

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

March 15, 2016 at 2:00 P.M.

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1. [15-20004](#)-C-13 EVANGELINE MARAKAS MOTION FOR COMPENSATION BY THE  
CAH-8 Gabriel Liberman LAW OFFICE OF HUGHES FINANCIAL  
LAW FOR C. ANTHONY HUGHES,  
DEBTOR'S ATTORNEY(S)  
2-5-16 [[153](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 5, 2016. 28 days' notice is required. That requirement was met.

The Motion for Compensation 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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C. Anthony Hughes, the Attorney for Debtors, ("Applicant") for Evangeline Markas, ("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 December 5,

2014 through February, 2016. Applicant requests fees in the amount of \$19,535.00 and costs in the amount of \$0.00, for an aggregate of \$19,535.00.

### **TRUSTEE'S OBJECTION**

The Chapter 13 Trustee objection to the Motion on the basis that:

1. Movant has failed to file the retainer agreement as a an exhibit.
2. There is uncertainty as to whether the task billing is complete or if pre-341 work has been lumped in with other tasks.
3. The fees requested for certain tasks exceed reasonable value i.e. summarizing the case to senior attorney, fee agreement and fee application, meetings, explanations, time spent to obtain confirmation.

### **DEBTOR'S REPLY**

1. HISTORY: To clarify, Hughes receives \$8,000.00 pre-petition, of which \$500 was applied to costs and the court filing fee and the remaining balance of \$7,500.00 towards attorney's fees; to be held in trust. As a concession to Debtor, Hughes did not charge debtor for any pre-petition work, even though Hughes and other staff members spent significant time in preparing the petition and strategy with the debtor. This leaves the full \$7,500.00 to be applied to the requested fees.
2. CONTRACT: The trustee has requested a copy of the retainer agreement. Hughes will supplement the record by filing a Supplemental Exhibit in Support of the Motion and attach as Exhibit B a true and accurate copy of the retainer agreement. It should be noted, the contract specified \$300.00 as the hourly rate for attorney time, though Hughes only charged \$250.00 per hour, saving the client a substantial amount of additional fees.
3. TASK BILLING: Hughes provided clarity to Trustee's question regarding pre-petition billing.
4. SPECIFIC TIME BILLING: Hughes responds as follows:
  - a. Hughes will agree to discount 50% of this entry regarding the "summarization to senior attorney..." though 50% should be allowed or .75 (\$187.50) as this task also includes reviewing the conversion/dismissal motion and summarizing to the client.
  - b. First, it appears the trustee has confused part of the task billing of the fee application with an employment application for a motion to employ a realtor in regards to selling Debtor's real property. The entry posted on 7/28/2015 for application fee and employment, client to sign 1.5 hours; \$375 relates to an employment application and not the fee application. Second, Hughes agrees to reduce the entries related to the drafting of this fee application from 10.5 hours (\$2,625) to 5% of the total fees requested which equals \$836.00 (\$16,722.50 times 5%).
  - c. Trustee objects to 2.5 hours billed for meeting with Ken Sanders. Hughes objects to reducing this task billing as the trustee has overlooked other portions of this entry. The entry in its entirety reads as follows:

Prepared and attended MO to CONF PLAN and AMENDED MO TO CONVERT TO CH 7 hearing; Discussed with Ken Sanders; Discussed with Anthony and Michael Croddy;

input notes.

d. Hughes objects to Trustee's overly broad objection to the task billing being excessive relating to Plan confirmation. Trustee has not provided any additional proof that this case warranted less time. This case would have failed without the amount of time spent, as an aggressive creditor made this case extremely cumbersome to work through.

Based on the foregoing, Hughes agrees to reduce the initial request for fees from \$19,535.00 as follows:

- Preparation of this fee application reduced from \$2625.00 to \$836.00;
- Reduce entry on 4/22 regarding summarizing to senior attorney by 50% from \$375.00 to \$187.50;

Therefore Hughes agrees to reduce the fee application by \$1,976.50 to \$17,558.50. In addition, since Hughes has provided free work to debtor for pre-petition work, the initial \$7,500 retainer is available to reduce the total due to \$10,058.50.

#### **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 services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

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

### **FEES AND COSTS & EXPENSES REQUESTED**

#### **Fees and Costs**

On December 5, 2014 applicant received a retainer of \$8,000.00 paid prior to filing. As reflected in that document and in the Bankruptcy Rule 2016 (b) disclosure statement, applicant and the debtor agreed that the initial fee for legal services and expenses in connection with this Chapter 13 case would be \$8,000.00. To date, fees in the amount of \$0.00 has been paid by the Chapter 13 Trustee through the debtors Chapter 13 plan.

The services include but are not limited to general correspondences, emails, telephone calls, file reviews, amendments, other document review and drafting, responding and settlements to objections to Plan confirmation. After exercising reasonable billing judgment, the number of hours expended in this case for which applicant seeks additional compensation is 65.4 Attorney hours, 14.1 Paralegal hours and \$0.00 for reimbursement for expenses incurred. The

applicant's customary hourly rate for services is \$350 for senior attorney time with 20 years or more experience, \$250 for associate attorney time and \$150.00 for case manager/paralegal time.

