**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Chief Bankruptcy Judge
Sacramento, California

**March 22, 2016 at 3:00 p.m.**

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**1. 14-28302-E-13 SHEILA RAY**
**MMM-2 Mohammad Mokarram**

**CONTINUED MOTION TO APPROVE LOAN MODIFICATION**
**1-28-16 [36]**

**Cont from 2/23/16**

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

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

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

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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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

**The Motion to Approve Loan Modification is further continued to 3:00 p.m. on xxxxxxxx, 2016 - with the court issuing a separate order for representatives of Bank of America, N.A. and Deutsche Bank National Trust Company, as Trustee to appear.**

The Motion to Approve Loan Modification filed by Sheila Ray ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,100.19, which includes the principal, interest, and estimated escrow payments. The modified principal balance is $288,534.03.

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

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on February 9, 2016. Dckt. 41. The Trustee states that he does not oppose the modification since it appears to be in the best interest of the Debtor. However, the Trustee notes that the loan modification is offered by Bank of America, N.A.

The Trustee states that Proof of Claim No. 1, filed on October 14, 2015, reports the creditor to be Deutsche Bank National Trust Company, as Trustee Under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1. The Proof of Claim indicates that Bank of America, N.A. is the servicer.

A review of the information and the Proof of Claim shows that Bank of America, N.A. is not, in fact, the creditor but rather that “Deutsche Bank National Trust Company, as Trustee Under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1" is the actual creditor. Even as of July 14, 2015, with the Notice of Mortgage Payment Change, Bank of America, N.A. indicates that it is the authorized agent of the actual creditor, here being Deutsche Bank National Trust Company as Trustee. Nothing in the Proof of Claim nor the Motion provides the grounds for Bank of America, N.A. to offer a loan modification on behalf of the real creditor.

The court will not authorize a loan modification when the real creditor is not named or when the agent of the creditor does not provide evidence that they are authorized to enter into loan modification on behalf of the real creditor.

While the court agrees with the Trustee and the Debtor that it appears that the loan modification would be in the best interest of the Debtor, the court will not authorize a “maybe effective” loan modification without the real creditor or a party with authority to do so, is presented.

**FAILURE TO PROVIDE A BASIS FOR EXERCISE OF FEDERAL JUDICIAL POWER**

The requirement to have the actual parties, with the actual rights, and the actual interests before the federal court is a long standing federal principle – dating back to the enactment of the Constitution itself. U.S. Const. Article III, Sec. 2. The federal courts are not a forum for the theoretical or one in which parties who do not have rights attempt to litigate on behalf of others who are not before the court (with limited exceptions to this rule, such as class action and other special representative proceedings authorized by Congress). Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9th Cir. 2006); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

The standing requirement is not merely a "procedural issue," but a fundamental requirement arising under the Constitution.

Though this court has clearly addressed this issue for more than five years, it is still presented with motions such as this which seek relief against mere "place holder opponents," and not the real party in interest whose rights and interests are the subject of the action. This can lead to horrific events for a debtor (and the debtor's counsel and professional liability insurer) in this type of setting when no relief is obtained with respect to the real party in interest. At best, after tens (if not hundreds) of thousands of dollars of litigation, the debtor (and debtor's counsel and professional liability insurer) might be able to prove that the relief was obtained for purposes of an undisclosed principal, and that such determination should be binding on good faith purchasers of the note years later. FN.1.

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FN.1. This risk and liability of litigating against a "place holder opponent" becomes even more stark when one considers the misidentification occurring in connection to motions to value secured claims (11 U.S.C. § 506(a)) for purposes of a "lien strip" or an objection to claim.

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Here, in reviewing the Proof of Service, it is clear that Deutsche Bank National Trust Company has not even been effectively served with the Motion and supporting pleadings. Dckt. 40. Debtor purports to have served a Richard Bauer in Santa Anna, California as being effective service on the actual creditor who is to be the party to the Motion. While Mr. Bauer is an attorney who represents Deutsche Bank National Trust Company in this bankruptcy case, there is no showing that he is the authorized agent for Deutsche Bank National Trust Company.

As noted by the Chapter 13 Trustee, Proof of Claim No. 1 clearly identifies Deutsche Bank National Trust Company, as Trustee, is the creditor having the claim in this case. That Proof of Claim was filed on October 14, 2014, well in advance of the filing of the present Motion on January 28, 2016.

Additionally, Deutsche Bank National Trust Company or its counsel has appeared in this case on several occasions: (1) August 20, 2014, request for special notice (by counsel Richard Bauer); (2) October 13, 2014, request for special notice (by counsel Alan Wolf, whose law firm appears to have replaced that of Mr. Bauer's); (3) December 10, 2014, Notice of Mortgage Payment Change (executed by an AVP of Bank of America, N.A. as the agent for Deutsche Bank National Trust Company, as Trustee; and (4) April 28, 2015, Notice of Mortgage

Payment Change (executed by an AVP of Bank of America, N.A. as the agent for Deutsche Bank National Trust Company, as Trustee.

**MISIDENTIFICATION OF CREDITOR IN LOAN MODIFICATION AGREEMENT**

However, the Loan Modification Agreement filed in support of the Motion does not purport to modify a loan with Deutsche Bank National Trust Company, as Trustee, but only modify some loan with Bank of America, N.A. Exhibit "Unnumbered," Dckt. 39. This Agreement appears to have been prepared by Bank of America, N.A. on Bank of America forms.

The cover page (Page 1 of 12) is titled "Modification Agreement (Servicer Copy)." On the first page of the Agreement (Page 2 of 12), in the upper left hand corner it is stated that "This document was prepared by Home Retention Service, Inc."

