UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 9, 2014 at 3:00 p.m.

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1. 14-29406-E-13 FRANCES/ALBERT ENOCHS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Nima Vokshori — 11-7-14 [19]

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. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Not all assets listed/may fail liquidation. The Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors fail to list interest in any clothing, household goods and jewelry on Schedule B. The Trustee is uncertain what other assets are not disclosed on the Debtors' schedules. On line 21 of Schedule B, Debtors list interest in a potential legal claim against Delay Group, which the Debtors identify as an unknown value. At the 341 meeting held on November 6, 2014, Debtors indicated that they believe they claim to be worth at least $60,000.00, which is the amount of money they have paid to Delay Group. On Schedule C, Debtors exempt $25,366.23, leaving at least a portion of the claim as non-exempt, if and when the claim is realized.

2. Plain not best efforts/not all income in plan. The Debtors' Plan is not the Debtors best efforts under 11 U.S.C. § 1325(b). On Schedule J, Debtors deduct $1,200.00 per month for rental/home ownership expense. On Schedule A, Debtors list ownership interest in real property located at 7621 Sum Cover Lane, Sacramento, California, but list the property in Class 3 of the plan to be surrendered. At the 341 meeting held on November 6, 2014, Debtors admitted that they have not made a mortgage payment on the property in approximately 5 years since they had begun working with the Delay Group attempting to obtain a loan modification. The Debtors are not currently paying the mortgage on the property and the $1,200.00 is additional disposable income. Debtors also indicated at the 341 that they intend to obtain a loan modification and retain their real property. At the 341 Meeting, Debtors indicated that they had a person moving into their home to rent a room at $500.00 per month effective end of November 2014. The Debtors did not report this income on Schedule I.

3. No dividend to attorney fees. In Section 2.06 of the plan, Debtors propose to pay $4,000.00 toward attorney fees. In Section 2.07, the Debtors propose a monthly dividend of $0.00 per month to be paid toward those fees.

4. While the plan proposes to pay the attorney $1,000.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. 1, pg. 40) appears to list in item 6 that the attorney services do not include some services required under LBR 2016-1(c), such as relief from stay actions. The Trustee believes that the Attorney is effectively opting out of LBR 2016-1(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

DEBTORS' RESPONSE

Debtors respond stating that the Trustee's Motion should be denied. First, Debtors have been unable to prepare a final budget because the proposed tenant decided not to rent the property. But by December 3, the Debtors will know if they have a tenant.

Debtors have amended the Schedules to list the personal property assets. The court's review of the Docket on December 5, 2014 does not disclose an amended Schedule B having been filed which lists interests in any clothing, household goods and jewelry; or a $60,000.00 potential legal claim against Delay Group.

The Debtors also assert that the Debtors listing a $1,200.00 mortgage expense, which is not being paid is improper, because once either a loan modification is agreed to or the Debtors vacate the property for which they are not paying a mortgage, then they project their future mortgage or rental cost to be $1,200.00. This misses the point of the Objection, the Debtors do not now actually have a $1,200.00 a month mortgage expense. They have that much additional disposable income each month to fund the plan. This case having been filed in September 2014, the Debtors now have $4,800.00 of these monies for a non-existent expense to fund the plan with an initial lump sum.

The Trustee's objections are well-taken. The Debtors' failure to list such things as clothing and household goods on their Schedule B raises the question of whether the plan would pass a liquidation analysis. The information the Trustee uncovered at the 341 meeting concerning the mortgage payments as well as the expected rental income highlights that the plan may not provide for all of Debtors' disposable income and is not Debtors' best efforts. Furthermore, the uncertainty concerning the attorney fees also brings the feasibility and best efforts of the plan into question. Finally, the Debtors have an additional $1,200.00 a month in projected disposable income which they are not using to pay into the Plan. Just the $1,200 a month payments for the first four months of this case would generate a 15% dividend to creditors holding general unsecured claims rather than the 0.00% provided in the proposed Chapter 13 Plan.

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

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

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

2. 09-22607-E-13 LOIS GRAHAM
PGM-4 Peter Macaluso

MOTION TO WAIVE DEBTOR LOIS GRAHAM'S 11 U.S.C. 1328 REQUIREMENT
11-10-14 [128]

Tentative Ruling: The Motion to Waive 11 U.S.C. § 1328 Requirements 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.

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

On November 11, 2014 a Motion was "filed by" Lois Graham. In the Motion Ms. Graham advises the court that she passed away on June 11, 2014. Ms. Graham further advises the court that due to her death she is now unable to comply with the requirements of 11 U.S.C. § 1328.

With Ms. Graham's passing there is no person who exists to bring the present Motion. No personal representative has been appointed pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014 to be the necessary party. While it may seem obvious that the court should complete the administration of this case, it is unable to do so when there is no debtor or representative of the deceased Debtor to seek relief from the court.

Having a person (be it an individual or non-individual legal entity) who has an actual claim or controversy is necessary for a federal court to exercise federal jurisdiction under Article III, Section 2 of the United States Constitution. While it could be viewed as expedient to cut the corner and ignore the Constitution under these facts, then that creates a "rule" that there are some federal judicial proceeding in which no party is involved, but merely an attorney who is representing some anonymous person outside the purview of the court.

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 Waive the Requirements of 11 U.S.C. § 1328 for the deceased Debtor which has been filed by the deceased Debtor having been presented to the court, no personal representative having been appointed pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3. 14-29909-E-13 DPC-1 PAUL KELLY Pro Se
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-7-14 [17]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on November 7, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

However, on December 4, 2014, the court entered its order dismissing this case.

The court's decision is to sustain the Objection.

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

1. Failed to attend 341. The Debtor failed to appear at the First Meeting held on November 6, 2014, the Meeting has been continued to January 22, 2015 at 10:30 a.m. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

2. Post Petition Mortgage Payments. Class 1 of the plan requires the Trustee pay all post petition payments falling due after the filing of that case to the holder of each class 1 claim.

Debtor lists Chase Bank, the holder of the Third Mortgage on his residential real property, in Class 1 of the plan but fails to propose an ongoing monthly payment. Debtor does propose to pay $166.67 toward the $10,000.00 in arrears he owes.

3. Not Provided for Claim. The Debtor's Plan fails to provide for Credit Acceptance Corp's secured lien against 2003 Chevy Trailblazer, listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

4. Financial Contributions. The Trustee is unable to determine whether the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6); The Trustee is unable to determine feasibility of the plan, Debtor's Schedule I, shows at least a portion of Debtor's income is from a "contribution," however Debtor has failed to provide Declarations by the contributors to prove these contributions are likely to occur.

The Trustee's objections are well-taken. One basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). As to the Trustee's other objections, the Plan fails to provide for the ongoing monthly mortgage payments for Chase Bank, fails to list Credit Acceptance Corp's secured lien. Additionally, the Debtor's failure to provide information concerning the contributions brings the Plan's feasibility into question.

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

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

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

4. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON MOTION TO MODIFY PLAN
GDC-1 Guy Chism 10-28-14 [188]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2014. By the court's calculation, 38 days' notice was provided. 35 days' notice is required.

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

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

Stephen Dickson ("Debtor") filed the instant Motion to Confirm Modified Plan on October 28, 2014. Dckt. 188. In the Motion, the Debtor states that the proposed Plan modifies the claim of Wells Fargo Home Mortgage from a Class 1 claim to a Class 4 claim to be paid directly by the Debtor. The Plan also proposes that the Debtor has paid the Trustee a total of $84,671.32 to the Trustee through September 2014. The Trustee is currently holding a lump sum payment of $3,000.00 which the Debtor paid in April 2014. Those funds are sufficient to pay the remaining balance of the Class 2 claim of Resurgent Capital/American General Finance, attorney fees and trustee's fees. Any remaining funds shall be applied to general unsecured claims. The Debtor states that in order to comply with the Trustee's objection to a shortened plan term, the debtor shall make payments to the Trustee in the amount of $25.00 per month commencing October 2014 for the remaining 10 months of the 60 month plan term.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on November 25, 2014. Dckt. 198. The Trustee objects on the following grounds:

1. The proposed modified plan does not resolve the court's issues from denied modified plan, DCN CK-6. The civil minutes from the Debtor's denied modified plan, previously heard on September 30, 2014 states:

> The Debtor filed a Supplemental Declaration of Debtor in Support of Motion to Approve Nomination of Debtors Representative. Dckt. 176. While the Declaration is not linked to the instant motion by Docket Control Number, the Declaration does explain the life insurance proceeds and what the Debtor has done with the proceeds. Attached to the Declaration is a copy of Debtors proposed Amended Schedules B and C which now includes the insurance proceeds and the relevant exemptions to fully exempt the proceeds. Dckt. 177. However, Debtor has not filed any amended schedules in the docket or motions to amend the schedules outside of merely attaching them as an exhibit with the intent to eventually formally file the schedules with the court

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

On November 28, 2014 Debtor filed a Second Modified Plan (Dckt. 203) and a motion to confirm the Second Modified Plan, which is set for hearing on January 13, 2015. Dckt. 201. This new modified plan supercedes the proposed first Modified Plan.

The Motion is denied and the Modified Plan 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.

5. 14-26919-E-13 RODERICK ROBBINS — MOTION TO CONFIRM PLAN
SNM-1 Stephen Murphy — 10-15-14 [42]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 15, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

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

Roderick Robbins ("Debtor") filed the Instant Motion to Confirm First Amended Chapter 13 Plan on October 15, 2014. Dckt. 42. In support of the Motion, the Debtor states that on July 1, 2014, David Cusick, the Chapter 13 Trustee, filed an Objection to Confirmation of the Prior Chapter 13 Plan, based on (1) the value of real property located at 136 Dolphin Ct. is contested; (2) rental expenses are not itemized; and (3) rental income is not itemized.

The court on September 15, 2014 sustained the Trustee's objection. In response to the Trustee's objections, the Debtor states that the Debtor is informed by a realtor that on the date this case was filed the real property located at 136 Dolphin Ct. was worth $139,000.00. As to the second objection, the Debtor states he has filed an amendment to schedules I and J to reflect an itemization of the rental expenses. Debtor also states that a Declaration of Rental Expenses has been filed. To the third objection, Debtor states that he has filed an amendment to schedules I and J to reflect an itemization of the rental income.

Debtor states that the First Amended Plan proposes for Debtor to pay $130.00 per month for 60 months, plus a lump sum payment of $30,000.00, which shall be funded from the sale of real property located at 136 Dolphin Ct., San Francisco, California, so as to pay 66% to general unsecured claims. Per the assets scheduled and exemptions claimed in this case, the total amount that would be paid to unsecured, non-priority claims if the estate of debtor were liquidated under Chapter 7 is $28,833.30. The First amended Chapter 13 Plan proposes to pay no less than 66% of $44,309.00, or $29,243.94.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant motion on November 5, 2014. Dckt. 48. The Trustee objects on the following grounds.

The Debtor cannot make the required under 11 U.S.C. § 1325(a)(6). The Plan proposes a $30,000.00 lump sum payment from the sale of real property located at 136 Dolphin Ct., San Francisco, California. However, the Debtor fails to indicate a specific date of when the proceeds will be paid into the Plan. The Plan lacks specificity as to the sale of the real property. See *In re Newton*, 161 B.R. 207, 217-18 (Bankr. D. Minn. 1993).

The Debtor filed an amended Schedule J on October 15, 2014 and added $340.00 for homeowners association dues for 136 Dolphin Ct., San Francisco, California. The Debtor also decreased the following expenses without any explanation of evidence of the changes:

A. Food was $800.00, now $760.00, decrease of $40.00

B. Clothing was $200.00, now $100.00, decrease of $100.00

C. Entertainment was $102.44, now $3.68, decrease of $98.76

D. Maintenance, repair and upkeep expenses was $276.25, now $175.01, decrease of $101.24

Total Decrease of $340.00 exactly.

