

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 10, 2015 at 2:00 P.M.

1. [14-32000](#)-C-13 ARTHUR/SHIRLEY PRUITT MOTION TO CONFIRM PLAN
SJS-1 1-22-15 [[22](#)]

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

The Motion to Confirm the Chapter 13

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 22, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The 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 February 11, 2015. Fourteen days' notice is required. This requirement has been met.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Note Resolutions. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.

The court notes that on February 24, 2015, this court granted Debtor's Motion to Value the Collateral of National Note Equities, LLC. (Dkt. 31). The Trustee's only objection having been satisfied, the objection is overruled and the Plan is confirmed.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 10, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The 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 February 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. There are several issues in connection with the additional provisions:
 - a. The additional provisions of Debtor's chapter 13 plan are not on a separate page as section 6 of the plan states.
 - b. Section 6 discusses the preprinted text of the plan, containing two contradictory statements, one permitting alterations in the preprinted text, and the other stating that alternations are to be given no effect.
 - c. The additional provision call for a balloon payment, the source of which is apparently the non-filing spouse's Las

Vegas, Nevada property, currently listed for sale for \$449,000. The additional provisions state that Debtor shall have the option to pay the plan in full earlier if the funds from sale become available sooner than the 25th month of the plan. No estimated amount is provided for this balloon payment, nor any other details.

- d. Even if the additional provisions were given effect, without the lump sum payment, the plan will not pay the 100% to unsecured claims, which appear to be mainly the same claim disclosed in the prior case (Case No. 13-22384), and now one additional claim not disclosed in the prior case although it was incurred five (5) years before the case was filed, (Case No. 15-20004, Sch. F, Dkt. 1, P. 22; Case No. 13-22383, Sch. F, Dkt. 1, P. 21).
2. Debtor filed a prior chapter 13 bankruptcy on February 25, 2013 and the case was dismissed on July 16, 2013. (Case No. 13-22384). According to the transcript from the motion to dismiss hearing on June 26, 2013, Judge Sargis requested any future cases filed by this Debtor be re-assigned to him. (See Exh. A, Dkt. 21.).
3. The Rights and Responsibilities filed in this case on January 2, 2015, reflect that the Debtor has paid Anthony Hughes \$8,000 before the filing of the Petition. The transcript of hearing on the motion to dismiss had discussed \$8,000 in tax refunds with which Debtor intended to pay her attorney, however the court had opined that the Debtor likely still had the tax refunds. (See Exh. A, Dkt. 21).
4. Debtor's prior chapter 13 case listed a 1967 Stingray Corvette, which was valued at \$35,000. However, the Debtor has not listed this asset on her Schedule B. Additionally, according to Debtor's schedule I, Debtor receives a pension or retirement income in the amount of \$4,403.26, however the Debtor has not listed any retirement on Schedule B.
5. Debtor admitted at the First Meeting of Creditors on February 5, 2015 that she earned income for her "Embroidery Diva" business, which was not disclosed on Debtor's Schedule I. Debtor also admitted at the First Meeting of Creditors that she would be receiving Social Security income of \$1,700 that was not disclosed on Debtor's Schedule I.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee filed a limited objection to confirmation of Debtors' Modified Plan on the basis that Trustee is unclear of the proposed dividend to unsecured creditors. In section 2.15 of the modified plan, Debtor's have listed dividend as .20%. However, the additional provisions of the plan lists dividend as .02%.

DISCUSSION

While the Trustee's objection as to the inconsistent dividend percentages listed in Debtor's modified plan is correct, this is a mere scrivener's error that can be corrected in the order confirming. Outside of that error, which can be corrected in the order confirming, the plan appears to be feasible, viable, and consistent with the requirements of the Bankruptcy Code.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is granted, Debtor's Chapter 13 Plan filed on January 26, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the dividend percentages under section 2.15 and additional provisions of the modified 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.

5. [14-32512](#)-C-13 DONALD/BEVERLY ISHIMOTO
DPC-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
2-11-15 [[16](#)]

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Objection to
Confirmation of Plan is overruled as moot, the
case having been dismissed.

Thru #8

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Chase, "Creditor," is denied without prejudice.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 6537 Cowboy Way, Citrus Heights, California. The Debtors seek to value the property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, the 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).