The only parties to and the terms of this Agreement are summarized as:

A. Borrowers.....Sheila D. Ray

B. Lender.....Bank of America, N.A.

C. Bank of America, N.A. modifies the obligation to.....$308,410.91

D. Bank of America, N.A. modifies the interest to be paid for the obligation to.....2%, which increases to 4%.

E. The Agreement supercedes prior agreement with Bank of America, N.A. concerning modification of the obligation.

F. Sheila D. Ray agrees to pay Bank of America, N.A. all of the amounts due as amended by the Agreement.

G. Agreement is signed by Sheila D. Ray.

H. Agreement is signed by Bank of America, N.A., as a principal without disclosure of any authority to act as an agent.

On multiple prior occasions Bank of America, N.A. has executed Notices of Mortgage Payment Change stating that it is merely an agent and not the creditor. Proof of Claim No. 1 has not been amended and there is no assignment of Proof of Claim No. 1 to Bank of America, N.A.

While most likely there has been an "innocent" preparation of a document which purports to have the less sophisticated consumer debtor enter into a loan modification agreement with a bank which is not a creditor, proper loan modification documentation is required. On a more ominous note, such misidentifications could lead a secondary or tertiary debt buyer to deny that there has been any modification of the loan (or such misidentification is intentional to spring the ineffective modification on the less sophisticated consumer debtor after years of payment and the debtor creating a significant equity in the property of the bank).

**FEBRUARY 23, 2015 HEARING**

At the hearing, the court noted that it would not deny the Motion, which might be mis-perceived as an excuse for Deutsche Bank National Trust Company, as Trustee, and Bank of America, N.A. as an excuse to revoke the loan modification.

Therefore, the court continued the hearing on the Motion to 3:00 p.m. on March 22, 2016.

Further, the court stated in the civil minutes that:

A. The court shall conduct a further hearing on the Motion to Approve a Loan Modification filed by Debtor Sheila Ray and orders the following persons and their respective attorneys to appear at 3:00 p.m. on March 22, 2016, to address their respective issues relating to the Loan Modification Agreement presented to the court.

B. A senior management representative of Bank of America, N.A., with counsel of the Bank's choice, with personal knowledge of the purported loan modification with Bank of America, N.A. in this case, to appear and advise the court of the basis for Bank of America, N.A. entering into the Loan Modification Agreement with the Debtor in this case, which identifies Bank of America, N.A. as the creditor with the obligation being modified for a claim against the Debtor;

C. A senior management representative of Deutsche Bank National Trust Company, as Trustee Under The Pooling And Servicing Agreement Relating To IMPAC Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1 ("Deutsche Bank National Trust Company, as Trustee"), with counsel of the Trust Company's, with personal knowledge of the claim asserted by Deutsche Bank National Trust Company, as Trustee, in this case, the purported loan modification with Bank of America, N.A. in this case, and whether Deutsche Bank National Trust Company, as Trustee, continues to assert a claim in this case, is entitled to receive any payments on the obligation upon which Proof of Claim No. 1 is based, and if such claim and the obligation upon which it is based has been transferred to Bank of America, N.A.;

D. Written responses, supported by credible, admissible, properly authenticated evidence, shall be filed and served by Bank of America, N.A. and Deutsche Bank National Trust Company, as Trustee, respectively, on the Debtor, counsel for the Debtor, the Chapter 13 Trustee, and the U.S. Trustee (Sacramento Office, attn: Antonia Darling, Esq.), on or before March 15, 2016;

E. A modified Loan Modification Agreement, if any, naming the actual creditor who is entering into the contract to modify the loan with the Debtor in this case shall be filed and served on the above on or before March 15, 2016.

F. No telephonic appearances are permitted for the senior

management representative for Bank of America, N.A., Deutsche Bank National Trust Company, as Trustee, and their respective attorneys.

Unfortunately, the court failed to issue the above order.

**DISCUSSION**

To date, no supplemental papers have been filed by the Debtor nor any other party in interest.

As addressed above, purported Loan Modification Agreement states that a loan obligation owing by Debtor to ***Bank of America, N.A.*** is modified.

At the hearing, xxxxx

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

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

**CHAMBERS PREPARED ORDER**

The court shall issue an Order (not 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 court has been presented with a Motion to Approve a Loan Modification between Sheila Dianne Ray, the Chapter 13 Debtor, and Bank of America, N.A. Dckt. 36. However, the Loan Modification Agreement filed in support of the Motion does not purport to modify a loan with Deutsche Bank National Trust Company, as Trustee, but only modify some loan with Bank of America, N.A. Exhibit "Unnumbered," Dckt. 39. This Agreement appears to have been prepared by Bank of America, N.A. on Bank of America, N.A. forms.

The cover page (Page 1 of 12) is titled "Modification Agreement (Servicer Copy)." On the first page of the Agreement (Page 2 of 12), in the upper left hand corner it is stated that "This document was prepared by Home Retention Services, Inc."

The only parties to and the terms of this Agreement are summarized as:

A. Borrowers.....Sheila D. Ray

B. Lender.....Bank of America, N.A.

C. Bank of America, N.A. modifies the obligation to.....$308,410.91

D. Bank of America, N.A. modifies the interest to be paid for the obligation to.....2%, which increases to 4%.

E. The Agreement supercedes prior agreement with Bank of America, N.A. concerning modification of the obligation.

F. Sheila D. Ray agrees to pay Bank of America, N.A. all of the amounts due as amended by the Agreement.

G. Agreement is signed by Sheila D. Ray.

H. Agreement is signed by Bank of America, N.A., as a principal without disclosure of any authority to act as an agent.

However, notwithstanding Bank of America, N.A. being identified as the "Lender" and the party who has the claim in this case being modified, Proof of Claim No. 1 filed in this case tells a slightly different story. Proof of Claim No. 1 identifies Deutsche Bank National Trust Company, as Trustee as the creditor in this case having the claim which is to be modified under the Loan Modification Agreement. While not clearly identified as the loan servicer, Bank of American, N.A., Payment Processing, is listed as the name and address where the payments should be sent. It appears that Bank of America, N.A. is not the creditor and not the party who should be entering into the loan modification agreement as the principal with the Debtor, but Bank of America, N.A. is the loan servicer for the creditor – Deutsche Bank National Trust Company, as Trustee.

The Loan Modification Agreement, as presented to the court, does not purport to present the real parties in interest, with the claim rights and payment obligations before the court to have those rights adjudicated. U.S. Const. Art. III, Sec. 2. While Bank of America, N.A. could act for its principal, it has not in the Loan Modification Agreement as drafted.