Absent specific convincing evidence of each expense, such as six months of bills and bank statements, the Trustee opposes confirmation. The Debtor previously stated under penalty of perjury that the expenses were higher and has not explained whether the prior testimony was mistaken or false, or whether events have occurred that have changed the expenses for the foreseeable future.

The Plan has not been filed in good faith. It appears the plan has not been filed in good faith under 11 U.S.C. § 1325(a)(3). The Debtor originally valued the real property of 136 Dolphin Court, San Francisco, California at $109,000.00 and listed this asset on Schedule B, not on Schedule A. The Trustee file a First Amended Objection to Confirmation (DCN DPC-1) on August 25, 2014 (Dckt. 23) several issues. The Trustee continues to assert the following opposition to the current Plan.

A. The Plan fails to provide for the real property on 136 Dolphin Court. The Debtor's Plan fails to provide for the service of any Debts on the real property located at 136 Dolphin Court in

San Francisco, California and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor. Where the Plan depends on the sale of this property, the Debtor should provide the secured debt on this property to show the Debtor will be able to make the payments called for by the plan and the creditor(s) will not foreclose. Schedule B reflects that this real property has debt owing to chase (Dckt. 1, pg. 11, item 20).

B. The Plan could fail the Chapter 7 Liquidation analysis. It appears that the plan may fail the chapter 7 liquidation analysis, under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $32,037.00 and the Debtor is proposing a 66% dividend to unsecured creditors, which the plan estimates at $44,309.00 total for a dividend of $29,243.00. The non-exempt equity is from the real property located at 135 Dolphin Court. The Debtor values the property on amended Schedule A at $139,000.00. The Debtor filed Amended Schedule C on October 15, 2014 and exempted $6,963.00 of the equity in the real property, leaving $32,037.00 non-exempt.

C. Rental income not listed correctly on Schedule I. The Debtor has once again failed to list the net income from the rental property on line 8a of amended Schedule I filed on October 15, 2014. Schedule I states "list net income from rental property and attach a statement for each property showing gross receipts, ordinary and necessary expenses and the total net income." The Debtor has provided a breakdown of the rental properties, however the Debtor listed the gross income of $2,750.00 on Schedule I, which should be the net income.

D. Tax refund. The Debtor's amended Schedule I filed on August 8, 2014 added income of $276.25 from an "Estimated Tax Refund" and according to line 13, "Tax refund of approximately $3,315.00 is expected to be received annually. These funds are used for ongoing expenses related to property maintenance, repairs, and upkeep for the rentals." The Debtor filed a second amended Schedule I on October 15, 2014 and deleted the language in line 13, although kept the income from the "Estimated Tax Refund" of $276.25. The Debtor does not actually have this income in any bank account or cash, according to amended Schedule B (Dckt. 39, pg. 5).

DEBTOR'S RESPONSE - NOVEMBER 20, 2014

Debtor filed a response to the Trustee's objection on November 20, 2014. Dckt. 52. In response, Debtor states the following:

A. As to the Trustee's first objection, the only evidence given for Trustee's accusation is the following: (1) the plan lacks specificity as to the sale of the real property; and (2) Debtor

decreased his expenses by $340.00 exactly, which is the same amount as the HOA fees added for 136 Dolphin Court. The property is in Sacramento County Probate case no. 34-2013-00118189, in title of the Estate of Dennis Robbins. This is why it was on Schedule B initially. Debtor has consulted with a realtor to market the property (Dckt. 46). The budget was reduced in the same amount by which the monthly obligation increased because the homeowner's association fee is $340.00 per month.

B. The homeowner's association fee expense was previously unaccounted for by mistake. Food was reduced from $860.00 to $760.00 because Debtor never lived on a budget before and this is a fair estimate of what Debtor spends. Clothing decreased by $100.00 because, even though the Debtor works outdoors and wears out clothing, the Debtor can operate effectively within $100.00. The Maintenance decreased from $276.25 to $175.01 because Debtor is selling the dilapidated property in the new plan and will only incur maintenance expenses at the recently improved rental property. Entertainment reduced from $102.44 to $4.68 because it mathematically produces a round plan payment amount and is not necessity of life. The Trustee observes that the Debtor is not in possession of his tax refund which accounts for 4276.25 of his monthly budget.

C. The tax refund is the product of a dependent deduction to which he is entitled as a father with custody. It is therefore received back as a refund rather than taken out each paycheck. The Trustee is correct Debtor's budget is unsustainable without tax refund money. Certain budgetary items fluctuate such as food and clothing. In a few weeks, the Debtor will be eligible to file his 2014 taxes and receive his refunds. Debtor prefers to wait to do so than to convert to Chapter 7.

D. As to the Trustee's second objection, the sole evidence given for the Trustee's accusation is that the house was originally listed with a value of $109,000.00. It was then valued at $139,000.00. Debtor initially valued the property at $109,00.00 because of real estate information he received in 2012, his estimate of the market, and the condition of the property. On July 20, 2013, the property was valued in Sacramento County Probate Case No 34-2012-00118189 at $102,000.00. Then on October 11, 2012, Debtor consulted with a realtor who presented the Debtor with a listing agreement and comps to support her suggesting listing price of $109,000.00. Since the prior proposed listing price of $109,00 would have been insufficient to cover the cost of sale plus pay the secured mortgage claim, Debtor did not market the property at that time. The realtor now estimates the property's value at $139,000.00. Debtor amended his schedules consistent with the new valuation, and disclosed the realtor's estimate to the court at Dckt. 46.

E. As to the Trustee's third objection, the only evidence provided is that Schedule B reflects that this real property has debt owing to Chase. The property is currently in probate and the

debt owed to Chase is in the name of Dennis Robbins, decedent. Debtor is the beneficiary of the estate and is making the payments for the debt owed to Chase. Those payments are accounted for on Schedule J at line 20a.

F. As to the Trustee's fourth objection, the only evidence given is that Debtors amended schedules leave $32,037.00 in unexempt assets. The Debtors state that the Trustee fails to account for the Chapter 7 Trustee fee and the cost of sale. The Average cost of sale is 5% and the average Chapter 7 Trustee administration fee is 10% which would leave a total amount available to unsecured of $22,578.30. Debtors' plan proposes to pay a dividend of $29,243.00 to unsecured creditors, which is $6,664.70 more than unsecured creditors would receive in a chapter 7 liquidation. Therefore, the plan passes the chapter 7 liquidation analysis.

G. As to the Trustee's fifth objection, the Debtor has listed the real property expenses for the rentals on Schedule J and lines 20a-20e and he has also furnished the court with an itemization of those expenses broken down for each property on the attachment to Schedule J titled "Rental Income" which is on page 13 of the amendment filed October 15, 2014. Dckt. 39.

H. As to the Trustee's sixth objection, the Debtor listed the tax refund as an average monthly amount because the forms require monthly income and expenses. The Trustee is correct that he is currently living on an unsustainably low budget. He chooses to do so because it is temporary and he will soon receive his tax refund.

DISCUSSION

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

The Debtor's response does address some of the Trustee's concerns, It still remains that the Debtor's current proposed plan is based on anticipated tax refunds have been explained and how the refund is created by a child dependant deduction. What is not clear is whether the Debtor could adjust his withholding so that when the tax return is prepared and the deduction is taken into account, the correct amount of tax has been paid and there is no amount owed and no refund due. (This is commonly done in determining the correct amount of withholding or payment of estimated taxes for the self employed.)

Additionally, Amended Schedule J states that the child for who the deduction is being claimed is 18 years old. No explanation is provided as to why Debtor will continue to claim the 19-24 son as a dependant during the 60 month term of the plan. It appears that this tax refund upon which the plan is dependant will disappear during the term of this plan.

The Trustee is correct that on Schedules I and J the Debtor has not correctly listed rental income and expenses. Rental property expenses are not listed on Schedule J, but the net income shown on Schedule I with an attachment showing how the net income is computed. There is an attachment to Schedule J

which shows that computation.

There are two significant problems for the court with this proposed Chapter 13 Plan. First, the Debtor is seeking to build a plan around real property which he does not own, from which he wants to collect income he is not entitled to, and which he wants to sell. The Dolphin Court property is currently part of a probate estate. Debtor asserts that he is the beneficiary and that he ultimately will have this property. But he does not now own the property. If the property is in probate, then there is an administrator who must administer the property for the benefit of the probate estate, not the Debtor.

Second, the Plan does not provide for the orderly, timely liquidation of the Dolphin Court property. Rather, it merely says that at some time during the next 60 months, it is the Debtor's intention to sell the property. Further, that at this time the Debtor has no right to sell the property because he does not own it, but he is merely the beneficiary who asserts he is entitled to a distribution and the administrator of the probate estate administers all of the property, pays all of the probate estate expenses, and pays all of the probate claims.

Though the Debtor seeks to treat himself as the owner of the property, this court cannot so do, just as it would not appreciate a state probate court thinking that it could wrench jurisdiction over property of the estate from this federal court because a debtor died.

No explanation is provided as to the status of the probate, who is the administrator, and how the Debtor's person property asset, the probate beneficiary interest, will ultimately be recovered for the estate.

While the changes to the budget and possible liquidation analysis do not bother the court (the later easily fixed by having the sales proceeds paid into the plan), the fact that the Debtor does not own the Dolphin Court Property, is not entitled to treat the property as his own, and cannot sell the property, as the Debtor in this bankruptcy case, while it is being administered in the probate estate, precludes this court from confirming the plan.

Additionally, the court will not confirm a plan which says that a debtor will sell property sometime during the next five years. Quite possibly, the Debtor cannot state a reasonable marketing and sale period for the Property because he does not know when, or if, he will ever obtain title to the Property.

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

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

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

appearing,

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

6.	**14-30421-E-13** **AJJ-1**	**LISA MCCLUNG** **Amir Javideyan**	**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.** **11-7-14 [17]**

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, Bank of America, N.A., and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Lisa McClung ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6904 Larkspur Avenue, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $195,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $200,665.00. Creditor's second deed of trust secures a claim with a balance of approximately $24,356.29. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Lisa McClung ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a

second in priority deed of trust recorded against the real property commonly known as 6904 Larkspur Avenue, Citrus Heights, 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 $195,000.00 and is encumbered by senior liens securing claims in the amount of $200,665.00, which exceed the value of the Property which is subject to Creditor's lien.

7. 14-30421-E-13 LISA MCCLUNG
AJJ-2 Amir Javideyan

MOTION TO VALUE COLLATERAL OF THE CITY OF CITRUS HEIGHTS
11-7-14 [22]

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, City of Citrus Heights, Bank of America, N.A., and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of City of Citrus Heights ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Lisa McClung ("Debtor") to value the secured claim of the City of Citrus Heights ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6904 Larkspur Avenue, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $195,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In*

re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first and second deeds of trust secure claims with a balance of approximately $225,021.29. Creditor's third deed of trust secures a claim with a balance of approximately $46,859.90. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the City of Citrus Heights secured by a third in priority deed of trust recorded against the real property commonly known as 6904 Larkspur Avenue, Citrus Heights, 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 $195,000.00 and is encumbered by senior liens securing claims in the amount of $225,021.29, which exceed the value of the Property which is subject to Creditor's lien.

8. 14-27422-E-13 LONNIE/SHARON SHURTLEFF
CAH-1 Oliver Greene

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
8-15-14 [18]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Value is xxxxxxxxxxxxxxx.

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

MOTION

The Debtors' motion is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 308 Savoy Avenue, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $175,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

OPPOSITION

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

SEPTEMBER 16, 2014 HEARING

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

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

CREDITOR'S SUPPLEMENTAL FILING

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

OCTOBER 7, 2014 HEARING

At the October 7, 2014 hearing, the court continued the hearing to 3:00 p.m. on November 4, 2014 to allow both Debtors and Creditor to continue conducting additional informal discovery. Dckt. 69.