1) 341 Hearing - Related to representing debtor at 341 hearing.

a. Associate Attorney Hours : 1.0 hours (\$250.00/hour) = \$250.00

b. Paralegal Hours : 0.0 hours (\$150.00/hour) = \$0.00

c. Expenses = \$0.00

= \$250.00

2) Case Administration - General communication with clients, trustee and creditors.

a. Associate Attorney Hours : 1.6 hours (\$250.00/hour) = \$400.00

b. Paralegal Hours : 0.0 hours (\$150.00/hour) = \$0.00

c. Expenses = \$0.00

= \$400.00

3) Conversion/ Dismissal - Related to Opposing Motion to convert case filed by creditor in this case.

a. Associate Attorney Hours : 1.5 hours (\$250.00/hour) = \$375.00

b. Paralegal Hours : .08 hours (\$150.00/hour) = \$160.00

c. Expenses = \$0.00

= \$535.00

4) Fee and Employment Application - Related to preparation of Employment Application of realtor to sell property and fees for preparing of this Motion.

a. Senior Attorney Hours: .1 hours (\$350.00/hour) = \$35.00

b. Associate Attorney Hours : 16.8 hours (\$250.00/hour) = \$4,200.00

c. Paralegal Hours : 0.0 hours (\$150.00/hour) = \$0.00

d. Expenses = \$0.00

= \$5,235.00

5) Plan, Plan Confirmation - Related to preparing and amending Plans, responding to objections to Plans and significant client and creditor communication to settle plan provisions.

a. Associate Attorney Hours : 30.9 hours (\$250.00/hour) = \$7,725.00

b. Paralegal Hours : 11.2 hours (\$150.00/hour) = \$1,675.00

c. Expenses = \$0.00

= \$9,400.00

6) Sale of Assets, Abandonment - Related to preparation of Motion to Sell real estate, communication with lender, title company and creditor to finalize the

sale

- a. Associate Attorney Hours : 13.2 hours (\$250.00/hour) = \$3,300.00
- b. Paralegal Hours : 1.2 hours (\$150.00/hour) = \$180.00
- c. Expenses = \$0.00  
= \$3,480.00

7) Schedules - Related to amending debtor' schedules post-341 hearing

- a. Associate Attorney Hours : .5 hours (\$250.00/hour) = \$125.00
- b. Paralegal Hours : 0.8 hours (\$150.00/hour) = \$120.00
- c. Expenses = \$0.00  
= \$245.00

In response to the Opposition, Movant agrees to reduce the initial request for fees from \$19,535.00 as follows:

- Preparation of this fee application reduced from \$2625.00 to \$836.00;
- Reduce entry on 4/22 regarding summarizing to senior attorney by 50% from \$375.00 to \$187.50;

Therefore Movant agrees to reduce the fee application by \$1,976.50 to \$17,558.50. In addition, since Movant has provided free work to debtor for pre-petition work, the initial \$7,500 retainer is available to reduce the total due to \$10,058.50.

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

Fees	\$10,058.50
Costs	\$0.00

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 C. Anthony Hughes ("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 C. Anthony Hughes is allowed the fees in the amount of \$10,058.50 and costs in the amount of \$0.00 as a professional of the Estate.

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2. [15-29405](#)-C-13 RHONDA SIMS  
AFL-1 Ashley Amerio

CONTINUED MOTION TO VALUE  
COLLATERAL OF MOAD, LLC  
1-11-16 [[17](#)]

Thru #4

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 11, 2016 Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of MOAD, LLC, "Creditor," is.....**

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3073 Suisan Bay Road, West Sacramento, California. The Debtors seeks to value the property at a fair market value of \$356,589 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 (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$370,644. MOAD, LLC's second deed of trust secures a loan with a balance of approximately \$140,334. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

#### **Creditor's Objection**

MOAD, LLC, Creditor, objects to Debtor's Motion to Value, estimating

the value of the subject property is greater than estimated and that the amount owed to the senior lien holder is less than estimated. Creditor has retained a licensed appraiser to value the property, but to date, Creditor has not been able to obtain access to the property from debtor. Creditor has ordered an updated payoff from the senior lienholder and upon receipt will be in a better position to evaluate and respond to Debtor's motion.

### **Discussion**

At the hearing held on February 9, 2016, Creditor informed the court that an appraiser was granted access to the property that day. The court continued the matter to allow the appraisal to be completed and to allow for an accounting of the debt owed.

At the hearing on the Motion, the court will inquire as to appraisal and accounting outcomes.

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' 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 Motion to Value Collateral filed by  
Debtors, having been presented to the court,  
and upon review of the pleadings, evidence,  
arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion pursuant to  
11 U.S.C. § 506(a) is . . .

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 9, 2016. Fourteen days' notice is required. That requirement was met.

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

1. The plan relies on a pending motion to value.
2. Debtor is \$4,600 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,600 is due on February 25, 2016. Debtor has paid \$0.00 into the plan to date.