While more dastardly and sinister motives for misidentifying the Deutsche Bank National Trust Company, as Trustee, as the party contracting with Debtor, the court initially takes the more charitable view that this may be an error caused when Home Retention Services, Inc. prepared the documents. Both Bank of America, N.A., as a loan servicer, and Deutsche Bank National Trust Company, as Trustee, have independently appeared in other cases in which the loan servicer and the real party in interest creditor were accurately identified.

Therefore, upon review of the Loan Modification Agreement, the relief sought by Debtor, the files in this case, and good cause appearing;

IT IS ORDERED that at 3:00 p.m. on May 3, 2016, at the continued hearing on the Motion to Approve Loan Modification;

A. A senior management representative of Bank of America, N.A.,

with counsel of the Bank's choice, with personal knowledge of the purported loan modification with Bank of America, N.A. in this case, to appear and advise the court of the basis for Bank of America, N.A. entering into the Loan Modification Agreement with the Debtor in this case, which identifies Bank of America, N.A. as the creditor with the obligation being modified for a claim against the Debtor;

B. A senior management representative of Deutsche Bank National Trust Company, as Trustee Under The Pooling And Servicing Agreement Relating To IMPAC Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1 ("Deutsche Bank National Trust Company, as Trustee"), with counsel of the Trust Company's, with personal knowledge of the claim asserted by Deutsche Bank National Trust Company, as Trustee, in this case, the purported loan modification with Bank of America, N.A. in this case, and whether Deutsche Bank National Trust Company, as Trustee, continues to assert a claim in this case, is entitled to receive any payments on the obligation upon which Proof of Claim No. 1 is based, and if such claim and the obligation upon which it is based has been transferred to Bank of America, N.A.;

C. A senior management representative of Home Retention Services, Inc., with counsel of the Home Retention Services, Inc.'s choice, with personal knowledge of the purported loan modification with Bank of America, N.A. in this case, to appear and advise the court of the basis for Bank of America, N.A. entering into the Loan Modification Agreement with the Debtor in this case, which identifies Bank of America, N.A. as the creditor with the obligation being modified for a claim against the Debtor;

D. Written responses, supported by credible, admissible, properly authenticated evidence, shall be filed and served by Bank of America, N.A., Deutsche Bank National Trust Company, as Trustee, and Home Retention Services, Inc., respectively, on the Debtor, counsel for the Debtor, the Chapter 13 Trustee, and the U.S. Trustee (Sacramento Office, attn: Antonia Darling, Esq.), on or before April 19, 2016;

E. A modified Loan Modification Agreement, if any, naming the actual creditor who is entering into the contract to modify the loan with the Debtor in this case shall be filed and served on the above on or before April 19, 2016.

F. No telephonic appearances are permitted for the senior management representative for Bank of America, N.A., Deutsche Bank National Trust Company, as Trustee, Home Retention Services, Inc., and their respective attorneys.

The Clerk of the Court shall use the following addresses for the following persons ordered to appear:

Bank of America, N.A.

Attn: Officer - Order to Appear
150 N. College St, NC1-028-17-06
Charlotte, NC 28255

CT Corporation
Agent For Service of Process for Bank of America, N.A.
Attn: Officer - Order to Appear
818 West Seventh St STE 930
Los Angeles, CA 90017

Bank of America, N.A.
Office of the General Counsel
Order to Appear
214 N. Tryon St., NC1-027-20-05
Charlotte, NC 28255

Deutsche Bank National Trust Company, Trustee
Attn: Officer - Order to Appear
Bank of America
400 National Wal Mail Stop: CA6-919-01-23
Simi Valley, CA 93065

Home Retention Services, Inc.
Attn: Officer - Order to Appear
9700 Bissonnnet
Houston, Tx 77036

CT Corporation System
Agent for Service of Process for Home Retention Services, Inc.
Attn: Officer - Order to Appear
818 West Seventh St STE 930
Los Angeles, CA 90017

**2. 15-29404-E-13 TAEVONA MONTGOMERY**
**DPC-1 Richard Jare**

**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**1-20-16 [26]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
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Local Rule 9014-1(f)(2) Motion - Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. The Debtor's plan calls for a lump sum payment of $18,000.00 from the sale of the Debtor's real property ("Oakland Property") no later than month 14 of the plan. The Trustee objects to this because the Debtor has not proven an ability to make payments and the Debtor has not shown that she has passed the liquidation analysis. Namely, the Trustee argues that, due to the skeptical nature of the proposed sale, there should be a provision that has a default if the residence is not sold. Additionally, the Trustee argues that the Debtor has not established the value of the property.

2. The Trustee argues that the adequate protection payments in Class 2 for "Wells Fargo Home Mortgage" are not sufficient. Additionally, the Trustee notes that only the second deed of trust creditor has filed a Proof of Claim No. 2 and that the Trustee cannot disburse to a claim unless a claim has been filed or the plan provides or the court otherwise orders.

3. The Debtor's plan proposes to pay $4,075.00 in attorney's fees when only $4,000.00 is allowed under Local Bankr. R. 2016-1(c)(1). The Debtor reported that she has paid $1,425.00 prior to filing. Dckt. 9 and Dckt. 1, pg 36. The balance owed should be $2,575.00.

4. The Debtor's plan relies on Motion to Value Collateral of Bank of New York Mellon.

**FEBRUARY 23, 2016 HEARING**

At the hearing, the court continued the hearing to 3:00 p.m. on March 22, 2016. Dckt. 37. The court ordered the Debtor to file Opposition, Supplemental Pleadings, and any proposed amendments to the plan before the court on or before March 4, 2016. Replies, if any, were ordered to be filed and served on or before March 12, 2016. In continuing the hearing, the court noted the following in the civil minutes:

> The court identified the following issues for Debtor, the Trustee, and Creditors in the tentative ruling for the February 23, 2016 hearing. It may well be that Debtor does intend to immediately hire an experience real estate broker who will immediately market the property to get a sale completed within twelve months. Most likely, an experienced real estate broker can have the property marketed and sold by Summer 2016.
>
> Debtor may also want to adjust the adequate protection payments, taking into account Wells Fargo Bank, N.A. holding both the senior and junior liens, it does not face the prospect of having to pay the senior lien to protect the junior lien position on the Oakland Property. Making payments on the senior debt and a very prompt marketing and sale schedule may provide reasonable adequate protection for the junior lien under the specific circumstances of this case.
>
> In light of Debtors two prior Chapter 13 case failures, Debtor may want to provide supplemental pleadings to give the court and creditors a basis for believing that this third bankruptcy case in two years will be the successful one.