NOVEMBER 4, 2014 HEARING

At the November 4, 2014 hearing, the parties agreed to continue the Motion to 3:00 on December 9, 2014 to continue informal discovery of the parties claims.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, -------

9. 14-27422-E-13 ALP-1 LONNIE/SHARON SHURTLEFF Oliver Greene

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A. 8-29-14 [32]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 29, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Motion to Confirm is xxxxxxxxxxxxxxxxxxxxx.

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

NOVEMBER 4, 2014 HEARING

At the November 4, 2014 hearing, the parties agreed to continue the

Objection to Confirmation to 3:00 p.m. on December 9, 2014, to be heard in conjunction with the Motion to Value.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, --------

10. 13-34624-E-13 DEBRA RANDELL — MOTION TO INCUR DEBT
MWB-5 Mark Briden — 10-28-14 [130]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Debra Randall("Debtor") seeks court approval for Debtor to incur post-petition credit. Debtor states that the loan for which the secured claim is based was sold by Flag Star Bank to Green Tree Servicing, LLC.

Debtor offers no evidence that the loan was sold to Green Tree Servicing, LLC. In her declaration Debtor failed to provide testimony that the loan was sold to Green Tree Servicing, LLC. Instead, she refers to the creditor as Flag Star Bank and/or Green Tree Servicing.

Green Tree Servicing, LLC has appeared before this court in other proceedings and has expressly stated that is a LOAN SERVICER, NOT A CREDITOR WHO OWNS THE CLAIM.

In her supplemental pleadings the Debtor testifies that she has made the monthly trial loan modification payments for the months of September, October, and November 2014. The Debtor states that she (and not her attorney) has requested written documentation of the transfer of the first mortgage from Flag Star Bank, FSB to "Greentree Servicing, LLC [sic], but that "Greentree Servicing, LLC" [sic] has failed to provide any documentation that it is the creditor in this case. Declaration, Dckt. 148.

She directs the court to a series of exhibits, none of which identify Green Tree Servicing, LLC. Dckt. 149.

It is very simple for Debtor to obtain a response to the question of who is the creditor and claim documents from a loan servicer – written interrogatories and production of documents by a 2004 examination. The Debtor has not done that, but merely asks the court to guess the identify of the creditor.

The identity of the creditor with whom the court is going to authorize the Debtor to enter into post-petition credit goes to the core of federal court jurisdiction and the exercise of federal judicial power. Article III, Section 2 of the United States Constitution limit the exercise of federal judicial power only to "federal question" matters and that involve the real parties in interest who have an actual case or controversy.

Here, it is likely that Green Tree Servicing, LLC is "only" (though serving a valuable function) the loan servicer for the actual creditor. If it is exercising agency power to enter into a contract to modify the loan for the creditor, its principal, then that principal needs to be identified. In other cases, Green Tree Servicing, LLC (and other loan servicers) have met this minimal requirement to disclose the identity of the actual creditor by identifying themselves as signing in an agency capacity and identify its principal, the creditor, in the signature block (if for some reason the loan servicer is reluctant to clearly disclose that in the body of the loan modification agreement).

Merely because Debtor and Debtor's counsel don't care if the court's order will be effective does not mandate that the court ignore (1) the basic Constitutional requirements for exercise of federal judicial power or (2) the court having a good faith belief that it has the real parties in interest before it and the order entered will actually be enforceable to the real parties in interest (in personam jurisdiction).

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 Approve the Loan Modification filed by Debtor having been presented to the court, the “creditor” with whom the Debtor seeks to enter into the post-petition Loan Modification being identified as Green Tree Servicing, LLC (a loan servicing company and not a party who has appeared in this court asserting claims as the creditor) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

11. 14-30925-E-13 JAMES KENNEDY
TLA-1 Thomas Amberg

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
11-7-14 [9]

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, Capital One, N.A., Capital One Auto Finance, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Capital One Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of $8,950.00.

The Motion filed by James Kennedy ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Mitsubishi Eclipse with 130,000 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,950.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 8, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,658.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $8,950.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance ("Creditor") secured by an asset described as a 2007 Mitsubishi Eclipse with 130,000 miles ("Vehicle") is determined to be a secured claim in the amount of $8,950.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,950.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. 14-30033-E-13 ERIK/TRACY YOUDAL
PD-1 Gerald Glazer

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
11-13-14 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

JPMorgan Chase Bank, National Association ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtors' Chapter 13 Plan cannot be confirmed because it does not provide for the full value of Creditor's claim. 11 U.S.C. § 132(a)(5)(B)(ii) requires a debtor's Chapter 13 Plan to distribute at least the allowed amount of a creditor's secured claim. The Debtors' Plan cannot be confirmed as proposed because it fails to properly provide for the full cure of Creditor's pre-petition arrears. Creditor's claim for pre-

petition arrears is in the total amount of $4,681.88. However, the Debtors' Chapter 13 Plan provides for the cure of only $3,591.22. As the Debtors' Plan fails to provide for a full cure of Creditor's pre-petition arrears, it fails to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii) and cannot be confirmed as proposed.

2. Debtors' Chapter 13 Plan cannot be confirmed because it does not promptly cure Creditor's pre-petition arrears as required under 11 U.S.C. § 1322(b)(5). Creditor's secured claim consists of $4,681.88 in pre-petition arrears, however, Debtors' Plan provides for the cure of only $3,591.22 in arrears, and only proposes to begin paying those arrears in month 13 of the Plan. Debtors will have to increase their monthly payment through the Chapter 13 Plan to Creditor to approximately $78.03 per month in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months. As the Debtor's Plan fails to promptly cure Creditor's pre-petition arrears, it cannot be confirmed as proposed.

3. Debtors' chapter 13 Plan cannot be confirmed because it is not feasible. First, Debtors allege that they are participating in a Keep Your Home California Program, which will pay Creditor's ongoing post-petition payments for one year. However, the Debtors have failed to provide any substantive information about this program or evidence supporting that they have been accepted to participate in the program. This is important as review of the Keep Your Home California Program shows that there are several programs available, each with its own eligibility requirements. Several of these programs preclude a participant from being in "active bankruptcy." It is unclear from the information provided what program the Debtors are participating in and what impact the present bankruptcy filing will have on their eligibility to participate in the program. Absent this information, it is unclear how the present filing will impact Debtors' income. If the Debtors are no longer eligible to participate in the Keep Your Home California Program, the Plan as proposed is infeasible and cannot be confirmed. Additionally, according the Debtors' Plan, the Keep Your Home California Program only covers one year of mortgage payments. Debtors' Plan states that Tracy Youdal will obtain employment sufficient to make the ongoing post-petition payments at that time. However, while it is possible, future employment is only speculative at this time. Given that Tracy Youdal is not currently employed and the feasibility of the Plan relies on her future, speculative employment, the Debtors' Plan does not have a reasonable likelihood of success, and cannot be confirmed.

Debtors have not filed any responses.

The Creditor's objections are well-taken. The Creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts $4,681.88 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as

maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Furthermore, the speculative nature of Debtor Tracy Youdal's employment and the uncertainty of whether the Keep Your Home California program is available to the Debtors, the Plan does not seem feasible.

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

13. 12-34737-E-13 TERESA NABER **CONTINUED MOTION TO MODIFY PLAN**
PGM-2 Peter Macaluso **6-17-14 [80]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

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

NOTICE

While notice was properly provided pursuant to Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g), this case was dismissed by order on June 3, 2014. Neither the Notice or the Motion mention this fact or the fact that there is a pending Motion to Vacate Dismissal. The parties receiving notice may not be aware that this Motion is taking place.

Furthermore, Debtor's Notice, Motion, Declaration, Exhibits, and Proof of Service all indicate that the hearing will be before the Honorable Judge Christopher Klein in Department C, when in fact the hearing will be before the Honorable Judge Ronald H. Sargis in Department E.

TRUSTEE'S OBJECTION

The Trustee opposes confirmation offering evidence that the Debtor is $479.83 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Additionally, Trustee states Section 2.06 of Debtor's modified plan provides for $1,500.00 in attorney's fees that shall be paid through the plan, $0.00 paid prior to the filing of the case, and that Debtor's counsel shall file and serve a motion for attorney's fees. Section 2.07 provides for a monthly dividend of $25.00 for administrative expenses. Attorney's fees under the confirmed plan are $0.00 per Debtor's prior attorney's Amended Disclosure of Compensation of Attorney, and the Order confirming. Debtor filed a Substitution of Attorney on June 5, 2014, which was granted June 10, 2014. Counsel's Disclosure of Compensation of Attorney (DN 78) indicates counsel has agreed to accept $300.00 per hour and received $1,000.00 prior to the filing of the disclosure statement. The Trustee believes Section 2.06 should reflect information as to the actual attorney's fees expected, including any amounts paid directly.

The Trustee is also uncertain of the plan payment proposed. Debtor's Motion and Declaration indicate payments of $1,675.00 per month shall begin June 2014, where Section 1.01 of the proposed modified plan indicates plan payments beginning June 2014 shall be $1,640.00.

Trustee also states that Section 2.11 of Debtor's proposed modified plan provides for one month of mortgage payments in Class 4. Debtor indicates the May mortgage payment of $1,160.16 to Dovenmuehle Mortgage was paid directly to the lender in lieu of the plan payment since Debtor's case was dismissed. Debtor has not provided proof that the May mortgage payment was made either by way of bank statement or a copy of the cancelled check.

The Trustee cannot tell if the Debtor can afford the plan payments based on the Declaration, 11 U.S.C. § 1325(a)(6). Debtor's Declaration fails to adequately explain the numerous changes regarding her individual expenses.

Debtor filed Supplemental Schedules I and J filed on June 13, 2014 indicate Debtor is now self employed with a monthly income of $4,014.00. Debtor's Business Income and Expenses, which was not included as part of Debtor's updated Schedules I and J filed as an Exhibit, reflect an average gross monthly income of $3,500.00 and a net monthly income of $2,364.00. Trustee states that it is unclear whether the $1,650.00 difference between the claimed monthly income of $4,014.00 and the net business income of $2,364.00 is Debtor's rental income, since this is not clearly stated and Debtor did not include a statement for the property. Additionally, Debtor lists her business expenses as $1,136.00, which includes $450.00 for travel. Debtor's personal expenses include transportation expenses of $425.00. Combined this would reflect a monthly travel and transportation expense of $875.00, which appears excessive.

Lastly, Debtor's provides on Schedule I that she is self employed in real estates sales and her employer is Client First Investments Inc. According to the State of California Bureau of Real Estate website, debtor's employing broker is Loans Realty Group Corporation, 1121 Ventura Dr., Pittsburgh, CA.

Additionally, Debtor's Schedule I reflects her employer's address as Madison Ave., Sacramento, but Debtor's Business Expenses do not reflect any kind of rental expense.

DEBTOR'S REPLY

Counsel for Debtor filed a response, stating that Debtor believes she is not delinquent and requests more time to provide proof of the payment. Counsel states that the declaration was incorrect regarding the amount of the monthly payments. Counsel for Debtor states that the total change of $193.76 in living increases is reasonable, necessary and non-material. Counsel states the Debtor as an agent does not pay rent, but a percentage of her commissions.

JULY 22, 2014 HEARING

The instant Motion to Modify Plan was continued to 3:00 p.m. on September 30, 2014.

DEBTOR'S SUPPLEMENTAL DECLARATION

On September 23, 2014, Debtor filed a Supplemental Declaration of Teresa Naber in Support of Motion to Modify. Dckt. 104. In the Declaration, the Debtor states that due to her position as a real estate saleswoman for the last nine years, her income and expenses vary and Debtor "done [her] best at the beginning of the case when working with John Tosney in averaging the part-time income with Grupe Company and a budget that would work."

Debtor states that following the death of her attorney, she was able to find a new attorney to help create a new budget reflecting the new average expenses and income. Debtor states that she wishes to complete the plan because Debtor only has three years remaining, the value of the property is increasing, and Debtor is underwater on the property and must strip the second deed so that Debtor will not lose her house. Debtor states that at the beginning of the case she was both a property manager, which was a salaried position, and had a real estate license but the property manager position ended approximately six months after she started.