#### **Trustee's Update**

The Trustee reports that the delinquency has been cured.

#### **Discussion**

The court will make a decision on the motion to value collateral set for hearing on this date and correspondingly decide the Objection at that time.

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 . . .

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4. [15-29405](#)-C-13 RHONDA SIMS  
MMW-1 Ashley Amerio

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY MOAD  
LLC  
1-7-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 7, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The court's decision is to . . .**

Creditor Moad, LLC opposes confirmation of the Plan on the basis that:

1. The Plan fails to provide for the secured claim of Moad, LLC.
2. Debtor has not filed schedules to support her ability to make the proposed plan payment.

**Discussion**

The Plan relies on the motion to value collateral of Moad, LLC. At the hearing on the motion to value held on February 9, 2016, the court continued the hearing to March 15, 2016 at 2:00 p.m. The court continued the hearing on the matter to the same date.

The court will make a decision on the motion to value collateral set for hearing on this date and correspondingly decide the Objection at that time.

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 Moad, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is . . .

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5. [15-29905](#)-C-13    MICHAEL/LA QUITA WALLACE    OBJECTION TO CONFIRMATION OF  
DPC-1                   Rick Morin                   PLAN BY DAVID P. CUSICK  
2-10-16 [[14](#)]

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 10, 2016. Twenty-eight days' notice is required. That requirement was met.

The Objection to the Plan 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 court's decision is to overrule the Objection.**

The Chapter 13 Trustee has withdrawn the Objection.

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 overruled.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors are \$1,873.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,873.00 is due before the hearing. Debtor has paid \$0.00 into the plan to date.
2. The Plan mistates the amount paid to the Trustee to date.
3. The Trustee is uncertain of the Debtors' ability to make the plan payments as the most recent Schedule I was filed in 2013.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 10, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor did not appear at the First Meeting of Creditors held on February 4, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$6,430 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$6,430 is due before the hearing date. Debtor has paid \$0 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. 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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 14, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. It is not clear if the Debtor can make the payments under the plan because the Debtor's monthly net income is negative \$638.24.

The court has considered the Trustee's concerns and finds them legitimate. 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2016. 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.**

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor did not appear at the First Meeting of Creditors held on December 10, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$4,680 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,680 is due before the hearing date. Debtor has paid \$14,040 into the plan to date.
3. Debtor did not provide Trustee with required business documents. 11 U.S.C. § 521(e)(2)(A)(1).
4. The plan does not provide for the secured second mortgage on Debtor's primary residence.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2016. 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.**

**Creditor's Opposition**

Secured Creditor Harley-Davidson Credit Corp. opposes confirmation on the following grounds:

1. The amended schedule J has a monthly net income of \$125.87, but the monthly plan payments are \$125.00. Debtor may not be able to afford the plan payments.
2. The plan fails to provide for creditor's secured claim. Debtor claims to have surrendered the Collateral, but Creditor is not in possession of the collateral.

**Discussion**

As Creditor's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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11. [15-27421](#)-C-13 REBECCA FRESNOZA  
TAG-5 Ted Greene

MOTION FOR COMPENSATION FOR TED  
A. GREENE, DEBTOR'S ATTORNEY  
2-11-16 [[85](#)]

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**Final Ruling: No appearance at the March 15, 2016 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. 28 days' notice is required. That requirement was met.

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Law Offices of Ted A. Greene, Inc., the Attorney for Debtors, ("Applicant") for Rebecca Fresnoza, ("Client"), makes an Request for the Allowance of Fees and Expenses in this case related to a short-sale.

Debtor's total fees for representation in her Chapter 13 Bankruptcy are \$4,000, with \$1,225 paid prior to filing and \$2,775 paid through the plan.

Applicant has represented Debtor in a short-sale. The Estimated Settlement Statement for the short-sale provides for a payment in the amount of \$2,000 to Law Offices of Ted A. Greene, Inc. for services rendered in negotiation of the short-sale with NATIONWIDE MORTGAGE and CITI MORTGAGE (Exhibit B - Estimated Settlement Statement / HUD-1). These funds are paid from escrow by the buyer of the property, not by the Debtor, as stated in provision #2 of the Addendum (Exhibit C - Addendum) and D(8) of the Residential Purchase Agreement (Exhibit D - Residential Purchase Agreement).

The payment is not for any service related to the bankruptcy, but only for the short-sale negotiations, and will have been earned after successful negotiation and close of escrow. Law Offices of Ted A. Greene, Inc. customarily charges 1% of the sale price as compensation for the short-sale negotiation, and these fees are generally paid by the buyer.



Debtor anticipates short-selling her property for \$200,000. The 1% fee for negotiation with the lender is \$2,000, and the interested buyer has agreed to pay those fees as part of the purchase of

#### **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.

The Chapter 13 Trustee filed a statement of nonopposition.

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 Law Offices of Ted A. Greene ("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 Law Offices of Ted A. Greene, Inc. is allowed the fees in the amount of \$2,000 and costs in the amount of \$0.00 as describe in the short-sale settlement.

