that motion being filed and granted, Debtor lacks sufficient monies to fund the plan.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor did not provide Trustee with a tax transcript or copy

of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

DEBTOR'S RESPONSE

In response, Debtor asserts that she is in communication with counsel for the secured creditor concerning the Motion to Value the secured claim of Capitol One Auto Finance. Debtor anticipated entering a stipulation with Creditor; however, it has not been finalized.

Regarding the pay stubs and tax transcripts, Debtor states they have been provided to the Trustee.

DISCUSSION

The court will grant Debtor a short continuance to finalize a resolution with the secured creditor on the Motion to Value collateral.

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 of the Plan is continued to **[date]** at **[time]**.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2014. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to set the Motion to Confirm the Plan for an evidentiary hearing on [date] at [time].
--

PRIOR HEARING

The court first heard this matter on November 18, 2014. At that hearing, counsel for the Debtor did not appear. The court was prepared to set the matter for an evidentiary hearing; however, due to counsel's absence, it continued the matter.

Since the matter was continued, Debtor has not filed any supplemental pleadings or response to the Chapter 13 Trustee. Therefore, the court remains compelled to set the matter for an evidentiary hearing.

SUMMARY OF MOTION

The Chapter 13 Trustee objects to confirmation of the plan because Debtors' plan is not filed in good faith. 11 U.S.C. § 1325(a)(3). Debtors are below median income and propose a plan of \$83.00 per month for 36 months, with

a 2.4 dividend to unsecured creditors. The unsecured creditors are the only parties to receive payment in this case.

Trustee asserts that it appears the Debtors do not wish to contribute their disposable income into the plan. The current motion is an attempt to confirm the third plan filed by the Debtors. With each plan, the Debtors have failed to fully and completely disclose information pertaining to their income, their business operations, their health and the disposable income available to be paid to unsecured claims.

HISTORY

Original Plan

Debtors' original plan was filed on December 26, 2012 and proposed to pay \$75.00 per month for 36 months. After the 341 Meeting, Trustee determined that Debtors had an additional \$1,250 per month available to contribute to plan payments. On February 5, 2014, Trustee filed an Objection to Confirmation based on excessive attorneys' fees and the plan not being Debtors' best efforts. Debtors had double deducted their housing expense of \$1,000 and utilities costs of \$250 on both their household expense budget and on their business expense reports.

On February 25, 2014, Debtors withdrew their plan and indicated they would file an amended plan addressing the Trustee's concerns. On March 4, 2014, the court issued an order sustaining the Trustee's objection.

On June 2, 2014, Trustee filed a Motion to Dismiss because Debtors did not file an Amended Plan (Dkt. 46).

On June 25, 2014, Debtors filed a First Amended Plan to avoid dismissal of the case. This resulted in the Trustee withdrawing his Motion to Dismiss.

First Amended Plan

In the First Amended Plan, the Debtors proposed to pay \$75.00 per month for 36 months, the plan was identical to the original plan except that counsel reduced his fees. Debtors explained in their Declaration that as of April 24, 2014, they have closed their business, losing their primary source of income, due to health conditions of "diabetes and prostate surgery." (Dkt. 54).

Debtors filed Amended Schedules I & J in support of their plan. Schedule I shows that Debtors receive help with bills from Jose Diaz of \$2,000 per month and rental income of \$1,000 per month. Schedule I also includes that the business was closed on April 24, 2014. No documentation was submitted in support.

On Schedule J, Debtors removed their expense for electricity, heat and natural gas of \$250; changed water/sewage/garbage from \$125 to \$149; changed food from \$800 to \$550; removed \$754 for clothing \$50 for personal care; and decreased transportation from \$300 to \$200. Debtors removed \$100 in entertainment and the business expenses of \$1,774. Debtors added the expense of the rental mortgage of \$729.

On August 5, 2014, Trustee filed his opposition to the plan, arguing

that Debtors were not eligible for Chapter 13 relief, were not prosecuting their case in good faith, and that the plan was essentially a disguised Chapter 7 case.