Debtor alleges that she made the payments for the mortgage during the dismissal of the case and is post-petition current with the mortgage. Debtor explains that due to her role as a commissioned agent, her car expenses varies depending on how many clients, averaging about $425.00. Debtor states that the personal expense for the vehicle allows Debtor to go to school at night, make repairs and maintain the vehicle, and attend out of town seminars to further Debtor's education.

Debtor alleges that she has chosen to make the proposed budget work by: "moving out of the home, renting a apartment for $700, rent the house out at $1,650, while the $1,410.00 is applied to the mortgage, the profit being applied t the mortgage and the trustee on a steady basis, and is part of the total net income of $4,014.00 per month." Dckt. 104, pg. 2.

Debtor concludes by stating, "I do believe that I can make the payments called for under the plan, and that I have sufficiently modified my income and lifestyle to enable me to complete the remainder of my plan."

SEPTEMBER 30, 2014 HEARING

The instant Motion to Modify Plan was continued to 3:00 p.m. on December 9, 2014.

TRUSTEE'S RESPONSE

On November 20, 2014, the Trustee filed a response to Debtor's Reply. The Trustee states that the Debtor's reply addresses the Trustee's objections in the following manner:

1. Debtor believes she is not delinquent and request additional time to provide proof of payment. Debtor is current under the modified plan to date.

2. Debtor addresses the Trustee's first objection regarding attorney's fees in that Section 2.06 should read Debtor's attorney was paid $1,000.00 prior to substitution. Debtor has agreed to pay $300.00 per hour with counsel expecting no more than $1,500.00 to be paid through the life of the case. This resolves the Trustee's objection.

3. Debtor addresses the Trustee's third objection in that the plan payments as written in Section 1.01 are correct. This resolves the Trustee's objection.

4. Debtor address the Trustee's fourth objection regarding the mortgage payment being paid outside for one month while Debtor's case was dismissed. Debtor provides as Exhibit 1 (Dckt. 93) a copy of Golden 1 Credit Union transfer of $1,135.17 from checking to mortgage account ending in 6449. This resolves the Trustee's objection.

5. Numbers 5 and 6 of Debtor's reply address the Trustee's fifth objection regarding Debtor's Declaration being insufficient in that it does not adequately explain all the changes in expenses, notably rental income and the sharp increase in transportation costs. Debtor's reply merely states Debtor is self-employed and includes a separate expense for travel as an agent and that the other increases are reasonable, necessary and non-material. This replay does not resolve the Trustee's objections. Debtor's supplemental Schedules I and J indicate Debtor is self-employed with a monthly income of $4,014.00. Debtor's business Income and expenses indicate Debtor has a gross income of $3,500.00 and a net monthly income of $2,364.00. Presumable Debtor's income on Schedule I includes rental income of $1,650.00, but Debtor does not clarify that or list the rental income separately from self-employment income. Debtor's total travel expenses of $875.00 ($425.00 in personal expenses and $450.00 in business expenses) still appears excessive.

6. Number 7 of Debtor's reply addresses the Trustee's sixth objection only in that it states the hearing location correction is duly noted. It should be noted that Debtor's Supplemental Declaration filed after Debtor's Reply continued to incorrectly identify the Department and Judge.

7. Number 8 and 9 of Debtor's Replay address the Trustee's seventh

objection regarding Debtor's employer. Debtor states the State does not have the updated information regarding her employer in their system and that as an agent she does not pay rent, only a percentage of her commissions. Whether the State of California Bureau of real Estate website is current or not is not clear to the Trustee. However, Debtor states she does not pay rent, but a percentage of her commission. The trustee is uncertain whether the $3,500.00 gross monthly income depicted on Debtor's Business Income and Expenses is net the percentage of commission Debtor purportedly pays, and Debtor's business expenses do not include a percentage payout.

As to the Debtor's Supplemental Declaration, the Trustee states that the declaration addresses the transportation costs a little further in that as a commissioned agent she must drive to and from potential clients' home, listings, and take clients on tours where she spends approximately $425.00 per month. Debtor's business expenses budget $450.00. Debtor states the personal transportation expenses allow her to go to school at night, repairs and maintenance, and out of town seminars. While the Trustee believes Debtor's transportation costs are still excessive, Debtor's statements raise an additional question as to why Debtor's Schedules do not include any kind of expense for education costs, tuition, registration fees, or books if Debtor is going to school at night and attending seminars. Debtor's Supplemental Declaration states Debtor is renting an apartment for $700.00 a month and rents out her house for $1,650.00, with the $1,410.00 applied to the mortgage and the Trustee and is part of her net income of $4,014.00 per month.

The Trustee notes that Debtor has not addressed any of the additional issues raised by the court in its civil minutes from September 30, 2014. Dckt. 106.

DISCUSSION

This case demonstrates the "real person" aspect to legal proceedings. Here, Debtor was represented by a very experienced bankruptcy attorney. Unfortunately (for both the Debtor and that attorney's friend and family, during the pendency of this case) that experienced bankruptcy attorney passes away. In the period following his death Debtor struggled financially and did not find counsel who would prosecute the case in a manner she desired until after her bankruptcy case was dismissed.

The court has vacated the dismissal. Order, Dckt. 101. Debtor and her current attorney seek to confirm this First Modified Plan. Debtor testifies that she is current on her plan payments. She also testifies as to how she has developed a more stable income by renting out her house for $1,650.00 a month, and then renting an apartment for herself at a cost of ($700.00) a month.

However, Supplemental Schedule I does not show income from rental of Debtor's house. Dckt. 79. Supplemental Schedule J does not show expenses relating to the rental of Debtor's House. *Id.*

The First Modified Chapter 13 Plan requires monthly plan payments of $1,640.00 from Debtor. This is the net monthly income of the Debtor as shown on Supplemental Schedules I and J. *Id.* It appears that Debtor states her gross income from working as a real estate agent to be $3,500.00, and there being ($1,138.00) in expenses to generate this income. With net income from

employment of $2,364.00, then an additional $1,650.00 a month for renting her house would total $4,014.00 in income. This is the same amount as shown on Supplemental Schedule I.

However, the $1,650.00 is the gross monthly rent for the house, with no provision made for rental housing expenses. Presumably Debtor has notified her insurance carrier of the change in the property use, which most likely has caused the insurance to increase. Additionally, Debtor may well have obtained a number of deductions for rental property, which may offset a portion of her increased income tax obligations for an additional $19,800.00 in rental income.

Supplemental Schedules I and J make list only a $250.00 a month for income taxes for the $3,500.00 a month in real estate agent income. No provision for the payment of any other income taxes or self-employment taxes is made by the Debtor. This budget appears to ignore that Debtor is now generating almost $20,000.00 a year in rental income.

While it may be possible, and the court will not be surprised to see, that the various expenses on Supplemental Schedule J can be "moved around" to create a plausible budget, the court will not blindly assume such is the case. Significantly troubling is the possible tax time bomb being created by the short term cover for the mortgage payment.

When the Debtor filed her response on December 2, 2014, she "apparently carefully") failed or refused to provide any testimony to support the argument of her counsel. As her attorney well knows, this judge requires that there be actual evidence to support the "facts" argued by counsel. While counsel "argues" that the Debtor could properly break out her income and expenses, she instead just lumps it together as gross business income.

This Debtor clearly would benefit from "doing it right" and not cutting corners. There has been considerable dispute, and finger pointing, between the Debtor and her second attorney who represented her after the death of John Tosney. Civil Minutes for Motion to Vacate Dismissal, Dckt. 98.

The court remains concerned that the Debtor's Supplemental Schedules I and J are not accurate, but merely hopeful guesses by Debtor of what numbers let her confirm a plan. The Debtor is self employed, but lists total federal self employment taxes, federal income taxes, and California state taxes of only $250.00 a month. No explanation is provided as to how this is a reasonable, realistic number for these amounts.

Further, on Supplemental Schedule I Debtor's employer is listed as "Self - Client First Investments Inc In." Dckt. 79 at 4. On Schedule B Debtor does not list ownership of any Corporation. Dckt. 25 at 2-4. On Supplemental Schedule I no wages or payroll deductions are shown for work done for her corporation, but a lump sum $4,014.00 is shown for rental of income and operation of a business (sole proprietorship). If, as stated on Supplemental Schedule I the Debtor owns an undisclosed corporation for which she works, then there would be wages and withholding.

The Trustee's remaining objections are well-taken. There still appears to be information lacking for the court to determine whether the Plan is feasible or whether there are remaining income and expenses that need to be accounted for in order to provided for in the Plan. Without full disclosure of

this information, the court finds that the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

14. 10-26240-E-13 STEVE/KRISTINE SCHARER — MOTION TO SELL AND/OR MOTION TO INCUR DEBT
HDR-5 Harry Roth — 11-24-14 [86]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion is granted.

Steve and Kristine Scharer, the Chapter 13 Debtors, have filed the present motion titled "Motion to Sell Property and Incur Debt." Though a seemingly inconsistent confluence of actions, these combined requests do sound in logic. Debtors own a 2008 GMC Sierra 1500. They desire to trade it in and purchase a 2014 Mini Cooper. The economics of the transaction is explained as follows:

Purchase Price of 2014 Mini Cooper.....$28,250.00
Trade in Value of 2008 GMC Sierra 1500.....$11,480.00

Monthly Payment for Financed Portion of Purchase Price.....$488.54.

Debtors state that they want to trade in the 7 year old GMC Sierra for the

1 year old (11,526 miles) Mini Cooper to reduce repair costs and fuel expenses.

Though not stated in the Motion, Debtor Kristine Scharer states in her declaration that the loan terms are (1) not more than $22,965.53 financed, (2) at 9.96% interest per annum, and (3) the loan term is 59 months. Exhibit B is the retail installment contract which states the post-petition secured credit terms. Fed. R. Bankr. P. 4001(c)(A).

Debtors provide a Kelly Blue Book valuation for a 2007 GMC Sierra 1500, which is a $10,714.00 trade in value. Exhibit A, Dckt. 89. Kristine Scharer appears to authenticate this document in her declaration by referencing it. However, she never states that she obtained this valuation or how this writing came into existence. Fed. R. Evid. 901.

Debtors commenced this bankruptcy case on March 14, 2010. The Confirmed Plan provides for a 60 month term, which the Debtors should complete in April 2015, just four months from this hearing. While the court may have a greater concern with a debtor purchasing an almost new car if they were at the start of the case, these Debtors are nearing the finish line. There is not the good faith and reasonable expense issue which would arise earlier in a bankruptcy case with a debtor seeking to purchase a new car.

The motion is granted and the Debtors are authorized to sell the 2008 GMC Sierra 1500 as a trade-in to purchase the 2014 Mini Cooper from BMW of Concord, on the terms stated on Exhibit B, the Retail Installment Contract (Dckt. 89). The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property and Incur Debt to purchase a vehicle filed by Steve and Kristine Scharer (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 and the Debtors are authorized to sell the 2008 GMC Sierra 1500 as a trade-in to purchase the 2014 Mini Cooper from BMW of Concord, on the terms stated on Exhibit B, the Retail Installment Contract (Dckt. 89).

15. 13-34540-E-13 LORI SMYLIE
RK-3 Richard Kwun

CONTINUED MOTION TO MODIFY PLAN
8-22-14 [76]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Lori Smylie ("Debtor") filed the Motion to Confirm Modified Plan on August 22, 2014.