**DEBTOR'S STATUS REPORT**

On March 11, 2016, the Debtor filed a status report. Dckt.49. The Debtor states that it is expected that the Debtor's property will be pending sale prior to the continued hearing. The Debtor states that given the rapidly changing and developing situation and the need for other companion motions to be served, that it may be simpler to start with a new plan. The Debtor indicates that the Debtor anticipates to file a new plan prior to March 22, 2016.

**TRUSTEE'S SUPPLEMENTAL RESPONSE**

The Trustee filed a supplemental response on March 14, 2016. Dckt. 51. The Trustee states that the additional supplemental grounds for opposing confirmation:

1. The Debtor does not list tax and insurance expenses. Debtor's household budget does not include expenses for escrow on her real property in Oakland. While the plan proposes to pay adequate protection payments, Debtor fails to provide for the property tax and insurance expenses for the property on her budget.

2. The Debtor is $2,600.00 delinquent in plan payments.

**DISCUSSION**

The Trustee's objections are well-taken.

As to the Trustee's first objection, the court concurs that the plan is too speculative as to the funding of the plan when the Debtor does not specifically provide mechanism in the case where the property is not sold and if the Debtor does, in fact, pass the liquidation analysis. The Debtor's plan states:

> The Debtor want to immediately market the property. Its is estimated that there is some equity in the property which will fund the plan.

Dckt. 7, § 6.04. This is not sufficient to show that the Debtor has satisfied 11 U.S.C. § 1325(a)(4) liquidation analysis nor how much equity the Debtor in fact has in the property. The Debtor does not state how, if there is not actual equity in the property, the plan will be funded otherwise. The nature of the plan as presented is far too speculative that the court nor any other party in interest can, with certainty, determine the feasibility and viability of the plan based on the "maybe" sale of the property in which the Debtor has not provided evidence of its actual value.

In reviewing the Docket, though Debtor's plan is premised on the property being sold, the court cannot file a motion to authorize the employment of a real estate broker to being actively marketing the property for sale. This is not indicative of a debtor who is seeking, in good faith, to confirm a plan that provides for Debtor to "immediately market" the property.

Additionally, the plan does not provide for the Debtor to actually "sell" the property. Rather, Debtor merely promises to "market" the property.

As to the Trustee's second objection, the Trustee alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditors in Class 2 are insufficient to provide it with adequate protection during the period of the plan. The creditor cites to *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), for the proposition that "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

*Timbers*, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See*, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., In re Sanchez, 384 B.R. 574, 576 (Bankr. D. Or. 2008); In re Denton, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

The Trustee's point is well-taken that the Debtor has not shown that the adequate protection payment is sufficient while the speculative nature of the sale of the residence. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too.

The Plan recognizes Wells Fargo Bank, N.A. as having two secured claims. The claim secured by a second deed of trust is provided for as a $60,587.10 secured claim in the Additional Provisions to the Plan, § 6.05. While the Debtor is "marketing" the property, an "adequate protection" payment of $40 a month will be paid.

A $40 a month payment represents an annual interest rate on $60,587.10 of 0.6% (six tenths of one percent).

The Plan also provides for Wells Fargo Bank, N.A. claim (identified as Wells Fargo Mortgage in the Plan) in the Additional Provisions, §§ 6.02, 6.04. On Schedules A and D, Debtor lists this claim in the amount of $334,823.68. Dckt. 1. This claim is to be paid from the sale of the Oakland Property. On Schedule A Debtor states a value of $420,000.00, and states "asking price will be higher than liquidation value stated" on Schedules A and D. Dckt. 1 at 9, 15. However, the value on the Schedules is the "current value," not a "liquidation value," whatever qualifications a debtor may secretly use to decrease the value of the property.

Further, Debtor states that under the Plan she intends to liquidate the property through an orderly sale. Even a Chapter 7 trustee will market and sell property (whether or real) in a commercially reasonable manner, and not just "dump it" in a liquidation sale (as does a creditor exercising a power of sale under Division Nine of the California Commercial Code) for whatever money happens to walk through the door.

The Plan states that on the $334,823.68 claim there is a $35,000 pre-petition arrearage and that the monthly contract payments are $1,567.49. Plan, Additional Provisions § 6.02. The Plan does not provide for making the $1,567.49 currently monthly contract payment and an arrearage cure payment, but a $400.00 a month adequate protection payment. Plan, Additional Provisions

§ 6.04.

Wells Fargo Bank, N.A. has not filed a proof of claim for the $334,823.68 claim. However, this is not the Debtor's first, or second, recent case. The two prior cases are summarized as follows:

| | |
|---|---|
| 15-24150 - Chapter 13 Case<br>Represented (By Different Counsel Than Current Case | Filed: May 22, 2015<br>Dismissed: October 19, 2015 |
| | 1. Case dismissed because Debtor was in default in plan payments in excess of $12,000 and failed to file an amended plan when the court denied confirmation of original Chapter 13 plan. 15-24150; Civil Minutes, Dckt. 42.<br><br>2. The Chapter 13 Plan provided to pay the Wells Fargo Bank, N.A. claims in full as Class 1 Claims. *Id.*; Plan ¶ 2.08.<br><br>3. On August 31, 2015, Wells Fargo Bank, N.A. filed Proof of Claim No. 5 for its claim secured by the First Deed of Trust against the Oakland Property. 15-24150, Proof of Claim No. 5.<br><br>a. The total secured claim amount was stated to be.....$334,823.68.<br><br>b. The arrearage as of August 31, 2015, was stated to be $25,299.15<br><br>c. The then current interest rate was 4.892%<br><br>d. The then current monthly contract payments were $1,554.17.<br><br>e. With a $309,000 principal balance and a 4.892% interest rate, the estimated monthly interest expense is $1,259.69.<br>($309,000 x 0.04892/12 = $1,259.69) |
| | |
| 13-28641 - Chapter 13 Case<br>Represented (By same counsel as in case no. 15-24150 | Filed: June 27, 2013<br>Dismissed: January 29, 2015 |
| | 1. The bankruptcy case was dismissed due to Debtor's default in plan payments, which default was in excess of $14,000. 13-28641; Motion and Order, Dckts. 77, 81. |

It appears that the "adequate protection payments" are fractions of the monthly interest accrual on the principal amount of each obligation. Debtor has not demonstrated how this is "adequate protection."