Debtors asserts that the first deed of trust secures a loan with a balance of approximately \$300,406.00. Chase's second deed of trust secures a loan with a balance of approximately \$144,623.39. Therefore, the

respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

DISCUSSION

Debtors seek to value the collateral of the entity they have named in their moving papers, "Chase." However, service is not proper. Debtors served the following address by certified mail:

Chase
Attn: Officer
800 Brooksedge Blvd
Westerville, OH 43081

However, a search on the FDIC database and the California Secretary of State website do not return a result a "Chase" company or entity. The Court can only assume that the Creditor to whom Debtors are referring in their moving papers as the entity that has an interest in the subject real property is "Chase Bank, N.A." The address for service of Chase Bank, N.A. can be found on the FDIC Website at:

Chase Bank USA, N.A.
201 North Walnut Street
Wilmington, DE 19801
New Castle County

Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h). Based on the lack of proper service here, 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 for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion is
denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. Chapter 13 Trustee opposes Debtors' motion to confirm plan on the basis that:

1. Debtors cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the pending Motion to Value the secured claim of Chase Bank's 2nd DOT secured by 6537 Cowboy Way and Chase Bank's 2nd DOT secured by 8194 Sunrise Blvd. Debtors have not filed motions to value collateral, and if these motions are not filed or granted, Debtors lacks sufficient monies to pay the claim in full.
2. Debtors propose to pay Labor Commissioner in Class 5 of the Plan, which should be paid a pro rata share of the plan payments, however the Debtor specifies a dividend of \$136.82 in the Additional Provisions of the plan. Additionally, Debtors propose specific dividend for Trustee administrative costs (\$255.75 for months 1-12; \$285.76 for months 13-24;

\$473.39 for months 25-60). However, these amounts may not be accurate as Trustee's compensation fee may change throughout the life of the case.

3. Debtors' plan does not provide how Debtors will be able to make all payments under the plan. 11 U.S.C. § 1325(a)(6). Debtors owns a care home known as Divine Family Care, LLC, and list their income from the business at negative \$700 per month. However, Debtors are proposing plan payments that increase throughout the life of the plan without providing evidence of how they intend to do so.
4. Debtors' plan will exceed sixty (60) months, the maximum amount of time allowed. 11 U.S.C. § 1322(d). Debtors' plan proposes to complete in 60 months, however, according to the Trustee's calculations, the plan will complete in 69 months. Plan proposes payments of \$4,518.50 for 12 months to \$5,048.50 for 12 months, then \$8,363.14 for 36 months, totaling \$415,877.04. In calculating the amount Debtor is proposing to actually pay in the plan, total debts to be paid total \$430,397.84 and does not include 5.4% Trustee compensation for fees, mortgage arrears, and labor commissioner.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. Fourteen days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 8194 Sunrise Boulevard, Citrus Heights, California. The Debtors seek to value the property at a fair market value of \$317,821.00 as of the petition filing date. As the owner, the 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).

Debtors assert that the first deed of trust secures a loan with a balance of approximately \$416,807.00. Chase's second deed of trust secures a loan with a balance of approximately \$56,700. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

DISCUSSION

Debtors seek to value the collateral of the entity they have named in their moving papers, "Chase." However, service is not proper. Debtors served the following address by certified mail:

Chase
Attn: Officer
800 Brooksedge Blvd
Westerville, OH 43081

However, a search on the FDIC database and the California Secretary of State website do not return a result a "Chase" company or entity. The Court can only assume that the Creditor to whom Debtors are referring in their moving papers as the entity that has an interest in the subject real property is "Chase Bank, N.A." The address for service of Chase Bank, N.A. can be found on the FDIC Website at:

Chase Bank USA, N.A.
201 North Walnut Street
Wilmington, DE 19801
New Castle County

Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h). Based on the lack of proper service here, 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 for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion is
denied without prejudice.

Thru #10

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 February 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Chase. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.
2. Section 6 of Debtor's plan indicates that Debtor has filed a request for mortgage loan modification on her residence, and that the mortgage arrears will be provided for by the modification. Debtor does not indicate how the modification will provide for the arrears, or how the plan is to treat the

mortgage if the modification is denied. Debtor proposes a monthly payment of \$3,980 through the plan to Wells Fargo Home Mortgage. The plan does not properly provide for the secured claim.