DEBTOR'S MOTION

Debtor seeks to modify her Chapter 13 Plan to make payments pursuant to a trial, then permanent loan modification as offered by SPS, Inc., Debtor's loan servicer. Additionally, Debtor's budget has changed. Debtor's parents are no longer contributing $4,129 per month, PG&E's rising rates and Debtor's need to pump more well water have increased Debtor's electricity costs. Debtor also seeks to correct an error in her previous schedule's phone cost amount. Debtor's transportation costs have increased as Debtor's husband works in the Bay Area.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, has filed opposition to this motion on September 16, 2014. The Trustee opposes the Motion to Modify Plan on the basis that:

1. Debtor's modified plan proposes to reduce the commitment period from 60 months to 36 months. Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Dckt. 1) indicates Debtor is under median income and the commitment period is three (3) years. Debtor's Motion and Declaration, however, provide no reason for the reduction in plan term.

2. Section 1.01 refers to the additional provisions in Section 6.01, which state "Trustee authorized to pay former Class 1 creditor SPS Servicing $41,110.48." It appears that Debtor intended to refer to Section 6.02. This section does not specify a plan payment for the months of December 2013 through July 2014.

3. The Debtor's Declaration fails to address the decrease in the term of the confirmed plan from 60 months to 36 months proposed.

4. The Debtor is proposing to move creditor SPS Inc. from Class 1 of the confirmed plan to Class 4. In additional provisions (Section 6.03.2), Debtor refers to SPS Inc.'s claim as secured by a First Deed of Trust. Per court claim no. 1-1, the actual creditor is Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-11. Debtor states in Section 6.03.3, Adequate Protection Payment, that a Trial Period Loan Modification is in process and attaches as Exhibit A, a one-page letter from Select Portfolio Servicing, Inc. as support. Debtor has not shown that Select Portfolio Servicing, Inc. has the authority to make such a modification on behalf of the actual creditor. Additionally, the Debtor states in Section 6.03.3 that "The Chapter 13 Plan does not modify the rights of Bank of America, N.A. for this secured claim, but provides adequate protect payments during the loan modification process. The adequate protection payment should be made through the plan as a Class 1 Monthly Contract Installment Amount as the claim was a delinquent secured claim that matures after the completion of the plan.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's opposition on September 23, 2014. The Debtor states that:

1. Debtor proposed a shortened term because she is not eligible for a discharge and was an under median debtor. Debtor's purpose in filing for Chapter 13 relief was to either cure the arrears or obtain a permanent loan modification. She has met the trial payment plan and wishes to modify her plan consistent with the terms offered by SPS, Inc. Debtor will change the term of the plan to 60 months, should Objection 1 be sustained.

2. The plan payments and duration from December 2013 to July 2014 was pursuant to the Debtor's initially filed plan, filed November 13, 2013. If the Court finds Objection 2 valid, Debtor will add that "$41,110.48 was authorized to be paid by Trustee

for plan months December 2013 through July 2014" in the order confirming plan.

3. Debtor has filed a supplemental declaration in support of the modification of her plan.

4. No collateral documentation is necessary to show that SPS, Inc. has authority to make a modification for the Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-11 when the proof fo claim lists SPS, Inc. as the agent for notice and payment with McCarthy Holthus filing the claim. Debtor states that Trustee's objection that SPS, Inc. cannot be the agent offering a loan modification is inconsistent with the fact that McCarthy Holthus can file a claim listing SPS, Inc. without dispute.

5. The reference to Bank of America, N.A. is a scrivener's error that Debtor will correct in the order confirming plan, if authorized.

SEPTEMBER 30, 2014 HEARING

The court continued the hearing to 3:00 p.m. on December 9, 2014.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. However, the Trustee's objections to the plan are well-taken.

The Trustee objected to the fact that the modified plan reduces the plan term from 60 to 36 months without any explanation from the Debtor. It is the Debtor's burden to establish that the plan is proposed in good faith, including any modifications. *Mattson v. Howe (In re Mattson)*, 468 B.R 361, 372 (B.A.P. 9th Cir. 2012).

Debtor has offered some explanation of her reasoning behind the plan reduction in her Reply, Debtor's Declaration filed with her Reply only states that she is willing to extend the plan term to 60 months if the Trustee's objection is sustained. However, Debtor asserts that the 60 month plan was required to cure the arrearage, which has now been resolved by the potential loan modification. Debtor was a below median income debtor, and as such any term past 36 months was "voluntary," done as necessary to achieve the arrearage cure. See Chapter 13 Statement of Current Monthly Income, Form B22C, computing Debtor's income and determining that the applicable commitment period is three years. Dckt. 1 at 36-37.

The proposed Modified Plan incorporates a modified version of the Ensminger Loan Modification Provision commonly used in this court. It has the Debtor make the direct payments to the lender – not having the payments made through the Plan until the actual loan modification is approved. This is necessary to insure that less scrupulous debtors and counsel then the ones in this case would not misrepresent the terms of a loan modification for purposes of improperly diverting monies around a Chapter 13 plan.

While the court does not "distrust" this Debtor and Counsel, they do

not get special exemption from the basic rules that govern all debtors and attorneys.

The Trustee also objects that the modified plan does not provide for the plan payments made between December 2013 through July 2014. This oversight in properly identifying payments made through the previous plan. This also may indicate a lack of good faith under 11 U.S.C. § 1325(a)(3). Debtor has states that she will amend the provision at issue. This change is significant, not a simple scrivener's error. The Debtor may correct the provision in a new modified plan.

Debtor and her Counsel also miss the point about the plan misidentifying SPS, Inc. as the creditor. It is not the creditor but "merely" the loan servicer for the creditors. Just as great confusion has come from the securitization of notes and creditors not clearly and correctly identifying who actually owns the note, such confusion can also arise from debtor's who do not clearly and correctly identify the creditors in their bankruptcy case.

Debtor's contention that the Trustee objecting to Debtor treating "SPS" as the creditor and stating that there is no evidence that "SPS" is the agent for the actual creditor is merely a request for an "advisory opinion" is wrong. While a debtor and an attorney may not care if a loan modification is being entered into with the actual creditor or some third-party who has no authority to modify the loan, the court cares. This court does not issue orders which may, or may not, be effective. This court does not ignore the requirements of Article III, Section 2, of the United States Constitution requiring that the real parties in interest who have a case or controversy must be before the federal court for there to be a proper exercise of federal judicial power. In substance, it is Debtor and Debtor's Counsel who are asking for an "advisory opinion" as to whether the court would approve a loan modification at some later date in the case.

The Trustee correctly objects to the plan on the basis that the Debtor has not provided the necessary documentation to support the assertion the Debtor's loan servicer, Select Portfolio Servicing, Inc. or SPS, Inc., has the requisite authority to modify the terms of Debtor's loan. Although Debtor and Debtor's Counsel believe that SPS, Inc. has the authority to offer the loan modification in question and bind the actual creditor (Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-11 ["DBNTC"]), the court has no documentary evidence to support this assertion.

Select Portfolio Servicing, Inc. has appeared in this court on other unrelated matters and has expressed an understanding of this concerns about misidentification of creditors in motions to value secured claims (11 U.S.C. § 506(a)) and loan modification agreements. The actual creditor needs to be identified in both, and if a loan servicer is executing documents in an agency capacity, then that agency capacity and the identify of the principal disclosed.

Debtor's counsel is incorrect in stating that merely because a lawyer files a proof of claim that "no authority is necessary to show that SPS Inc. has authority to make a modification of the loan [for the undisclosed creditor in the Plan]...." Merely filing a proof of claim is not a grant of agency or the authority to "play with assets of the creditor" as if they were personal assets of the agent.

Further, Debtor's counsel arguing that since payments and general bankruptcy notices are to be set to sent to the creditor through Select Portfolio Servicing, Inc. then the court can "assume" that Select Portfolio Servicing, Inc. has the authority to "be the creditor" is misplaced. Notice are not service of process, which is governed by Federal Rule of Bankruptcy Procedure 7004. Given the depth and detail in which this court has addressed the basic Due Process service requirements and the specific requirements arising under Federal Rule of Bankruptcy Procedure 7004, the court cannot fathom how or why such an argument by Debtor has been advanced in connection with this motion.

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

While accepting all of the benefits of Chapter 13, the Debtor seeks to reject the minimal burdens, one of which is making payments on a secured claim which is in default through the trustee. As discussed above, until the court approves the loan modification, the debt is in default. The court does not give this Debtor and her Counsel a special exemption from this requirement.

The court infers from this fight that the Debtor is trying to keep from paying the Chapter 13 Trustee from making the $1,850.29 a month adequate protection payment pending the Debtor obtaining a loan modification. Assuming a 6% Chapter 13 Trustee fee, this is $111.00 per payment. In looking at the pleadings filed by Debtor arguing about this over the last three months, she and spent well in excess of $333.00 of attorneys' fees in trying to slip out of the plan requirements.

Additionally, this court has, as part of approving trial loan modifications, authorized debtors to make four or five months of trial loan payments directly to the creditor. This avoids any argument arising as to whether the Chapter 13 Trustee's end of the month disbursement gets to the creditor timely.

In addition to seeking to avoid the minimal plan requirements, this Debtor and Counsel have failed to seek any authorization to enter into a trial loan modification agreement. This is commonly done day in and day out in all the courts in this District. Instead, they have created a *sui generis* law which allows the Debtor to modify loans and enter into financial transactions without being bothered by the Bankruptcy Code.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

16. 14-28649-E-13 JSO-1 THOMAS/HEIDI CARTER Jeffrey Ogilvie MOTION TO VALUE COLLATERAL OF HERZOG FAMILY REVOCABLE TRUST OF 2004 10-29-14 [24]

Tentative Ruling: 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

Notice Provided. The Debtors did not file a Proof of Service for this Motion and its supporting documents. The court cannot determine which, if any, parties were served with the notice for hearing or the Motion materials. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Herzog Family Revocable Trust of 2004 ("Creditor") is denied without prejudice.

Thomas and Heidi Carter ("Debtors") filed this Motion on October 29, 2014. Dckt. 24. Debtors, however, failed to file a Proof of Service for this Motion and its accompanying documents. Without proof that the parties in interest were properly served, the court must deny 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 Thomas and Heidi Carter ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

ALTERNATIVE RULING

The Motion to Value filed by Thomas and Heidi Carter ("Debtors") to value the secured claim of Herzog Family Revocable Trust of 2004 ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 26846 Aslan Road, Shingletown, California ("Property"). Debtor seeks to value the Property at a fair market value of $240,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $336,860.00. Creditor's second deed of trust secures a claim with a balance of approximately $42,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas and Heidi Carter ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Herzog Family Revocable Trust of 2004 secured by a second in priority deed of trust recorded against the real property commonly known as 26846 Aslan Road, Shingletown, 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 $240,000.00 and is encumbered by senior liens securing claims in the amount of $336,860.00, which exceed the value of the Property which is subject to Creditor's lien.

17. 12-25050-E-13 CARLOS/MARTHA MORALES
BLG-7 Paul Bains

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP FOR CHAD M. JOHNSON, DEBTORS' ATTORNEY(S)
11-4-14 [97]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Chad Johnson, the Attorney, ("Applicant") for Carlos and Martha Morales, the Chapter 13 Debtors ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 17, 2014 through November 4, 2014. Applicant requests fees in the amount of

$2,191.00 and costs in the amount of $36.01.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir.

1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including motion for permission to refinance mortgage, motion to modify, motion for fees and expenses.

“No-Look” Fees

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

> “(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 95. Applicant prepared the order confirming the Plan.

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion for Permission to Refinance Mortgage: Applicant spent 5.3 [1.2 no charge] hours in this category. Applicant communicated with client regarding refinance; preparation of Motion for Permission, review opposition and response; and attend hearing.

Motion to Modify: Applicant spent 5.1 [1.0 no-charge] hours in this category. Due to the Debtors modifying their mortgage and changes in the household income and expenses a Motion to Modify was prepared, communication with clients; and preparation of Motion.