Using Debtor's valuation, it appears that here is little, if any, possible equity in the Oakland Property for Debtor.

Debtor's Statement of Value.....$420,000

Wells Fargo Bank, N.A. Claim Secured by First Deed of Trust.....($340,000)
(The court adjusting for the additional defaults since the August 31, 2015 amount stated by creditor in prior case)

Wells Fargo Bank, N.A. Claim Secured by Second Deed of Trust.....($ 62,000)

Costs of Sale, Estimated at 8%.....($ 33,600)

Estimated Equity For Debtor..... ($ 15,600)

It appears that there would be marginal, if any equity in the Oakland Property for Debtor. Debtor is unable to make a monthly interest payment, but proposes only a significantly discounted "adequate protection" payment.

Such a minimum discounted payment could be warranted if Debtor was showing a substantial equity cushion for the creditor's claims. Even if there was not a shown significant equity cushion, making a modest adequate protection payment could be warranted if the Debtor was actively prosecuting a sale.

As counsel for Debtor is aware, Chapter 13 Plans which provide for the liquidation of real property (as opposed to Debtor making the current and arrearage payments through the plan) are confirmable if they have a twelve month period to have the sale completed, absent some extraordinary circumstances being shown. Here, no extraordinary circumstances are given for why more than a twelve month period is reasonably required to sell residential real property.

While bankruptcy is a "redemptive process," Debtor has been existing in Chapter 13 cases since 2013 - seriously defaulting in payments in the prior two case, which caused them to be dismissed. If, now going on three years, Debtor sought to immediately sell the Oakland Property, it would be listed with a real estate broker and being actively marketed.

It appears from the Debtor's Plan that Debtor is attempting to speculate (at the creditor's expense) that the property may rise in value over the next fourteen months so as to create an equity for Debtor. The proposed "adequate protection" payment does not adequately protect Wells Fargo Bank, N.A. for Debtor so speculating.

Debtor states she has gross income of $3,942 from employment and an additional $450.00 of family support payments. Debtor also states she has $50 from recycle or remove voluntary retirement and $500.01 income tax credit, monthly. After payment of taxes and insurance, Debtor states she has $4,051.67 in Monthly Income. Schedule I, Dckt. 1 at 24.

On Schedule J Debtor lists having one dependent. Dckt. 1 at 25. For a family of two persons, and without including mortgage, rent, or property tax expenses, Debtor states their monthly expenses are only $1,451.67. Schedule

J, *Id.* at 26.

Interestingly, on Schedule I in her second Chapter 13 case Debtor lists higher monthly income on Schedule I, stating it was $5,241.23. 15-24150, Dckt. 1 at 25. On Schedule J in the second Chapter 13 case, Debtor stated under penalty of perjury that her monthly expenses were only $941.23. *Id.* at 30. For that case, Debtor stated that any shortfall in money for expenses would be made up by her father. That case was dismissed due to Debtor's substantial defaults and inability to make the plan payments.

In the current case, the Debtor's expenses stated under penalty of perjury do not appear reasonable or credible statements. Some of the shortcomings include:

a. Food and Housekeeping Supplies for Two Persons.....$475

   i. Allowing $50 for housekeeping supplies, $425 for food equates to $2.28 per person, per meal, for a thirty-one day month.

b. Electricity and Natural Gas.....$ 75

   i. No showing has been made for such a low number for these essential utilities.

As to the Trustee's third objection, it appears to the court that the information listed on the plan was a mere scrivener's error by Debtor's counsel. While this is not an independent ground to deny confirmation, the failure of the Debtor to properly prepare the plan so that the court and any other party in interest can determine the feasibility of the plan when the plan does not accurately detail the attorney's fees.

The Trustee's supplemental objections raise additional concerns and grounds for denying confirmation. A review of Debtor's Schedule J shows that the Debtor does not provide for payments on tax or insurance expenses. Without this information, the budget is facially insufficient and the plan cannot be confirmed. Without all expenses actually listed in the budget, the court, trustee, nor any other party in interest can determine the feasibility of the plan.

The basis for the Trustee's supplemental objection is that the Debtor is $2,600.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6)

Lastly, the court granted the Debtor's Motion to Value Collateral of Bank of New York Mellon on January 26, 2016. Dckt. 36. Therefore, the Trustee's fourth objection is overruled.

Denial of confirmation is further supported by indication of the Debtor in the Status Report that she intends to file supplemental motions concerning the sale and to propose a modified plan, which will require a new motion to confirm.

In light of the objections and the Debtor's consensus that a new plan

is necessary, 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 also notes that this is not Debtor's first, or second recent attempt to prosecute a bankruptcy case. While represented by a different attorney, Debtor file and then had dismissed to prior Chapter 13 cases – 15-24150 (filed 5/22/2015 and dismissed 10/19/2015) and 13-28641 (filed 6/27/2013 and dismissed 1/29/2015). Debtor and Debtor's counsel must take into account these prior promises and failures, and give the court substantial evidence in support of new promises.

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

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

**3. 15-29404-E-13 TAEVONA MONTGOMERY**
**EAT-1 Richard Jare**

**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A. 1-21-16 [30]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2016. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

Wells Fargo Bank, N.A., Creditor, opposes confirmation of the Plan on the basis that the plan does not provide for the full payment of the Creditor's pre-petition arrears.