On August 12, 2014, Debtors withdrew the First Amended Plan and the court dismissed the Motion without prejudice.

On September 19, 2014, trustee filed his second Motion to Dismiss. Trustee withdrew the Motion on October 9, 2014, after Debtors filed the pending plan and motion to confirm.

Current Plan: Second Amended Plan

On September 30, 2014, Debtors filed the current plan with supporting documents. The plan calls for payments of \$83.00 per month for thirty-six month and a 2.4% dividend to general unsecured claims. The only change is a payment increase of \$8.00 per month.

Debtors' declare that they have stopped receiving help with payments and have opened the business as of August 8, 2014 and that they believe the income will be steady, into the future. Debtors state that changes to the budget are necessary in order to assist Debtors in repaying their debts.

The Profit and Loss Statement shows Debtors' incomes is approximately the same as originally reported, but the business budget now shows that \$1,839 (Exh. B., Dkt. 81, Pg. 25) is the average expenses for supplies versus the original estimate of \$517.00 per month (Exh. A, Dkt. 30). Debtors claim to make and sell Churros.

Debtors did not supply Trustee with any evidence to support their expenses for the business. Debtors did not list any business equipment, inventory, or machinery on Schedule B. The Debtor only shows one 2006 Aztec Trailer on Schedule B.

The Trustee is unable to determine that the income Debtors claim for the business is an actual, stable, and reliable source of income. The Trustee has not been provided with any proof of a business licence, health permits, or permit/license to sell food.

Disputed Material Facts

The Trustee requests the court set an evidentiary hearing to determine the Debtors' income and expenses and the result and/or effect of the Debtors' medical condition. Trustee seeks that the matter be set out at least 60 days to allow discovery.

Business

Trustee seeks from Debtors ninety (90) days of receipts for supplies for the business, a list of business equipment, a list of current inventory, their 2013 tax return, and a copy of their most recent sales tax return. The Trustee also requests that Debtors describe when, where, and how they operate their business.

Medical Issues

Debtors' medical records indicate that treatment is for diabetes. The records appear to disclose that the initial appointment on May 2, 2014 was a "new patient" appointment. There is no clear indication in the medical records that the doctor requested that Debtors stop working or have surgery.

Trustee cannot determine whether Debtors' petition was filed in good faith or if the plan has been proposed in good faith. 11 U.S.C. §§ 1325(a)(3) & (7).

Disguised Chapter 7

Trustee reiterates his concern that Debtors' case is merely a disguised Chapter 7 case. Debtors have done nothing to attempt a debt reorganization and will pay a total of \$2,299 toward unsecured claims under the plan. Counsel accepted \$4,800 in fees prior to filing. The plan proposes to pay nothing to secured claims and a nominal dividend to unsecured claims; however, Debtors list no unsecured claims on Schedule F. On Schedule D, Debtors list a First Deed of Trust held by JP Morgan Chase Bank, N.A. and a Second Deed of Trust held by Bank of America. Debtors' Second Deed of Trust was subject to a Motion to Value heard and granted on February 2, 2014 (Dkt. 37).

Trustee argues that this case was filed with the sole purpose of stripping the Second Deed of Trust on Debtors' rental property, located at 412 Park Drive, Bakersfield, California. Debtors filed the Chapter 13 to receive the benefits not available under Chapter 7.

Chapter 7 Liquidation Analysis

Debtors' plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$0.00 and the Debtors are proposing a 2.4% dividend to unsecured creditors. Debtors may not have reported all assets. Debtors have not business inventory or assets listed on Schedule B. The Trustee is concerned that all assets have not been reported.

Best Effort

The plan may not be Debtors' best effort under 11 U.S.C. § 1325(b). In the event the original Schedules I & J filed by Debtors were and remain correct, because of the double-counting of rent and utilities, more money should be available to unsecured creditors.