Motion for Fee and Expenses: Applicant spent 1.0 hours in this category. Applicant prepared Motion for Fees and Expenses.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Pualdeep Bains, Attorney	4.1	$300.00	$1,230.00
Tina Perez, Paralegal	4.1	$185.00	$758.50
Lindsey Sloan, Assistant/Administrative Staff	.2	$85.00	$17.00
Jennifer Walden, Paralegal/Office Manager	1	$185.00	$185.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,190.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $36.01 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	90 pages @ .05	$4.50
Postage	29 Creditors @ $0.69 per creditor	$20.01
Total Costs Requested in Application		$24.51

While the Applicant requests $36.01, there is only billing for $24.51 in expenses and costs listed on the provided billing statement.

FEES AND COSTS & EXPENSES ALLOWED

After a review of the Motion and the attached exhibits, the court concludes that the three additional, post-confirmation motions were "substantial and unanticipated."

Therefore, because the Applicant has shown that the additional fees were "substantial and unanticipated" to justify additional fees of $2,190.50 and expenses of $24.51.

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 Chad Johnson ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion is granted and Applicant is allowed $2,190.50 in attorneys' fees and $24.41 in costs, for a total of $1,214.91 in professional fees and expenses as counsel for the Chapter 13 Debtors, in addition to the fees previously approved in this case. The additional fees and expenses shall be paid through the Chapter 13 Plan, and the Chapter 13 Trustee is authorize to so pay these additional amounts.

18. 14-31150-E-13 GARY/MELISSA BURNS MOTION TO EXTEND AUTOMATIC STAY
MRL-1 Mikalah Liviakis 11-18-14 [10]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Gary and Melissa Burns ("Debtors") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-26023) was dismissed on October 27, 2014, after Debtors failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 13-26023, Dckt. 78, October 27, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the

subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtors believed that they had paid ahead in plan payments but had not. The Debtors fell behind and had trouble catching up. The Debtors state that in order to prevent this from happening again, Debtors have saved up and intend to pay extra to the Trustee at the beginning of their case in order to create a cushion. Further, the Debtors state that Debtor Gary Burns has picked up a second job so Debtors will be in a better position to afford their plan payments.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

19. 09-40854-E-13 RALPH SNODGRASS
PLC-2 Peter Cianchetta

MOTION TO VALUE COLLATERAL OF GOLDEN ONE CREDIT UNION
11-10-14 [54]

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, Golden 1 Credit Union, and Office of the United States Trustee on November 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Golden 1 Credit Union ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Ralph Snodgrass ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8755 San Pedro Way, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $288,000.00 as of the petition filing date. FN.1. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. Debtor previously filed a Motion to Value for this property and secured claim, which was granted on December 24, 2009. Dckt. 29. However, Creditor may not have been properly served at the time. Debtor filed the instant Motion to ensure Creditor is properly noticed and served.

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $326,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $58,447.89. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ralph Snodgrass ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden 1 Credit Union secured by a second in priority deed of trust recorded against

the real property commonly known as 8755 San Pedro Way, Elk Grove, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $288,000.00 and is encumbered by senior liens securing claims in the amount of $326,000.00, which exceed the value of the Property which is subject to Creditor's lien.

20. 14-24258-E-13 BARNEY GAXIOLA
AEB-4 Andrew Bakos

AMENDED MOTION TO VALUE COLLATERAL OF E TRADE BANK
10-30-14 [85]

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, parties requesting special notice, and Office of the United States Trustee on October 29, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of [name of creditor] ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Barney Gaxiola ("Debtor") to value the secured claim of E*Trade Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known

as 7422 Mar Vista Way, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $195,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of Aaron Barcelon, a licensed real estate appraiser with 21 years' experience, who opines that the value of the property is $195,000.00.

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

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

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

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

No Proof of Claim File

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $209,989.00. Creditor's second deed of trust secures a claim with a balance of approximately $49,492.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any

confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Barney Gaxiola ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of E*Trade Bank secured by a second in priority deed of trust recorded against the real property commonly known as 7422 Mar Vista Way, Citrus Heights, 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 $195.000.00 and is encumbered by senior liens securing claims in the amount of $209,989.00, which exceed the value of the Property which is subject to Creditor's lien.

21. 14-29659-E-13 JUAN ZARAGOZA-BRAVO
DPC-1 Mary Ellen Terranella
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-3-14 [27]

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

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation on December 2, 2014 (Dckt. 35), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

22. 14-29065-E-13 ISAIAH MARSH
DEF-2 David Foyil

MOTION TO VALUE COLLATERAL OF NEWPORT BEACH HOLDINGS CORPORATION
10-31-14 [31]

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

The case having previously been dismissed, the Motion is denied without prejudice 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 denied without prejudice as moot, the case having been dismissed.

23. 14-29067-E-13 MET-2 EARLINE MILES Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF E*TRADE BANK 11-6-14 [26]

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, Creditor, and Office of the United States Trustee on November 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

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

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest**

> **in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $575,388.00. Creditor's second deed of trust secures a claim with a balance of approximately $62,966.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Earline Miles("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of E*Trade Bank secured by a second in priority deed of trust recorded against the real property commonly known as 4605 April Court, Vallejo, 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 $290,000.00 and is encumbered by senior liens securing claims in the amount of $575,388.00, which exceed the value of the Property which is subject to Creditor's lien.

24. 13-28069-E-13 ROSENDA DESMOND **MOTION TO MODIFY PLAN**
DEF-2 David Foyil **10-7-14 [34]**

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

The Debtor having filed a “Withdrawal of Motion” for the pending Motion to Modify Plan (Dckt. 43), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Debtor’s Motion to Modify 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.
>
> A Motion to Modify Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

25. 12-31671-E-13 CHRISTIAN NEWMAN
Peter Macaluso

CONTINUED ORDER TO APPEAR RE: PROOFS OF CLAIM NOS. 9 AND 10 AND OBJECTION TO NOTICE OF POST-PETITION MORTGAGE CHANGE 10-10-14 [189]

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

The Hearing on the Order to Appear has been continued by Order of the Court to 3:00 p.m. on February 3, 2015.

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

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

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

The Objection to Notice of Post-petition Mortgage Fees, Expenses, and Charges is set for further hearing at 3:00 p.m. on February 3, 2015.

27. 14-27971-E-13 KENDALL/CYNTHIA BERTRAND MOTION TO SELL
TAG-2 Ted Greene 11-10-14 [42]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

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

A. 9436 Feickert Drive, Elk Grove, California

The Debtor's motion does not list a proposed purchaser of the Property but the attached Residential Purchase Agreement lists Leonard Nunez as the buyer. The proposed sale is a short sale. The sale price is $236,610.00. All creditors with liens and security interests encumbering the subject property not voluntarily released will be paid in full simultaneously with the transfer of title to the buyer or held by the escrow holder until agreement by the parties or further court order. All costs of sale, such as escrow fees, title

insurance, and commissions will be paid in full from the proceeds. The sale price is all cash. Debtors will not relinquish title to, or possession of, the subject property prior to payment in full of the purchase price. The sale is an arms length transaction and the buyer is not related to the Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on November 17, 2014. Dckt. 48. The Trustee states that he has no objection to the Motion but notes that the Debtor has failed to disclose that the Seller will receiver $3,000.00 for relocation assistance shown in the estimated closing statement. Dckt. 46, Exhibit B.

SAFE CREDIT UNION'S OPPOSITION

Safe Credit Union ("Creditor") filed a limited opposition to the instant Motion on November 18, 2014. Dckt. 50. The Creditor states that the Creditor is not necessarily opposed to the idea of the sale to a new party so long as the new party does not seek to sell the collateral without the Creditor's explicit written permission. All sale proposals must be provided to Creditor for approval before proceeding with executing the sale. Pursuant to the motion, Debtor states that the sale price is $236,610.00 but as of December 12, 2014, the projected payoff on Creditor's lien will be $259,034.95. The Creditor requests that if the court grants the Motion, that the order state that the approval be contingent on full satisfaction of its lien or in amount agreeable. Further, the Creditor requests that the order read that Debtors shall not be allowed to consummate the sale and close escrow of the Property without explicit written prior consent and approval of the First Deed Holder.

The court overrules this "limited opposition" and does not provide "clarification" that Safe Credit Union controls the sale of the property. Safe Credit Union is correct, Debtor is seeking court authorization to sell the real property. The sale is pursuant to 11 U.S.C. § 363(b), with liens having to be cleared through escrow, to the extent that the buyer wants to pay $246,610.00 to acquire the property free and clear of liens. Conceivably, the Buyer could pay the estate $246,610.00 and buy the Property subject to all of the liens and then have to pay the claims secured by the liens.

The "limited opposition" and "clarification" uses interesting language stating that the Debtor does not seek to "force the sale on the lender." The court does not understand how an owner of property "forces a sale" on a lender. The owner of property can sell property he, she or it owns. The sale may require the property to be free and clear of liens, or the buyer make take the property subject to some or all of the liens. In California, deeds of trust and mortgages (to the extent they are used) have due on sale clauses, which accelerate an installment loan upon sale. The owner doesn't "force" the sale on the lender. The sale occurs, as is the owner's right, and then the lender can exercise its right to accelerate the loan and demand the balance in full from the buyer and commence foreclosure proceedings if not paid.

DISCUSSION

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

court: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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

The Motion is granted and the sale is approved.

Chambers Prepared Order

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kendall and Cynthia Bertrand, 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 Kendall and Cynthia Bertrand, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Leonard P. Nunez or nominee ("Buyer"), the Property commonly known as 9436 Feickert Dr., Elk Grove California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $236,610.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 46, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 4. The Chapter 13 Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 5. The Chapter 13 Debtors be and hereby are authorized to pay a real estate broker's commission in an amount equal to six percent (6%)of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's/Chapter 13 Debtor's/Debtor's in Possession] broker, Remax Gold.
>
> 6. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtors, with the exception of the $3,000.00 relocation fee identified in the Estimated Closing Statement. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the

Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

7. The Chapter 13 Debtor is authorized to receive the $3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

IT IS FURTHER ORDERED that the $2,361.00 in monies to be paid to the Law Offices of Ted A Greene, Inc. identified in Estimated Settlement Statement (or any greater amount at determined at close of escrow) shall be disbursed directly from escrow to David Cusick, the Chapter 13 Trustee, to be held pending further order of the court. Ted A. Greene, the attorney for the Chapter 13 Debtors shall file an application for additional attorneys' fees pursuant to 11 U.S.C. § 330 and Local Bankruptcy Rule 2016-1(c) on or before January 2, 2015.

28. 14-29672-E-13 MARINA ARZUMANOVA
DPC-1 PRO SE

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-7-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Failed to attend 341. The Debtor failed to appear at the first Meeting held on November 6, 2014, the Meeting has been continued to December 11, 2014 at 10:30 a.m. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

2. Failed to provide tax documents. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, specifically, the 2013 Tax Return, or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Debtor provided the Trustee with only 1 page of her return.

3. Misclassified claim. The Plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). Debtor lists on Schedule D, secured claim for Bank of Stockton, in the amount of $27,000.00, secured by a 2007 BMW 750li with a value of $12,286.00. Debtor has improperly listed the creditor in Class 1 of the plan. Debtor deducts on Schedule J, $678.00 per month for payment of the vehicle. It appears the claim should be provided for and paid in Class 2 of the plan, depending on the date of purchase; the loan may be eligible for a valuation motion. Debtor's Statement of Financial Affairs #5, reports that the subject vehicle was repossessed by Bank of Stockton on September 22, 2014. The Trustee is uncertain whether the Debtor has regained possession of the vehicle or whether treatment in the plan is necessary. Debtor lists on Schedule E priority claims for Internal Revenue Service in the amount of $2,500.00 but fails to provide for the claim in the plan.

4. Insufficient Disposable Income. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's projected disposable monthly income listed on Schedule J is $17.00 and the Debtor proposes a plan payment of $900.00. Debtor also fails to list common household expenses such as rent, utilities, medical expenses and she lists very little for food and clothing.

The Trustee's objections are well taken.