**FEBRUARY 23, 2016 HEARING**

At the hearing, rather than having the parties expend the time of coming to court and listening to Debtor's promise to do something in the future, the court sets a briefing schedule and final hearing on the objection. Dckt. 43. The Objection to Confirmation was continued to 3:00 p.m. on March 22, 2016. Debtor was ordered to fil Opposition, Supplemental Pleadings, and any proposed amendments to the plan now before the court on or before March 4, 2016. Replies, if any, were ordered to be filed and served on or before March 12, 2016.

**DEBTOR'S STATUS REPORT**

On March 11, 2016, the Debtor filed a status report. Dckt. 50. The Debtor states that it is expected that the Debtor's property will be pending sale prior to the continued hearing. The Debtor states that given the rapidly changing and developing situation and the need for other companion motions to be served, that it may be simpler to start with a new plan. The Debtor indicates that the Debtor anticipates to file a new plan prior to March 22, 2016.

**DISCUSSION**

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $6,661.47 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The Debtor admits in the Status Report that an amended plan will be necessary given the pending sale of the Debtor's property and other corrections that are necessary for a confirmable plan.

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

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

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

**4. 15-29404-E-13 TAEVONA MONTGOMERY**
**MDE-1 Richard Jare**

**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.**
**12-11-15 [14]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 11, 2015. By the court's calculation, 74 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 to Confirmation.**

U.S. Bank, N.A., Creditor, opposes confirmation of the Plan on the basis that:

1. The plan fails to cure the pre-petition arrears of the Creditor.

2. The plan fails to provide how the Debtor will be able to make all payments under the plan given the speculative nature of the sale of the residence.

**FEBRUARY 23, 2016 HEARING**

At the hearing, rather than having the parties expend the time of coming to court and listening to Debtor's promise to do something in the future, the court sets a briefing schedule and final hearing on the objection. Dckt. 39. The Objection to Confirmation was continued to 3:00 p.m. on March 22, 2016. Debtor was ordered to fil Opposition, Supplemental Pleadings, and any proposed amendments to the plan now before the court on or before March 4, 2016. Replies, if any, were ordered to be filed and served on or before March 12, 2016.

**DEBTOR'S STATUS REPORT**

On March 11, 2016, the Debtor filed a status report. Dckt. 50. While not connected to the instant Objection, the Debtor states that it is expected that the Debtor's property will be pending sale prior to the continued hearing. The Debtor states that given the rapidly changing and developing situation and the need for other companion motions to be served, that it may be simpler to

start with a new plan. The Debtor indicates that the Debtor anticipates to file a new plan prior to March 22, 2016.

**DISCUSSION**

The Creditor's objections are well-taken.

As to the Creditor's first objection, the court concurs that the plan is too speculative as to the funding of the plan when the Debtor does not specifically provide mechanism in the case where the property is not sold and if the Debtor does, in fact, pass the liquidation analysis. The Debtor's plan states:

> The Debtor want to immediately market the property. Its is estimated that there is some equity in the property which will fund the plan.

Dckt. 7, § 6.04. This is not sufficient to show that the Debtor has satisfied 11 U.S.C. § 1325(a)(4) liquidation analysis nor how much equity the Debtor in fact has in the property. The Debtor does not state how, if there is not actual equity in the property, the plan will be funded otherwise. The nature of the plan as presented is far too speculative that the court nor any other party in interest can, with certainty, determine the feasibility and viability of the plan based on the "maybe" sale of the property in which the Debtor has not provided evidence of its actual value.

As to the Creditor's second objection, the Creditor holds a deed of trust secured by the Debtor's residence. The creditor has failed to file a proof of claim. The Objection states that the plan provides for the curing of the arrears in the amount of $25,100.00. However, the Creditor asserts that the approximate amount in arrears in $27,243.64.

Unfortunately, the Creditor does not provide any evidence of the arrears in the form of a declaration or proof of claim or account statement. Instead, the Creditor merely states the $2,143.64 in arrears in the Objection without admissible evidence.

The Debtor admits in the Status Report that an amended plan will be necessary given the pending sale of the Debtor's property and other corrections that are necessary for a confirmable plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor U.S. Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**5. 15-28605-E-13 JODY/JOY SILVA — MOTION TO CONFIRM PLAN**
**CA-1 Michael Croddy — 2-9-16 [23]**

**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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

Jody and Joy Silva ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 9, 2016. Dckt. 23.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 8, 2016. Dckt. 41. The Trustee objects on the following grounds:

1. The Debtor is $5,704.00 delinquent in plan payments.

2. The Debtor's plan relies on Motions to Value Collateral of Santander.

**DISCUSSION**

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

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claims of Santander. However, the court denied the Debtor's Motion to Value Collateral of Santander on March 17, 2016. Order, Dckt. 49. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

Additionally, another basis for the Trustee's objection is that the Debtor is $5,704.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

**6. 16-20005-E-13 BEVERLY BAUER** **MOTION TO CONFIRM PLAN**
**George Bye** **2-3-16 [18]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Beverly Bauer ("Debtor") filed the instant Motion to Confirm on February 3, 2016. Dckt. 18. FN.1.

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FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 7, 2016. Dckt. 37. The Trustee opposes confirmation on the following grounds:

1. The Debtor's plan fails to list an interest rate on the arrears to Class 1 creditor BAC Home Loans.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

**DISCUSSION**

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

On March 12, 2016, the Debtor filed a First Amended Plan. Dckt. 40. The only correction in the amended plan and the original plan filed on February 3, 2016 is that the Debtor has now put "0%" for interest rate on arrears as to the Class 1 Creditor. However, the Debtor has failed to file an accompanying Motion to Confirm the Amended Plan nor set a hearing for confirmation of the first amended plan. L.B.R. 3015-1(d). This changes the treatment for the effected creditor by reducing interest at 10% per annum on its claim to 0.00% per annum.