DISCUSSION

The court's decision is to set the matter for an evidentiary hearing, per the Trustee's request, on **[date]** at **[time]**. During the evidentiary hearing, the court will take evidence on the Debtor's income, expenses, medical history and status, business, and why Debtors' require a Chapter 13 plan versus a Chapter 7 liquidation.

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

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

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

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

Tentative Ruling: The 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 November 7, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation based on the following:

1. The plan does not reflect the Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor is above median income. Form 22C shows on line 59 the Debtor's monthly disposable income, with a net excess income of (\$20.00); however, this is after a deduction of \$2,583 for involuntary employment on line 31. According to Debtor's Schedule I, there is no such deduction.

Additional Income. Debtor's paystubs dated July 21, 2014, August 5, 2014, August 20, 2014, and September 5, 2014, show that Debtor earns an approximate average of \$10,236 gross per month and \$6,359 net income per month. This is approximately \$300 more than Debtor reports on Schedule I. The plan payment

is not the Debtor's best effort and could be increased.

The Debtor's non-filing spouse is currently reported as unemployed. Trustee requests that Debtor provide him with periodic paystubs and updates of household income and copies of tax returns each year Debtor is in the plan.

Excessive Tax Withholding. On line 16 of Schedule J, Debtor deducts \$759 for income tax. This is in addition to the 18% already being deducted from her payroll. Debtor reports a household of six, including herself, her spouse, and four dependent children. Debtor has not testified as to why the additional tax withholding is reasonable and necessary. The deduction could be an addition to disposable income.

Tax Refunds. Debtor received tax refunds of \$5,405 from the IRS in 2014 for tax year 2013 and \$2,405 from the Franchise Tax Board for tax year 2013. The combined refunds total \$650.84 amortized over a twelve month period. Trustee requests the court view these funds as additional disposable income and require that Debtors turn over any future tax refunds received during the life of the plan as an additional payment to be paid toward unsecured claims.

2. While the plan proposes to pay the attorney \$1,400 through the plan under LBR 2016-1, the Disclosure of Compensation of Attorney for Debtors lists in item 6 that the services provided to not include some services required by the local rules. The attorney is effectively opting out of LBR 2016-1(c), and the Trustee will oppose any attorneys' fees being granted without a separate motion.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor's plan may not pass Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Trustee is concerned that Debtor may be entitled to tax refunds for the unfiled tax years 2011 and 2012. As referenced above, Debtor received tax refunds of \$5,405 from the IRS and \$2,405 from the FTB. The assets, if any, are not listed on Schedule B and are not exempt.

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

December 9, 2014 at 2:00 p.m.

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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.

IT IS FURTHER ORDERED that Debtor is to turnover any income from future tax refunds to the Chapter 13 Trustee to be used as additional payments to be paid toward unsecured claims.

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 November 7, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on November 6, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The continued meeting is set for January 22, 2015.
2. The plan may not comply with 11 U.S.C. § 1325(A)(1) because Debtor misclassified a claim. On Schedule D, Debtor lists a secured claim for El Paso County Tax Assessor for \$5,000. The claim is secured by real property located in Fergosa Springs, Colorado. Debtor lists the creditor in Class 1 of the plan; however, it should be in class 2 because the claim appears

due in full.

3. Debtor has not demonstrated ability to make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor does not list an expense on Schedule J for future property tax liabilities for the land in Fergosa, Colorado and does not have excess disposable income beyond the proposed plan payments.
4. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
5. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

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

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

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

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

30. [14-29797](#)-C-13 SOO YI
CK-1 George T. Burke
Thru #30
CASE DISMISSED 11/21/14

OBJECTION TO CONFIRMATION OF
PLAN BY SONG CHA MATSON
11-6-14 [[19](#)]

Final Ruling: No appearance at the December 9, 2014 hearing is required.

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

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

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

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

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

31. [14-29797](#)-C-13 SOO YI
DPC-1 George T. Burke

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-3-14 [[15](#)]

CASE DISMISSED 11/21/14

Final Ruling: No appearance at the December 9, 2014 hearing is required.

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

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

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

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

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