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**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 18, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. It is uncertain whether all assets have been properly disclosed.
2. Debtor fails to fully explain the purpose and low price of a transfer of real property to her son.
3. The plan relies on a motion to value collateral.
4. The plan fails the chapter 7 liquidation analysis.
5. It appears that the plan is not Debtor's best efforts. Debtor's non-exempt assets total \$2,632.56, and the plan proposes a 0% dividend to unsecured creditors.

The court has considered the Trustee's concerns and finds them legitimate. 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.

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13. [15-29647](#)-C-13 JASON/SHELLY BELOTTI  
DPC-1 Richard Steffan

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-27-16 [[44](#)]

\*\*\*\*\*

**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 January 27, 2016. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors are above the median income, and it appears the Schedules are not accurate.

#### **DEBTORS' RESPONSE**

Debtor Jason Belotti filed a declaration in response to Trustee's objection to confirmation, providing that the reason Trustee objected to the plan was because between the time of filing their case and the date of the meeting of creditors, Debtor changed employment and the Trustee wanted to ensure that all disposable income was being submitted to our plan. However, Debtor Jason Belotti provides that being a new employee, his employment was terminated and therefore there has been no increase in their income to submit to their plan. Debtors urge the court to confirm the plan as Debtor Shelly Belotti is employed, Jason Belotti is actively seeking employment,

and they can afford the plan payment by receiving temporary unemployment benefits and using the exempt net proceeds of the sale of their home which is pending court approval by motion, Dckt Control No. RDS-4, set for hearing on March 22, 2016.

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

Trustee replies to Debtors' response, stating that Trustee's objection was based on whether Debtors could make plan payments under 11 U.S.C. § 1325(a)(6) based on his 341 testimony of a job change so that the current schedules do not reflect the current monthly income.

Debtor now indicates that his new employment has been terminated, yet Debtor still seeks confirmation of the plan as Debtor Shelly Belotti is employed and Debtor Jason Belotti will receive unemployment benefits, and Debtors will use the exempt proceeds from the sale of the residence, from which Debtors expect to receive \$18,640.50.

However, Debtor's declaration does not indicate how much Debtor will receive in unemployment benefits or when that income will commence. The original schedules listed job gross income for Jason Belotti as \$2,612.50, and the schedules have not been amended. The plan calls for plan payments of \$700 per month for 60 months, calls for the residence to be surrendered, and does not call for the proceeds of a property sale to be paid into the plan. The estimated proceeds from the residence will be exhausted in 8 months without the unemployment benefits or other income.

#### **DISCUSSION**

Trustee has raised a valid objection as to the confirmability of the plan, and the court is highly concerned as to how Debtors expect to make consistent plan payments. The court notes that the Motion to Sell Debtors' residence is on calendar for hearing on March 22, 2016 at 2:00 p.m., Dckt. Control No. RDS-4. However, even assuming the sale is approved and Debtors receive the exempt net proceeds, as described by Debtors' declaration and representations therein, Debtor Jason Belotti has no form of income at this time (the declaration did not provide that Debtor Jason Belotti's unemployment benefits have commenced), and asks the court to confirm a plan on vague statements that temporary unemployment benefits will aid in making plan payments (which was presumably drafted under the premise that the household would have two solid incomes), without stating if these unemployment benefits are certain or how much he would receive. Furthermore, a quick look at the court docket reflects that Trustee is correct in pointing out that no amendment to Debtors' schedules have been filed to reflect their current monthly income, which has changed according to the submitted declaration of Debtor. The court is not convinced Debtors are able to make plan payments under 11 U.S.C. § 1325(a)(6).

The court has considered the Trustee's concerns and finds them legitimate. 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.

\*\*\*\*

14. [15-29750](#)-C-13 MARIA RAMAGOZA  
DPC-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
2-10-16 [[28](#)]

DEBTOR DISMISSED: 02/18/2016

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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The case having previously been dismissed, the Objection is 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 the plan by Chapter 13 Trustee, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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Also #16

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. 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.**

#### **CHAPTER 13 TRUSTEE OBJECTION**

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

1. The plan fails to indicate if Debtor's attorney will seek court's approval by complying with LBR 2016-1(c) or filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. The plan does not provide a monthly dividend to be paid to Debtor's attorney's fees.
2. The plan does not provide a monthly dividend to pay class 1 mortgage arrears to First U.S. Community Credit Union.
3. Trustee's Objection to Confirmation, DPC-1, was heard and sustained on November 17, 2015. The amended plan fails to address paragraphs #3 and #4 of the objection:
  - a. The plan does not appear to be Debtor's best efforts under 11 U.S.C. § 1325(b). The Debtor is over the median income and proposes plan payments of \$200 for 4 months then \$700 for 56

months with a 0% dividend to unsecured creditors. Form B22C reflects monthly disposable income of \$1,281.22 for 60 months, this totals \$76,873.20 however Debtor proposes to pay \$0.00 to unsecured creditors. Debtor has failed to propose to pay his income tax refund into the plan. The Debtor received a tax refund of \$5,332 for his 2014 taxes.