3. The additional provisions of the plan are not on a separate paper appended to the plan, therefore the additional provisions of the plan are null and void.

Although the court is prepared to grant Debtor's pending motion to value the secured claim of JPMorgan Chase Bank, N.A. resolving Trustee's first objection, Trustee's second and third objection have not been resolved.

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

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

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

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

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

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

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

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

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 February 24, 2015. Fourteen days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8285 Peacock Lane, Elverta, California. The Debtor seeks to value the property at a fair market value of \$350,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$550,000. JP Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$183,858.52. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8285 Peacock Lane, Elverta, 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 \$350,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$850 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$850 is due on February 25, 2015. Debtor has paid \$0 into the plan to date.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor admitted at the First Meeting of Creditors held on February 5, 2015 that she had not filed all of her tax returns due during the four year period preceding the filing of the Petition. Specifically, 2012 and 2013 tax returns have not been filed. 11 U.S.C. §§ 1308 & 1325(a)(9).
4. Debtor has not listed income for 2012 and 2014 on Question #1 of the Statement of Financial Affairs.
5. Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor admitted in the First Meeting of Creditors on February 5, 2015 that she could not afford to make the plan payments as her income tax withholdings have changed and what is reflected on Schedule I is not accurate.

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

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

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

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

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

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on February 10, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of HSBC Bank Nevada, N.A. for the sum of \$1,313.50. The abstract of judgment was recorded with Sacramento County on March 18, 2009. That lien attached to the Debtor's residential real property commonly known as 6321 39th Avenue, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$134,902 as of the date of the petition. The unavoidable consensual liens total \$117,237 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$17,665 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

IT IS ORDERED that the judgment lien of HSBC Bank Nevada, N.A., Sacramento County Superior Court Case No. FCM116197, Document No. 07AM12039, recorded on March 18, 2009, with the Sacramento County Recorder, against the real property commonly known 6321 39th Avenue, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. [14-32554](#)-C-13 THOMAS/JOYCE STEVENS
ADR-1

MOTION TO VALUE COLLATERAL OF
NISSAN MOTOR ACCEPTANCE
CORPORATION
2-10-15 [[15](#)]

Thru #15

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2015. Twenty-eight days' notice is required. This requirement has been met.

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

The Motion to Value secured claim of Nissan Motor Acceptance Corporation, "Creditor," is granted.
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The motion¹ is accompanied by the Debtor's declaration. The Debtors are the owners of a 2014 Nissan Murano SL ("Vehicle"). The Debtor seeks to value the property at a replacement value of \$25,570.00 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 October 31, 2014, which is less than 910 days prior to filing of the petition.

Movant is requesting that the loan held by Creditor be determined to be secured in the amount of \$41,711.72 and that the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of \$3,432.90 be determined to be an unsecured claim.

¹ Note, Movant has not pointed to any legal authority or provision of the Bankruptcy Code in support of this motion. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g). However, the court declines to do so here.

The Creditor filed a Proof of Claim No. 1 on January 9, 2015, claiming a secured claim in the amount of \$45,144.62. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 2 shows that the total amount financed by the Movant was \$44,543.81. There was a net trade-in of <-\$3,432.90>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 7.7% of the amount financed and the remaining 92.3% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, \$3,476.14 of the amount financed is to the negative net equity from the trade-in. The remaining \$41,668.48 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant is only seeking to value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

The creditor's secured claim is determined to be in the amount of \$41,668.48. See 11 U.S.C. § 506(a). The remaining \$3,476.14 is determined to be a general unsecured claim arising from the negative equity from the trade-in. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nissan Motor Acceptance Corporation secured by a 2014 Nissan Murano SL, is determined to be a secured claim in the amount of \$41,668.48. This is the amount of the secured claim which pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a) [the unnumbered paragraph following § 1325(a)(9)], and the balance of the claim, \$3,476.14, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$25,570.00 and is encumbered by liens securing claims which exceed the value of the asset.