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

Furthermore, failure to provide necessary information, such as tax documents required by 11 U.S.C. § 521, are additional grounds to deny confirmation because it does not permit the court to review the financial status of the court to determine the viability and feasibility of the plan. Additionally, the plan either does not provide for certain claims or misclassifies claims. These oversights brings into to question the veracity of the plan and whether the Debtor can perform under its terms. Lastly, the Debtor does not provide information that explains how Debtor could afford a $900.00 per month plan payments when Schedule J lists Debtor's disposable income at $17.00. It appears that Debtor does not have sufficient disposable income to

fund the proposed plan

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

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

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

29. 14-26573-E-13 PA LEE — MOTION TO CONFIRM PLAN
MAC-1 Marc Caraska — 10-28-14 [36]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Pa Lee ("Debtor") filed the instant Motion to Confirm Amended Plan on October 28, 2014. Dckt. 36. The amended plan proposes to pay $1,347.81 per month for 60 months.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant motion on November 25, 2014. Dckt. 49. The Trustee objects on the following grounds:

1. Delinquency: Debtor is $34.56 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,347.81 is due on November 25, 2014. The Debtor has paid $5,356.68 into the plan to date.

DISCUSSION

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

Fails to Plead with Particularity

First, the Motion fails to abide by Fed. R. Bankr. P. 9013. The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. On June 24, 2014, Debtor filed her chapter 13 petition and a proposed chapter 13 plan.

B. Debtor now comes forward with her first amended chapter 13 plan, which proposes to pay $1,347.81 per month for 60 months. Debtor estimates that her general unsecured creditors will receive 0% of the amounts due them. This represents debtor's good faith and best effort to pay her creditors as much as she can afford.

C. Wherefore, Debtor respectfully requests that the court permit her to modify her chapter 13 plan with this proposed first amended chapter 13 plan and to confirm said first amended plan.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the new plan payments and what unsecured creditors will receive. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434

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

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

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

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

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual

allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

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

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

Delinquency

The Trustee's objection is well-taken. The court cannot confirm an amended plan when the Debtor is delinquent under its terms. Here, the Debtor is delinquent $34.56. Therefore, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

30. 14-29978-E-13 FELICISIMO SUNGA
MDE-1 Mark Shmorgan

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
11-13-14 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

U.S. Bank National Association ("Creditor") opposes confirmation of the Plan on the basis that:

1. Pursuant to 11 U.S.C. § 1325(b)(5), the plan fails to provide for the curing of the default on Creditor's claim. According to the plan, Debtor has provided for the arrears in the amount of $90,945.82. However, the arrearage on Creditor's claim is in the amount of $92,123.38. Debtor has failed to provide for the curing of the remaining default of $1,177.56.

The Creditor's objection is well-taken. The Creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $92,123.38 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the U.S. Bank National Association 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.

31. 10-23479-E-13 MARCO/MAGGIE PEDROZA
SNM-4 Stephen Murphy
MOTION TO APPROVE LOAN MODIFICATION
11-5-14 [40]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 5, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Marco and Maggie Padroza ("Debtors") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,267.23 a month to $2,129.03 a month.

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

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on November 20, 2014. Dckt. 45. The Trustee objects on the basis that

the Debtors are seeking affirmation of a Modification Proposal. The Modification proposal is dated March 20, 2014. The Debtors have provided no evidence that the proposal is still in effect. The Debtors have not provided a loan modification agreement. The Debtors' motion does not indicate if approval of a final loan modification document will be sought.

Exhibit 1 includes a chart stating the terms of the loan modification. While not the loan modification agreement as required by Federal Rule of Bankruptcy Procedure 4001(c), the court accepts these terms as sufficient for a trial loan modification. The basic terms for the trial loan modification are,

A. Principal increases from $390,356.92 to $408,216.59

B. Maturity extended from 07/15/2049 to 03/01/2054

C. Payment (P&I) reduced from $1,878.31 to $1,606.86

D. Total Payment reduced from $2,267.23 to $2,129.03

E. Interest rate reduced from 5.750% to 4.750%

F. The deferred principal balance is $63,216.59

G. The amount capitalized is $17,859.66

H. Trial Loan Modification Payments begin 04/01/2014 FN.1.

In the Motion, Debtors state that they have been informed by Wells Fargo Bank, N.A. states that they will not loan modification agreement until the court approves the modification. Wells Fargo Bank, N.A. is well aware that the court cannot approve a final loan modification without the loan modification agreement (Fed. R. Bankr. 4001(c)), so the court interprets this phrase as one in which the Debtors are seeking authorization for the trial loan modification so that they can then perform during the trial period. When the trial period is complete, then a loan modification agreement can be prepared and presented to the court for final authorization.

The court grants the motion and authorizes the Debtors to enter into a trial loan modification on the terms stated in Exhibit 1, Dckt. 43. The court authorizes the Debtors to make the trial loan modification payments directly to the Creditor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Marco and Maggie Padroza having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the

Debtors are authorized to enter into a Trial Loan Modification on the terms and conditions stated on Exhibit 1, Dckt. 43. Debtors are authorized to make the trial loan modification payments directly to Wells Fargo Bank, N.A., the creditor.

32. 09-34180-E-13 BRIAN/KELLY BAETGE — **MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE**
PGM-3 Peter Macaluso — **11-10-14 [62]**

Tentative Ruling: The Motion to Waive 11 U.S.C. § 1328 Requirements 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.

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

On November 10, 2014 a Motion was "filed by" Brian Baetge and Kelly Baetge. In the Motion Brian Baetge advises the court that he passed away on January 10, 2014. Mr. Baetge further advises the court that due to his death he is now unable to comply with the requirements of 11 U.S.C. § 1328.

Though Kelly Baetge continues as a debtor, she has not sought to be appointed as the personal representative for the interests of the late Brian Baetge. Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025, 9016.

With Mr. Baetge's passing, he cannot be a party to the motion and seek relief from the court. No personal representative has been appointed pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014 to be the necessary party. While it may seem obvious that the court should complete the administration of this case, it is unable to do so when there is no debtor or representative of the deceased Debtor to seek relief from the court.

Having a person (be it an individual or non-individual legal entity) who has an actual claim or controversy is necessary for a federal court to exercise federal jurisdiction under Article III, Section 2 of the United States

Constitution. While it could be viewed as expedient to cut the corner and ignore the Constitution under these facts, then that creates a "rule" that there are some federal judicial proceeding in which no party is involved, but merely an attorney who is representing some anonymous person outside the purview of the court.

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 Waive the Requirements of 11 U.S.C. § 1328 for the deceased Debtor which has been filed by the deceased Debtor having been presented to the court, no personal representative having been appointed pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

33. 14-29982-E-13 MARAH TORRES
DPC-1 Timothy Walsh

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-7-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). On October 29, 2014, the Trustee received Debtors' 2013 Tax Return. The Debtor received tax refunds of $13,067.00 from the Internal Revenue Service in 2014 representing federal tax refund for tax year 2013, Debtor also received $4,334 from Franchise Tax Board for a state tax

refund. The tax refunds total $17,401.00. The Trustee is uncertain if Debtors returns are to remain this amount in the future, but requests that the Debtor be required to annually provide the Trustee with updated pay advices and tax returns. The Trustee also asks the Court to require the turn-over of any future tax refunds received to be contributed toward unsecured claims as an additional payment into the plan. On Schedule I, Debtor reports her average net income of $8,281.78 per month. If the Debtor contributed her tax refund into their household income at 1/12 per month, she would have an estimated additional $1,450.09 per month ($17,401/12=$1450.09).

2. The Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income. Form 22C shows -$1,442.38. According to Schedule I, contributions of $651.42 per month were being made to a retirement loan and $64.00 per month for contribution to retirement. Debtor admitted at her First Meeting of Creditors on November 6, 2014, that the loan is expected to pay off in approximately 3 years. Debtor has not proposed an increase in her plan upon payoff of the retirement loan.

3. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of One Main Financial, but has not filed a motion to value collateral The Debtor also proposes to value the secured claim of National City Bank, but has not filed a motion to value collateral. Debtor's plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

4. While the plan proposes to pay the attorney $2,200.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. 1, pg. 35), appears to list it in item 6 that the attorney services do not include some services required under LBR 2015-1(c), such as relief from stay actions. The Trustee believes that the attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

5. On Schedule J (Dckt. 1, pg. 24), Debtor reports an expense for life insurance of $758.36. Debtor has not reported an interest in any life insurance policies on Schedule B (Dckt. 1, pg. 10, no.9). It appears the Debtor has failed to report all assets, or has inaccurately reported his expenses. The Trustee requests the Debtor provide evidence of the expense and the policy.

The Trustee's objections are well-taken. First, the failure of the Debtor to account for the Debtor's tax refund in determining plan payments indicates that there is additional disposable income that should be applied to plan payments. Secondly, the Trustee points out that the Debtor does not account for the end of the retirement loan repayment and does not provide for a step up in the plan once those monies could be applied towards the plan. This plan does not appear to be Debtor's best efforts. Third, the plan also relies on motions to value collateral that have yet to be granted. A review of the

docket shows that on November 20, 2014, Debtor filed a motion to value collateral concerning a PNC Bank loan but not the One Main Financial claim nor the National City Bank claim mentioned by the Trustee. Without these motions being granted, the plan is not feasible. Fourth, the discrepancy concerning the attorney costs raises doubts on the feasibility of the plan since the court cannot determine what method of payment Debtor's counsel is seeking, which directly effects the viability of the plan. Lastly, the Debtor does not appear to be disclosing all assets. As noted by the Trustee, the Debtor states that she pays into a life insurance policy but does not list any life insurance policy as an asset. This omission leaves the court questioning whether the Debtor has disclosed all assets which is required to determine whether or not the plan complies with the Code.

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

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

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

34. 14-29982-E-13 MARAH TORRES
MDE-1 Timothy Walsh

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE, N.A.
10-17-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 17, 2014. By the court's calculation, 53 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Pursuant to 11 U.S.C. § 1525(a)(5)(B), the value of a 2012 Chevrolet Cruz, VIN 1G1PC5SH6C7353627 ("Vehicle") to be distributed to Creditor is less than the allowed amount of Creditor's claim. According to the plan, Debtor has provided for Creditor's claim under Class 2 in which the claim is not reduced based on the value of collateral. However, Debtor has understated the amount claimed by Creditor, $20,116.61;

Creditor's claim is in the amount of $21,637.20.

2. Pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), Debtor may not lien strip a debt incurred within 910 days prior to the filing of the petition and the Vehicle is the personal use of the Debtor. Creditor has a purchase money security interest securing the debt and the Vehicle was acquired for personal use of Debtor. The debt was incurred 764 days prior on September 3, 2012, which is within the 910-day period preceding the date of the filing of the petition on October 7, 2014. Based on the foregoing, the value of the Vehicle to be distributed under the plan on account of Creditor's claim may not be less than its claim amount: $21,637.20.

The Creditor's objections are well-taken. The proposed plan does not provide for the full secured claim of the Creditor. Additionally, it appears that the Creditor holds a purchase-money-security-interest in the Vehicle and the Debtor cannot reduce or strip the amount owed on the Vehicle through the plan. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

35. 14-25585-E-13 SCOTT OLNEY **MOTION TO CONFIRM PLAN**
LBG-3 Lucas Garcia **10-9-14 [53]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2014. By the court's calculation, 61 days' notice was provided. 42 days' notice is required.

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

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

Scott Olney ("Debtor"), through counsel, filed the instant Motion to Confirm Second Amended Chapter 13 Plan on October 9, 2014. Dckt. 53

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on November 5, 2014. Dckt. 60. The Trustee objects on the following grounds:

1. The Debtor is $213.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $510.00 is due on November 25, 2014.

2. The Internal Revenue Service filed a proof of claim on August 20, 2014 (Claim No. 3-1), and amended the claim on September

18, 2014. The secured claim is filed in the amount of $9,416.08; and the priority claim is filed in the amount of $10,171.94. The proof of claim provides that the Debtor has not filed tax returns for 2013. The amended Plan filed on October 9, 2014 fails to provide for the secured claim of the Internal Revenue Service in the amount of $9,416.08.