- b. It appears the plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt assets total \$5,577 and the Debtor is proposing a 0% dividend to unsecured creditors.

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

Creditor, First U.S. Community Credit Union, opposes the first amended plan on the following basis:

1. The plan does not provide for an adequate monthly contract installment amount.
2. The plan is inaccurate with regard to the current amount of arrears.
3. The plan does not designate an arrearage dividend.
4. The plan does not designate a monthly amount for administrative expenses, specifically attorney's fees.
5. The plan likely will not be feasible once the Debtor's payments change to include principal and interest in July 2017.
6. Finally, Creditor urges the court to deny Debtors any further opportunity to submit further plans to the court as this is their fourth attempt in 2 cases to submit a plan that has not been confirmed.

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

Debtor responds to Trustee and Creditor's oppositions.

First, Debtor replies to the opposition to Creditor, First U.S. Community Credit Union.

1. Debtor asserts that the cause of miscalculating adequate monthly contract installment amounts is due to the delay of Creditor in filing an updated or amended proof of claim prior to Debtors filing their amended plan. Debtors believe it was feasible for creditor to have filed this long before the amended plan was prepared and filed. In fact, several communications took place between Debtors' counsel and Creditor's counsel during the month of December in which Creditor several times requested an amended plan be filed. However, Creditor did not present any suggestion or estimation of their increased fees during that time.
2. Debtor asserts that a recently filed motion to employ will be designed around the sale of certain parcels of undeveloped real property during the course of the plan. If necessary, those funds will be used to either supplement income or pay down the principle of debt owed to Creditor.

3. Debtor asserts that the request by Creditor to deny Debtors any further opportunity to confirm a plan is not only counter to the rights of amendment allowed to Debtor, but also disingenuous based on Creditor's own behavior, and is a thinly veiled attempt to relitigate the court's decisions made during a motion to extend automatic stay.
4. Debtors respond to Creditor's claim that the "contract" payment of \$300 is a misstatement of their declarant's information. However, the "contract" amount of \$300 is based on the declaration of Ms. Otter, and it should be noted that the monthly mortgage is variable, which is adjusted on a regular basis. Creditor has no way of knowing how the market will fluctuate during a 5 year period and so to note that it has "generally gone up" is little more than guess work.
5. Debtors concede that the additional provisions do not provide for the attorney dividend with enough clarity nor the arrear dividend. Debtors will need and submit an amended plan to correct this.

Debtors submit the following response to Trustee's opposition:

1. Some portion of the additional provisions were inadvertently left off the plan. Debtors plan to correct this.
2. Debtors assert that the best efforts objection was based on the original means test that was filed. however since the holding that the second mortgage is secured by the property, the means test needs to be amended and that will be filed with the aforementioned amended plan.
3. Debtors' next amended plan will reflect and reassess the liquidation and account for the minor fluctuation.
4. The tax refund funds that existed in the bank account as disclosed include the refund from the 2014 taxes.
5. Debtors assert that the objection should be sustained and reasonable time for an amended plan be afforded to debtor to cure these defects.

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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2016. 14 days' notice is required. That requirement was met.

The Motion to Employ 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 Employ is granted.**

Debtor, Robert Claycamp, seeks to employ Realtor John Oliver to assist the Debtor in carrying out his duties in this case, in particular, to sell and market two real properties commonly known as:

6215 S HWY 95A S2 PAR, Silver Springs, Nevada.

2695 Ft. Churchill Road, Silver Springs, Nevada.

The Debtor argues that Realtor's employment is necessary to aid Debtor in carrying out his duties in this case, to list, market and negotiate the sale of the aforementioned real properties in Nevada.

John Oliver, a licensed real estate broker, testifies that he has substantial experience in marketing and sale of real estate in Nevada, and that pursuant to agreement with Debtor, he will review the history of

ownership of the properties and provide due services, and that he does not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including Realtors, to represent or assist in carrying out duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 330(a) authorizes, with court approval, that reasonable compensation for actual, necessary services rendered by a professional person may be awarded reasonable compensation and reimbursement for actual and necessary expenses.

Taking into account all of the relevant factors in connection with the employment and compensation of Realtor, considering the declaration demonstrating that Mr. Oliver does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Realtor John Oliver on the terms and conditions set forth in the Listing Agreement filed as Exhibit B, Dckt. 134. The approval of the sales commission fee is subject to the provisions of 11 U.S.C. § 330(a).

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 Employ filed by the Chapter xx Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted and the Debtor is authorized to employ John Oliver as realtor for the Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit B, Dckt. 134.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 20, 2016 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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 10, 2016. Fourteen days' notice is required. This requirement was met.