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2015. Twenty-eight 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 Nissan Motor Acceptance Corporation, "Creditor," is granted.
--

The Motion filed by Thomas and Joyce Stevens ("Debtor") to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Nissan Juke S ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,250.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 11, 2011, which is more than 910 days prior to filing of the petition, with a balance of approximately \$16,125.00. Therefore, the Creditor's claim secured by a lien on the Vehicle's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$14,250.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 2013 and 11 U.S.C. § 506(a) is granted. The balance of the claim shall be paid as a general unsecured claim as provided in a confirmed bankruptcy plan.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nissan Motor Acceptance Corporation secured by the Vehicle, a 2011 Nissan Juke S, is determined to be a secured claim in the amount of \$14,250.00, 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 \$14,250.00 and is encumbered by liens securing claims which exceed the value of the Vehicle.

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 February 11, 2015. Fourteen days' notice is required. This requirement has been met.

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claims of Nissan Motor Acceptance Corporation for a 2011 Nissan Juke and 2015 Nissan Murano. If the motions are not granted, Debtors lack sufficient monies to pay the claim in full.

Specifically with regard to the 2014 Nissan Murano, purchased on October 31, 2014, Creditor has filed a secured claim for \$45,144.62. Debtor proposes to value the collateral and pay this creditor \$41,397.10 in Class 2(B). This debt exceeds 60 months and should be listed in Class 4 of the Plan and paid in full to this creditor directly.

The court notes that Debtors have filed two motions to value the collateral of Nissan Motor Acceptance Corporation, on calendar currently

with the instant objection. Although the court is prepared to grant the two motions to value, Trustee's objection as to the misclassification of the 2014 Nissan Murano in Class 2(B) rather than in Class 4 has not been resolved. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Thru #17

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 6, 2015. Twenty-eight days' notice is required. This requirement has been met.

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

The Motion to Value secured claim of PNC Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8816 Palmerson Drive, Antelope, California. The Debtor seeks to value the property at a fair market value of \$190,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$279,000. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$42,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of PNC Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8816 Palmerson Drive, Antelope, 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 \$190,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. Fourteen days' notice is required. This requirement has been met.

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

The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtors' plan relies on the pending Motion to Value the secured claim of PNC Bank, N.A. If the motion is not granted, Debtors lack sufficient monies to pay the claim in full.

DEBTOR'S OPPOSITION

On March 3, 2015, Debtors filed an opposition to Trustee's objection, pointing out that Debtors had filed a motion to value two days prior to Trustee's objection, and that both matters are set for the same hearing date. As of the date of filing their opposition on March 3, 2015, Debtors note that no opposition had been filed for their pending motion to value the secured claim of PNC Bank, N.A.

DISCUSSION

The court is prepared to grant Debtors' Motion to Value Secured Claim of PNC Bank, N.A. (item 16 above). As Debtors have resolved Chapter 13 Trustee's only objection, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 31, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtor's Chapter 13 Plan filed on
October 29, 2014 is confirmed, and counsel for
the Debtor shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors Holding General Unsecured, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Substitute Collateral is granted.

Debtors request the court's permission to use insurance proceeds to purchase a replacement vehicle and to substitute the replacement vehicle as collateral securing the claim of Toyota Motor Credit. Debtors filed this case on June 4, 2014. Debtors at the time owned a 2012 Toyota Camry SE with 21,500 miles subject to the purchase money security interest of Toyota Motor Credit. Debtors filed a chapter 13 plan proposing to pay Toyota Motor Credit the full amount of its claim as a Class 2(A) creditor. The plan was confirmed on August 31, 2014.

On December 9, 2014, Debtors' Toyota Camry was totaled. After an assessment of damages and obtaining an appraisal, Debtors' insurance company, MetLife Auto and Home determined that the cash value of the vehicle is \$18,651.44. MetLife has agreed to pay Debtors \$20,345.56 for the purchase of a replacement vehicle.

Debtors have found a possible replacement vehicle, a 2012 Toyota Camry, for \$21,742.25. Debtors wish to use the insurance proceeds to purchase this vehicle without additional financing. Chapter 13 Trustee shows that the principal amount paid to Toyota Motor Credit is \$3,444.81, leaving a principal balance of \$15,933.05. Debtors wish to have Toyota Motor Credit placed as a lien holder on the vehicle to substitute the collateral for the vehicle that was destroyed, securing Toyota's Class 2 claim. Debtors state that they are current in payments to the Chapter 13 Trustee.