3. Even if the Debtor sought to pay the secured claim filed by the Internal Revenue Service in the amount of $9,416.08, the Plan would then complete in 77 months as opposed to 60 months proposed, this exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Debtor's Plan proposes payments of $435.00 for 1 month; $481.00 for 3 months; and $510.00 for 56 months with a 1% dividend to unsecured creditors. The plan payments total $30,438.00. The Debtor is proposing to pay the Plan: $4,000.00 attorney fees; $8,500.00 at 4% interest for the 2005 Big Dog Motorcycle in Class 2, which totals $9,392.43; $2,860.44 at 18% interest for Contra Costa County property taxes in Class 2, which totals $4,362.48; Internal Revenue Service in Class 5, which totals $10,071.94; if the $9,416.08 for the not provided for secured claim of the Internal Revenue Service is added to the Plan; and the 1% dividend to unsecured creditors, which totals $471.02, a grand total of $37,712.93 is needed to pay claims.

4. It appears that the Plan is not the Debtor's best effort, under 11 U.S.C. § 1325(b). The Debtor is over the median income and proposes plan payments of $425.00 for 1 month; $481.00 for 3 months; and $510.00 for 56 months with 1% dividend to unsecured creditors, which totals $471.02. Based on the Debtor's Amended Schedule I filed on October 9, 2014 and Amended Schedule J filed on July 11, 2014, the Debtor's monthly net income totals $935.21, although the Debtor is proposing plan payments of only $510.00 beginning October 25, 2014. The Debtor amended Schedule I on October 9, 2014 and added $500.00 from his live in girlfriend's contribution. The total amount of income reflects $4,441.30. The Debtor failed to amend Schedule J to show this income of $4,441.30. The Debtor's most recent amended Schedule J was filed on July 11, 2014, which reflects the total expenses of $3,506.09, which leaves monthly net income of $935.21 (Dckt. 56).

5. It appears that the Debtor has not proven they make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor fails to provide a Declaration in support of his girlfriend's contribution, which states her willingness and ability to contribute $500.00 per month.

6. The Plan fails to provide for the priority claim of the Franchise Tax Board filed on July 30, 2014 in the amount of $203.72. Claim No. 5-1.

DISCUSSION

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

confirmation.

However, a review of the proposed plan and the Trustee's objections show that this plan cannot be confirmed. The Trustee's objections are well-taken. The Debtor is currently delinquent. The proposed Plan does not provide for all of the Internal Revenue Service claims. A computation of the proposed plan shows that in order to pay all the claims, it would exceed the permitted 60 months allowed for a plan. The Debtor has not updated Schedule J to reflect the contribution from the live in girlfriend for the court to determine whether the plan is truly using all of Debtor's disposable income and is, in fact, feasible. Lastly, the proposed plan does not provide for the Franchise Tax Board's Claim.

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

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

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

36. 14-28888-E-13 JAMES/JENNIFER CRUM
DPC-1 Mikalah Liviakis

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
10-8-14 [16]

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

The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Confirmation, the court interpreting the "Withdrawal of Motion" to be an *ex parte* motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation the Bankruptcy Case, and good cause appearing, **the court overrules without prejudice the Chapter 13 Trustee's Objection to Confirmation**.

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.
>
> An Objection to Confirmation having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on September 1, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

37. 14-28890-E-13 JOANN ARTIAGA **MOTION TO CONFIRM PLAN**
CAH-4 Oliver Greene **10-17-14 [41]**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2014. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

38. 14-29692-E-13 ANNA STARR
BF-1 Marc Caraska

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
11-6-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Bank of America, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the Debtor's plan does not propose to cure the pre-petition arrears owed to Creditor, thus not complying with 11 U.S.C. § 1325(b)(5).

Creditor states that the total amount due is $71,561.67 and the pre-petition arrearage amount owed is $703.98. Creditor also claims that Debtor's plan classifies Creditor as a Class 4 claim. Creditor argues that since its claim is secured only by a security interest in the Debtor's principal residence that the claim may not be modified pursuant to 11 U.S.C. § 1322(b)(2) and should be classified in Class 1.

Additionally, Creditor argues that, pursuant to the Note, the loan will mature on June 1, 2018. Thus the debt will become all due and payable prior to the date on which the final plan payment is due. If due during the term of the plan, then the claim is not a proper Class 4 Claim ("Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Chapter 13 Plan, Section 2.11, Dckt. 7.)

The Debtor will be responsible for payment of hazard insurance and property taxes during the term of the Plan. Creditor states that it will no longer have an impound account set up for these payments.

The Creditor's objections are well-taken. The Creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $703.98 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed. Additionally, it does appear that the Debtor's plan misclassifies Creditor as a Class 4 claimant rather than a Class 1.

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

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

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

39. 14-29692-E-13 ANNA STARR
DPC-1 Marc Caraska

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
11-3-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2014. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan is not the Debtor's best efforts, 11 U.S.C. § 1325(b). The Debtor appears to be over the median income and propose plan payments of $183.35 per month for 60 months, with a 2% dividend to the unsecured creditors. Form 22C shows $241.00 of monthly disposable income on Line 59 (Dckt. 1, pg. 49), asserts additional expenses for 2 older vehicles on line

60 totaling $400.00 (which may be disallowed under *In re Luedtke,* 508 BR 498 (B.A.P. 9th Cir. 2014)), and $6,150.00 of involuntary expenses for employment on line 31 (which may include business expenses as it does not otherwise appear in Schedule J).

2. The Debtor's income is not clear. Debtor is self employed and lists no income on Schedule I. The Statement of Financial Affairs, question 1 lists the YTD gross business income in the amount of $36,753.00, $90,000.00 for 2013 and $122,051.00 for 2012. Form 22C lists her income in Column A as $6,150.00. The Trustee received and reviewed Profit and Loss Statements for May 2014 through September 2014. According the Trustee's calculation, the total gross income was $34,261.67. The Debtor's net income, based on the Profit and Loss Statements averaged $1,153.98. This income was not listed on Schedule I. The income listed for the Debtor differs where it is not clear if the net income listed on Schedule J is accurate, in the amount of $183.00 per month.

3. Debtor's 2012 Federal Tax Return reflects a refund of $14,522.00. The Debtor also received a federal refund according to the 2013 federal return in the amount of $14,401.00. If the Debtor included this income in her monthly income calculation, dividing the income monthly throughout the year, she would have at least $1,200.08 per month in additional income.

4. It is not clear if the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). Schedule J fails to list an expense for Capital One/House listed in Class 4 in the amount of $150.00. Schedule J lists an expense of $317.00 on line #17a (car payment for vehicle 1). The Debtor lists USAA in Class2A for her 2002 Toyota Sequoia.

5. While the plan proposes to pay the attorney $2,100.00 through the plan under LBR 2015-1(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. 1, pg. 36) appears to list in item 6 that the attorney services do not include some services required under LBR 2016-1(c), such as relief from stay actions. The Trustee believes that the attorney is effectively opting out of 2016-1(c) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

The Trustee's objections are well-taken. A review of the proposed plan and the Trustee's objections raises this court's concern of whether the Debtor has fully disclosed all Debtor's income, particularly as it concerns the Debtor's business. Additionally, the Debtor has failed to include the substantial tax refund she has received in calculating the income for the plan. The Debtor's plan appears to have payments listed that are not reflected in Debtor's schedules. Lastly, the Trustee's concerns on how Debtor's counsel is asking for attorney's fees also concerns the court, as the court cannot determine if counsel is seeking "no-look" or is attempting to opt-out of LBR 2016-1(c). Without all this information, the court cannot determine the feasibility and viability of the proposed plan.

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

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

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

40. 14-29493-E-13 RODNEY/CHANDRA LAMBERT
DPC-1 Richard Jare
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-7-14 [82]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtors are $1,750.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,750.00 is due on November 25, 2014. The Debtors have paid $0.00 into the plan to date.

2. The Debtors' Plan is not the Debtors' best efforts under 11

U.S.C. § 1325(b). Debtors are above median income proposing to pay $1,750.00 for 4 months, $1,900 for 10 months, $2,500.00 for 46 months with a guaranteed dividend of 0% to general unsecured claims. Debtors are not proposing all disposable income into the plan. On Schedule I, line 13, Debtors indicate that they will be increasing their rental income by $50.00 per year, but fail to propose those increases into the plan. It appears that there is an additional $6,000.00 that could be paid toward unsecured claims over the term of the plan.

3. It appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors report on Schedule I income from rents of $1,350.00 per month. At the 341, Debtors admitted that the tenants currently residing in the property are not paying rents and Debtors are in the process of evicting the tenants. It appears that the Debtors are currently unable to make plan payments as their income relies on each source of income, including the rents.

4. The Debtors' Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). While the Debtors reported non-exempt equity totals $0.00 and the Debtors are proposing a 0% dividend to unsecured creditors, additional equity exists. Debtor Rodney Lambert admitted at the 341 that he has worked as an Auto Broker in the last 6 months, but has not yet been paid for any of the transactions. Debtor fails to list any accounts receivable on Schedule B. Debtors admitted at the 341, they have a potential predatory lending claim against Landmark Bank. Debtors have not disclosed interest in this claim on Schedule B. On Schedule B #13, Debtors list interest in Lambert Investment Enterprises Inc. which includes a description sole asset is the real property commonly known as: 1801 NW 112th Street, Miami, Florida. It appears that the Debtors may have possession of a third piece of real estate not disclosed on Schedule B. Debtors have provided insufficient information relating to this asset for the Trustee to determine whether it has been properly disclosed and valued.

5. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtors proposes to value the secured claim of Golden One Credit Union, but have not filed a motion to value collateral. Debtors plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

6. The Debtors have failed to timely provide the Trustee with business documents including: questionnaire; tax returns, profit and loss statements, bank account statements; proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). The Debtors have failed to provide the Trustee with proof of income for the 60 days preceding filing of their bankruptcy. The Trustee has not received pay stubs for Rodney Lambert. The Debtor has

> failed to provide the Trustee with a tax transcript or a copy of his/her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, specifically, the 2013 Tax Return, or written statement of no such documentation exists. Due to the delay in receiving documents, the Trustee has continued the 341 to December 11, 2014 at 10:30 a.m.

The Trustee's objections are well-taken. A review of the docket does not show that the Debtors have cured the delinquency. There is no evidence provided that the necessary documentation has been provided to the Trustee. Furthermore, the court is concerned that the Debtors have not fully disclosed all of their income and assets to allow this court to determine if the proposed plan is feasible or viable. Without all the necessary information available or given, the court cannot confirm the plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

41. 14-29493-E-13 KO-2 RODNEY/CHANDRA LAMBERT Richard Jare — OBJECTION TO CONFIRMATION OF PLAN BY LANDMARK BANK, N.A. 11-13-14 [86]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Chapter 13 Plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors do not have sufficient income to support their proposed plan payments. In addition to Debtor R. Lambert's net wages from employment in the amount of $2,890.00, Debtors' Schedule I shows that Debtor R. Lambert is receiving $1,350.00 per month in net income from rental property. Debtor R. Lambert testified at the 341 Meeting that the tenant in his

> rental property located at 1071 Little River Drive, Miami, Florida is not paying rent and that he has hired a property management company to evict the tenant. Debtors proposed payments under the Chapter 13 Plan appear to rely on the income from the Florida rental property. As such, Debtors are not currently able to make the proposed plan payments.

The Creditor's objection is well-taken. The Plan appears to rely on a source of income, namely the rental income, that is no longer coming to the Debtors. Without the rental property providing the $1,350.00 in income, it appears that the Debtors cannot perform under the terms of the proposed plan. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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