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

1. Debtor proposes to pay Ocwen Loan Servicing, LLC ongoing mortgage payments of \$2,199 and mortgage arrears of \$30,388. Debtor fails to propose a monthly dividend toward the arrears but instead in section 6.01 proposes a pro rata dividend. Based on the Trustee's plan calculation it appears the monthly dividend should be no less than \$506.47 to pay off the arrears within 60 months, but Trustee is not aware as to what dividend the Debtor seeks.
2. Debtor has not provided the Trustee with business documents, which are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Debtor and counsel for Debtor were mailed a business questionnaire and a list of business required on January 11, 2016.

3. Debtor cannot make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Trustee is unable to determine if the Debtor has the ability to make plan payments due to his own statements at the 341 meeting held on February 4, 2016. Debtor admitted that he has not earned income from his corporation in the last 6 months. On Schedule I debtor lists on line 8h his projected future income \$5,890 per month. Debtor indicates this income will be derived from commissions earned on real estate transactions. Debtor did say he currently has pending escrow.

#### **DEBTOR'S REPLY**

Debtor replies to Trustee's objection to plan, providing:

1. The Additional Provision was added to delay the payment of a dividend toward mortgage arrears for the first 4 months of the plan. As a result, the amount of mortgage arrears \$30,388, would be paid over 57 months instead of 60 months. That would call for a dividend of \$534 commencing month 4 of the plan as set forth in the additional provisions. Debtor proposes to add that specific dollar amount to the order confirming plan to clarify this point.
2. Debtor asserts he gave to Trustee at the 341 meeting the information that Debtor is an independent contractor employed as an independent broker for a corporation in which he holds 50% of the shares. Debtor has provided the tax returns of the corporation for which he has an interest to the Trustee. Debtor has provided his personal income tax returns as requested by Trustee. Although Debtor is "in business" and derives his income only to the extent that he is an independent contractor for the corporation, as he testified at the Meeting of Creditors, he will forthwith prepare a business questionnaire and send it to Trustee.
3. Debtor restates his testimony at the 341 meeting that he has not had income for more than 6 months preceding the filing of the case, but that he has real estate listings and escrows, so thereby expects his earnings to normalize throughout the next few months so that he can make the proposed plan payments. He has made all plan payments that have come due.

#### **CHAPTER 13 TRUSTEE RESPONSE**

Chapter 13 Trustee responds to Debtor as follows:

1. Debtor's reply satisfies the Trustee projecting equal payments to the arrears claim of \$534 for 57 months starting in month 4, and Trustee believes this satisfies the equal payment requirement of 11 U.S.C. § 1325(a)(5)(iii)(I).
2. Trustee in part questioned Debtor's ability to make plan payments due to his own statements at the 341 meeting and lack of business documents. Debtor merely restates his 341 testimony. No verification of Debtor's income in the amount of \$5,890 has been provided to Trustee to file with the court. Trustee is still unable to determine if the Debtor has the ability to make the plan payments based on historic performance of the last two years.



## DISCUSSION

Debtor has provided an explanatory explanation to Trustee and to the court as to Trustee's first issue of the arrearages owed and the specific monthly payment due on the mortgage arrears. However, the court is concerned that Debtor has not provided to Trustee the necessary documentation in order to determine if Debtor can consistently make plan payments, despite repeated requests from Trustee that Debtor do so. Trustee's remaining concerns having not been resolved, and the court and Trustee being unable to determine if Debtor is able to make plan payments by way of valid documentation, the Trustee's objection will be sustained.

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.

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. 42 days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the Motion to Confirm the Plan to April 5, 2016 at 2:00 p.m.</b>
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Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the following basis:

1. While Debtors do not explain in the motion the reason for an amended plan, the original plan was denied confirmation on December 20, 2015, Dckt. 28. Trustee makes much the same objections here as he made previously, Dckt. 28.
  - a. Debtor Thomas Boyes did not appear at the first meeting of creditors on November 19, 2015. Debtor Becky Boyes appeared, stating her power of attorney for Mr. Boyes, however Trustee believes Becky Boyes cannot testify as to Thomas Boyes' personal knowledge. The meeting was continued to January 7, 2016, and has since been continued to March 3, 2016.
  - b. Debtors' plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$31,318.36 and Debtor proposes to pay unsecured creditors 0%. Furthermore, Debtor's first amended plan filed January 19, 2016 reduces the percentage to unsecured creditors from 1% to 0%. Debtor has not resolved the liquidation analysis. While Debtors had previously responded that the plan would provide 100% to unsecured, the prior plan did not guarantee

it, this plan has a reduced minimum percentage to unsecured, and Trustee does not agree with the calculations.