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

This Debtor, this case, and Debtor's prior case in 2015 have been fraught with challenges. Debtor's counsel in the 2015, No. 15-28988, and her original attorney in this case was not and is not admitted to practice in the Eastern District of California.

Debtor then obtained her current attorney, who on February 19, 2016, forty-six days after the commencement of this case, who filed a pleading titled "Emergency Ex-Parte Motion For Relief From Default (FRCP Rule 60)." Dckt. 30. The court denied relief pursuant to the Ex-Parte Motion, addressing in detail the lack of any grounds for such relief being shown. Order, Dckt. 33. One of the reasons given for the delay is that when Debtor's former counsel was identified as not being admitted to practice in the Eastern District of California, Debtor located her current attorney. However, Debtor's current counsel was not admitted in the Eastern District of California, so he could not promptly commence representing her, but had to wait until he could get admitted in this District. That delay allowed the thirty-day period specified by Congress in 11 U.S.C. § 362(c)(3) to expire and the automatic stay terminated, as a matter of law, as to the Debtor due to the inaction.

Other than $1,400 of general unsecured claims, the only other "creditor" to be paid is "Ditech Financial, LLC," purportedly the creditor having a claim secured by Debtor's residence. Chapter 13 Plan, ¶ 2.08(c); Dckt. 20. On Schedule D, Debtor lists her one creditor with a secured claim as "Ditech Financial, LLC."

No proof of claim has been filed for the above secured claim in this case. On March 15, 2016, a Request for Service of Notice was filed by Ditech

Financial LLC f/k/a Green Tree Servicing, LLC. Dckt. 42. The Request is signed by Paul Cervenka, from the Buckley Madole, P.C. law firm. The Notice does not state that Ditech Financial LLC is a "creditor" (as that term is defined in 11 U.S.C. § 101(10) and (5)) in this bankruptcy case.

Green Tree Servicing, LLC, prior to its merger into Ditech Financial, LLC, and Ditech Financial, LLC have appeared in other cases, usually in the role of a ***loan servicer*** acting as ***an agent for*** the actual creditor. Debtor has not provided the court with any information that Ditech Financial, LLC is not acting in its usual role as a loan servicer or that Ditech Financial, LLC is the actual creditor whose rights are to be modified in this federal judicial proceeding. Debtor and Counsel should take advantage of counsel (who are familiar with this court's need to have the real parties in interest identified) having been identified for Ditech Loan Servicing, LLC and obtain confirmation (either informally or with simple Rule 2004 written interrogatories) of the identity of the actual creditor whose rights Debtor seeks to modify through this bankruptcy case.

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

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

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

**7. 16-20005-E-13 BEVERLY BAUER** — **ORDER TO APPEAR (JAMES L. CONKEY, ESQ.)**
**RHS-1 George Bye** — **2-5-16 [27]**

**No Tentative Ruling:** The Order to Appear 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 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorneys, Chapter 13 Trustee, and Office of the United States Trustee on February 10, 2016. By the court's calculation, 41 days' notice was provided.

The Order to Appear was properly 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 ----------.

**The Order to Appear is ----------.**

This Chapter 13 case was commenced by Beverly Joe Bauer ("Debtor Bauer") on January 4, 2016. The Debtor Bauer filed a skeletal petition. Dckt. 1. The final page of the petition contains a verification executed by James L. Conkey ("Attorney Conkey") as the Debtor Bauer's attorney in this bankruptcy case, stating that Attorney Conkey has informed the Debtor Bauer about eligibility under Title 11 and explained the relief available under each chapter of the Bankruptcy Code. Attorney Conkey signed this section as "Attorney for Debtor." *Id.* at pg. 7. This verification indicates that Attorney Conkey works at the firm of "JLC Law Offices" located in Newport Beach, California. *Id.* Attorney Conkey states that he is licensed to practice law in California, listing California State Bar Number 46616.

On January 20, 2016, the Debtor Bauer, in *pro se*, filed a "Motion to Extend Deadline to File Schedules." Dckt. 9. The Motion states the following:

> To: Clerk of the US Bankruptcy Court, Eastern District
> Re: Bankruptcy case number: 2015-14033-A-13
> Dear Clerk:
>
> This is a request for additional time to file my bankruptcy schedules. I am in the process of substituting a new Attorney who's admission to practice in the Eastern District is pending. If I could kindly have two or three days the issue will be resolved. Thank you for your attention in this matter.
>
> Sincerely,
> Beverly Bauer January 19th, 2016

Dckt. 9.

Of note, the case number cited in the subject line indicates Case No. "2015-14033-A-13." Debtor Bauer's case number in the instant case is 2016-20005-E-13. A search of this other case number indicates that it is the bankruptcy case number for the Chapter 13 case filed by Jo Ann Pierson on October 15, 2015, in this District. As discussed below, Attorney Conkey, counsel for Debtor Bauer in this case, is also the counsel who filed the Chapter 13 case for Jo Ann Pierson.

The judge in the Jo Ann Pierson case contacted the undersigned judge concerning a discovery that Attorney Conkey is not admitted to practice law in the Eastern District of California. A review of the United States District Court's website discloses that Attorney Conkey is not admitted to practice in the Eastern District of California.

This led the court to further review of the files of this court to determine if Attorney Conkey was purporting to represent other debtors or parties in interest in other bankruptcy or district court cases in the Eastern District of California. The information from the courts' files is discussed below.

Additionally, the court also notes that in the instant case as well as other bankruptcy cases filed by Attorney Conkey in which he represented debtors, that he either did not file the required disclosure of attorney's fees (Fed. R. Bankr. P. 2016(b)) or stated conflicting information as to whether fees have been paid.

**ORDER FOR ATTORNEY CONKEY TO APPEAR**

On February 5, 2016, the court issued the following Order to Appear:

> In light of the foregoing, the court finds it necessary to order Attorney Conkey to appear before the court to provide explanation for the court's concerns over his failure to disclose compensation and failure to properly be admitted to appear in the Eastern District. Additionally, that Attorney Conkey file in each the Debtor Bauer, Debtor Pierson, and Debtor Riggie bankruptcy cases: (1) amended Disclosures of Compensation accurately stating the monies received or agreed to be paid (Form B203); and (2) a supporting declaration by Attorney Conkey disclosing all payments

of monies or agreements to pay money made, for any services to be provided to that debtor, during the period commencing one year prior to the filing of the bankruptcy case and ending on the date the declaration is signed by Attorney Conkey.