TRUSTEE'S RESPONSE

Chapter 13 Trustee has filed a motion of no opposition to Debtor's Motion to Substitute Collateral.

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

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

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

IT IS ORDERED that the Motion is
granted under 11 U.S.C. § 363, and Debtors may
use the insurance proceeds resulting from the
total loss of Debtors' 2012 Toyota Camry for
the purchase of a replacement vehicle,
provided that Toyota Motor Credit is placed as
a lien holder on such vehicle to secure Toyota
Motor Credit's claim.

IT IS FURTHER ORDERED that the
insurance proceeds resulting from the total
loss of Debtors' 2012 Toyota Camry be made
payable to Debtors for the purpose of allowing
Debtors to purchase the replacement vehicle.

2-11-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtors' plan may not be Debtor's best efforts. 11 U.S.C. § 1325(b). Debtors are over the median income and propose plan payments of \$300 for 60 months with a 31.02% dividend to unsecured creditors, which totals \$14,695. According to Trustee's calculations, Form B22C, Line 59 should be \$2,096 for 60 months, which totals \$125,760 to unsecured creditors. Trustee has made a number of changes to Form B22C.
2. Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). According to Form B22C, Debtor will no longer receive overtime income beginning January 1, 2015 in the

amount of \$1,502.57.

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

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

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

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

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

21. [14-32473](#)-C-13EVELYN/JERRY GAUDITEOBJECTION TO CONFIRMATION OF
DPC-1
PLAN BY DAVID CUSICK

2-11-15 [[16](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$950 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$950 is due on February 25, 2015. Debtor has paid \$0 into the plan to date.
2. Debtor did not appear at the First Meeting of Creditors held on February 5, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting was continued to March 5, 2015.

3. Debtor's plan may not be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$950 for 60 months with no less than a 1% dividend to unsecured creditors, which totals at least \$105 based on the estimate in the plan. Debtor's projected disposable income listed on Schedule J reflects \$2,249 per month and the Debtor is proposing a plan payment of \$950 per month. Debtor lists an expense of \$300 for support to 98 year old mother, however the Debtor has not provided any evidence of this expense.
4. Debtor's plan does not fully provide for priority claim of the Internal Revenue Service. The Internal Revenue Service filed a priority claim of \$218,252.41 on January 28, 2015 and the Debtor has only provided for this claim in the amount of \$21,460 in Class 5 of the Plan.
5. Debtor is over the unsecured debt limit. It appears that Debtor is not entitled to chapter 13 relief based on 11 U.S.C. § 109(c). Debtor is over the unsecured debt limit of \$383,175. Debtor listed unsecured priority debts on Schedule E totaling \$377, 789.67 and Debtor lists a \$20,000 IRS tax lien on Schedule D, however Debtor did not indicate a date the claim was incurred and the IRS's claim does not indicate a secured portion, therefore it appears the total amount of unsecured debt is \$397,789.67.
6. Debtor is opting into the guidelines for payment of attorneys fees according to Debtor's plan. Debtor has filed Rights and Responsibilities in this case, however the attorney fees requested in the plan of \$5,110 exceed the allowed amount of \$4,000.

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

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

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

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

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

2-11-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to continue the Objection to March 24, 2015 at 2:00 p.m.

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

1. Debtor did not provide Trustee with a tax transcript or copy of her Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor cannot make payments under the plan or comply with the

plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Beneficial Financial. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.

DEBTOR'S OPPOSITION

Debtor replies to the Trustee's objection stating first, that she has provided the tax return to the Trustee, and second, that she has filed a motion to value the secured claim of Beneficial financial, which is set for hearing on March 24, 2015. Debtor requests that the hearing on the instant objection be continued to March 24, 2015 to be heard with the motion to value.

DISCUSSION

The docket reflects that on February 18, 2015, Debtor filed a motion to value the collateral of Beneficial Financial, Inc. Set for hearing on March 24, 2015. (Dkt. 18). The court's decision is to grant the Debtor's request and continue the Chapter 13 Trustee's objection to March 24, 2015 at 2:00 p.m. to be heard concurrently with the Debtor's pending motion to value.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to March 24, 2015 at 2:00 p.m.