- c. Trustee previously objected on the basis that Debtors' plan relies on a motion to value the collateral of Wheels Financial Group listed in Class 2B. In this plan, Debtors do not propose to value the collateral of this creditor possibly based on the ruling denying the prior motion. Trustee objects to this treatment as unfairly discriminating against the general unsecured in favor of the unsecured claim of Wheels Financial Group. Wheels Financial Group has filed a claim with a secured and an unsecured part. Presumably this claim is correct because the claim is not a "purchase money security interest," and thus the prohibition in the hanging paragraph of 11 U.S.C. § 1325(a)(5) does not apply. Creditor was correct when they filed their claim

#### **DEBTOR'S REPLY**

Debtors respond to Trustee's basis for opposition by providing the following:

1. Debtors are amending the plan to deal with the Wheels Financial debt that was originally objected to as not subject to 11 U.S.C. § 506.
2. Debtors missed the continued March 3, 2016 meeting due to calendaring errors, however intend to appear at the continued date on March 31, 2016. Debtor states they are up to date with payments and understand their need to appear at the continued meeting.
3. Debtors state that although their budget is lean, it provides 100% to unsecured creditors and that the plan text states 0% is a mistake. Debtors' plan payment is \$3,400 per month for 60 months. Because this plan is a 100% payment to unsecured creditors, the liquidation text only results in the same outcome of 100%, the Debtors are not required to pay more than 100% to the general unsecured creditors.
4. Debtors' previous attempts to value the collateral of Wheels Financial Group was denied, and a motion to value would result in a claim that is partially secured and partially unsecured. The unsecured portion would then attach to class 7 and still be paid 100%. Therefore it is an unnecessary exercise to divide the claim when either treatment will still result in 100% payment of the debt.

#### **DISCUSSION**

The court notes that the continued meeting of creditors was continued to March 31, 2016. The Debtors have now missed two 341 meetings, and if Debtors again fail to appear at the next continued meeting of creditors, the court will dismiss the case.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to April 5, 2016 at 2:00 p.m.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2016. 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.**

**CREDITOR OPPOSITION**

The Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmbs, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., ("Creditor") opposes Debtor's motion on the basis that:

1. Creditor's claim is secured by a priority first deed of trust recorded against real property commonly known as 2652 Roxby Way, Roseville, California. At the time of filing the petition, arrearages were owed in the amount of \$35,725.34. Debtor's plan does not provide for the full amount of arrears owed, only for \$24,000.
2. Debtor does not show how Debtor expect to make all payments under the plan or comply with the plan. Debtor is to make monthly payments of \$3,875, however Debtor has a net monthly income of \$3,875.13. This amount will be insufficient to pay for the plan once the full amount of arrears owed on Creditor's claim is accounted for.

**CHAPTER 13 TRUSTEE OPPOSITION**

Chapter 13 Trustee opposes confirmation on the basis that:

1. Debtor cannot afford to make plan payments, 11 U.S.C. § 1325(a)(6).
  - a. Debtor's plan changes treatment of IRS claim from a class 2 creditor to a class 4 creditor with a monthly contract installment of \$75.00. Debtor's motion to confirm states debtor will continue paying the IRS \$75.00 per month directly pursuant to the prepetition agreement with the IRS. No verification of any prepetition agreement has been provided to Trustee. It is not clear if the IRS has agreed to receive \$75.00 per month.
  - b. Debtor's plan relies on a motion to value collateral, which to date has not been filed.
2. Debtor's plan specifically states \$2,000 in attorney's fees were paid and an additional \$3,000 shall be paid through the plan. Disclosure of attorney compensation also shows that \$5,000 in attorney fees have been charged in this case. However, only \$4,000 is allowed through routine procedure if this is a non-business case.
3. Debtor failed to use the correct median family income on lines 16c and 20c. The median family income figures were updated effective for cases filed on or after November 1, 2015.
4. Debtor failed to provide proof of his social security number at the first meeting of creditors held on February 4, 2016.

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.

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21. [16-20373](#)-C-13 BOATAMO MOSUPYOE  
DEF-2 David Foyil

MOTION TO VALUE COLLATERAL OF  
PORTFOLIO RECOVERY ASSOCIATES  
2-12-16 [[19](#)]

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 12, 2016. Twenty-eight days' notice is required. This requirement was met.

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

<b>The Motion to Value secured claim of Portfolio Recovery Associates, LLC, "Creditor," is granted.</b>
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The Motion filed by Boatamo Mosupyoe ("Debtor") to value the secured claim of Portfolio Recovery Associates, LLC, ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Saturn Aura ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000 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 lien on the Vehicle's title secures a purchase-money loan incurred in September 1, 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,800. 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 \$3,000. *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 Boatamo

Mosupyoe ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Portfolio Recovery Associates, LLC, ("Creditor") secured by an asset described as 2007 Saturn Aura ("Vehicle") is determined to be a secured claim in the amount of \$3,000, 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 \$3,000 and is encumbered by liens securing claims which exceed the value of the asset.

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**Final Ruling:** No appearance at the March 15, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' plan will take 69 months to complete. The proposed plan pays 28% to unsecured creditors. Unsecured claims filed total \$217,397.62. The Trustee has disbursed \$18,640.41 to unsecured creditors. \$42,230.92 remains to be paid unsecured creditors. Secured creditors are due a total of \$84.07 plus interest. Approximately \$42,314.99 remains to be paid through the plan. The proposed plan payment of \$1,401 is \$1,329.54 net of Trustee fees. 32 months remain in the plan. Debtors have completed 37 months through January 2016.
2. Debtors' proposed plan and declaration are not consistent. The Debtors' motion states 15% is to be paid unsecured creditors while the plan and declaration state 28%. Debtors' declaration states the monthly plan payment will be \$2,130 while the plan and motion states \$1,401.
3. Debtors' declaration states in item 20 that Debtors will turn over

all future bonuses received. This is not included in the proposed plan which has no additional provisions, although this indicates additional provisions are appended to the plan.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's opposition, providing:

1. Debtors' plan is feasible. As reflected by Trustee, the unsecured claims require \$42,230.92 while the secured requires \$84.07 for a total needed of \$42,314.99 with a net Trustee fees of \$1,329.54 for 22 more months, leaving a balance of \$1,655.91 plus Trustee fees remaining to be paid from Debtors' future bonuses.
2. Debtors' plan has paid out 28% and will remain at 28%. Debtors originally attempted to make a budget at \$2,130 including the bonus checks within the monthly income. However given the irregularity, Debtors will turn over all bonus checks, which are needed to total \$1,655.91 to be feasible in this plan.
3. Debtors agree to turn over all bonuses, and the appropriate language can be included in the order modifying plan.

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

On March 10, 2016, Chapter 13 Trustee filed a response stating that Trustee had received a proposed order modifying which resolves the Trustee's opposition. The proposed order provides: (1.) plan payments shall be \$1,401 per month effective January 2016; (2.) Debtors are to turn over Trustee any and all future bonuses; and (3.) general unsecured creditors are to receive no less than 28%. Trustee requests the court grant 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 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, and the plan filed on January 15, 2016 is confirmed. Counsel for Debtors has transmitted the proposed order with clarifying language to the Chapter 13 Trustee for approval as to form, and which Trustee has approved, the Chapter 13 Trustee will submit the proposed order to the court.

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23. [16-20090](#)-C-13 INGRID HONRADO  
BF-1 Scott Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
N.A.  
1-28-16 [[13](#)]

Also #24

**Final Ruling:** No appearance at the February 9, 2016 hearing is required.  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

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

Creditor, JPMorgan Chase Bank, N.A., is holder of a claim secured by a security interest in real property commonly known as 7111 14th Avenue, Sacramento, California, Debtor's principal place of residence. The total amount due and owing under the promissory note is approximately \$285,259.16 and the pre-petition arrears amount to \$49,982.10. Creditor opposes confirmation of the Plan on the basis that Debtor's plan understates the amount of pre-petition arrears owed to Creditor, and as such Debtor's plan does not provide for the cure of the full amount of the pre-petition default owed, and the plan cannot be confirmed under 11 U.S.C. §§ 1322(b)(5) or 1325(a)(5).

On February 26, 2016, the Debtor filed an amended plan and accompanying Motion to Confirm Amended Plan. Dckts. 24 and 27. The hearing on the Motion is set for April 12, 2016 at 2:00 p.m.

The Creditor's objection is well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on January 8, 2016. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the January 8, 2016 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 filed on January 8, 2016 is not confirmed.

**Final Ruling:** No appearance at the February 9, 2016 hearing is required.  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

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

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtor's plan proposes unfair discrimination as to general unsecured creditors, 11 U.S.C. § 1322(b)(1). Debtor's plan proposes to pay no less than 0% to general unsecured creditors. According to the claim filed by Ford Motor Credit, Claim 1, regarding a 2011 Ford Escape purchase on 10/07/2010 with no co-buyer, this appears to be a debt that can be valued where the Debtor estimates the value on Schedule D as \$5,000. It appears this creditor should be listed in Class 2B of the plan, not Class 2A.

On February 26, 2016, the Debtor filed an amended plan and accompanying Motion to Confirm Amended Plan. Dckts. 24 and 27. The hearing on the Motion is set for April 12, 2016 at 2:00 p.m.

The Trustee's objection is well-taken. Additionally, the Debtor filing a new plan acts as a de facto withdrawal of the original plan filed on January 8, 2016. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the January 8, 2016 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 filed on January 8, 2016 is not confirmed.

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**Tentative Ruling:** The Motion to Extend Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(3).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 4, 2016. While generally at least fourteen days' notice is required, for good cause, the court granted an order shortening time, requiring fewer than fourteen days' notice. Movant has submitted, and the court has granted, an order to shorten time on this matter.

The Motion to Extend Automatic Stay was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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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<b>The Motion to Extend the Automatic Stay is granted.</b>
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James Lee Perry and Lori Jean Perry ("Debtor") 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. 13-28280) was dismissed on January 21, 2016, after Debtor fell behind in plan payments. See Order, Bankr. E.D. Cal. No. 13-28280, Dckt. 106, January 21, 2016. 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. Specifically Debtor states that they fell behind in plan payments because Debtor James Perry is the sole money earner for the family, and James had two eye surgeries and fell ill with a prostate infection causing them to become delinquent in plan payments. Since the last case was dismissed, Debtors provide that their circumstances have changes and James has recovered from the surgeries and infection and back to work. Debtors state they have not acquired any new debt since the previous case, and Debtors have presented a workable plan that they are confident they will be able to make plan payments on.

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.

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