Therefore, upon review of the files in this case, the unrelated Chapter 13 bankruptcy cases which Attorney Conkey filed for debtors by Attorney Conkey, and good cause appearing;

**IT IS ORDERED** that Attorney Conkey appear at **3:00 p.m. on March 22, 2016**, in person, in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, with no telephonic appearances permitted for Attorney Conkey.

**IT IS FURTHER ORDERED** that on or before **February 28, 2016**, Attorney Conkey shall file an amended Disclosure of Compensation of Attorney For Debtor (From B203) which accurately discloses all compensation required by said form and a declaration of Attorney Conkey disclosing all payments of monies or agreements to pay money for any services to be provided to that debtor, during the period commencing one year prior to the filing of the bankruptcy case and ending on the date the declaration is signed by Attorney Conkey for each of the following cases:

A. In re Beverly Joe Bauer, 16-20005;
B. In re Beverly Bauer, 15-28988;
C. In re Paul Riggie, 15-28736; and
D. In re Jo Ann Pierson, 15-14033.

**IT IS FURTHER ORDERED** that Attorney Conkey shall file with the court in this case exhibits consisting of the Disclosure of Compensation forms and declaration in each of the four above identified cases, as well as any other responses determined proper by Attorney Conkey, on or before **February 18, 2016**. The Exhibits and any other response pleadings shall be served on the Chapter 13 Trustees in the respective cases and the U.S. Trustee, attn: Antonia Darling, Esq., 501 I Street, Suite 7-500, Sacramento, California 95814. Responses, if any, of other parties in interest to this Order or the Exhibits and Responses filed by Attorney Conkey shall be filed and served on or before **March 4, 2016**. Replies, if any, by Attorney Conkey shall be filed and served on or before **March 11, 2016**.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall not close this bankruptcy case except upon further order of the court.

Dckt. 27.

**REQUIREMENT TO BE ADMITTED TO**
**THE BAR FOR EASTERN DISTRICT OF CALIFORNIA**

In order to appear in proceedings before the United States District Court or the United States Bankruptcy Court for the Eastern District of California Bankruptcy Courts, an attorney must not only be a member of good standing of the California State Bar, but also admitted to the bar for this District. The District Court Local Rules specify the requirements for admission to the Bar for the Eastern District of California bar. Specifically, Local Rule 830 states:

> (a) Admission to the Bar of this Court. Admission to and continuing membership in the Bar of this Court are limited to attorneys who are active members in good standing of the State Bar of California.
>
> > (1) Petition for Admission. Each applicant for admission shall present to the Clerk an affidavit petitioning for admission, stating both residence and office addresses, the courts in which the applicant has been admitted to practice, the respective dates of admissions to those courts, whether the applicant is active and in good standing in each, and whether the applicant has been or is being subjected to any disciplinary proceedings. Forms will be furnished by the Clerk and shall be available on the Court's website.
> >
> > (2) Proof of Bar Membership. The petition shall be accompanied by a certificate of standing from the State Bar of California or a printout from the State Bar of California website that provides that the applicant is an active member of the State Bar of California and shall include the State Bar number.
> >
> > (3) Oath and Prescribed Fee. Upon qualification the applicant may be admitted, upon oral motion or without appearing, by signing the prescribed oath and paying the prescribed fee, together with any required assessment, which the Clerk shall place as directed by law with any excess credited to the Court's Nonappropriated Fund.

The District Court for the Eastern District of California maintains a database of attorneys who are active members in the Eastern District and permitted to appear.

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F N . 1 . http://www.caed.uscourts.gov/caednew/index.cfm/attorney-info/attorney-admission-search/

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Once admitted to appear in the Eastern District, the Local Bankruptcy Rules requires that “all documents shall be submitted for filing in electronic form in strict compliance with the instructions of the Clerk in a format approved by the court,” with certain exceptions not applicable to the cases at hand. Local Bankr. R. 5005-1.

**COMPENSATION FOR CHAPTER 13 ATTORNEYS**

For attorneys admitted to the Bar for the Eastern District of California who represent debtors, the Local Bankruptcy Rules (“L.B.R.”) provide two alternative methods by which fees may be allowed and paid to a debtor’s

attorney in Chapter 13 cases. One fee structure for a Chapter 13 debtor's attorneys is colloquially referred to as a "no-look fee." This fee structure, established after substantial input from the Bar, allows the attorney to accept a fixed fee not to exceed $4,000.00 in nonbusiness cases and $6,000.00 in business cases. L.B.R. 2016-1(c). (This Rule allows additional fees for substantial and unanticipated work by debtor's counsel, to ensure that fair compensation is allowed based on unique circumstances of a case.) This "no-look fee" allows the debtor attorney to establish a profile for the types of cases he or she takes, collecting a fixed fee which in some cases may result in a slightly higher hourly rate and in some cases a slightly lower hourly rate based on the actual time on the specific case, but one that averages out and allows counsel the cost and expense of filing detailed, hourly, lodestar fee applications. (This is similar to the commission nature of trustee's fees in bankruptcy cases.)

The Bankruptcy Code requires that the attorney for a debtor disclose a statement of compensation paid or agreed to be paid, if such payment was agreed to or made within one year of the bankruptcy filing, for services rendered by counsel. 11 U.S.C. § 329(a). Federal Rule of Bankruptcy Procedure 2016 provides the methodology for debtor's counsel to disclose such statement accurately regarding the compensation paid or promised to be paid to debtor's counsel:

> (b) Disclosure of compensation paid or promised to attorney for debtor
>
> **Every attorney for a debtor**, whether or not the attorney applies for compensation, **shall file** and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, **the statement required by § 329** of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The **statement shall include the particulars** of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Federal Rule of Bankruptcy Procedure 2016(b) [emphasis added].

## DISCUSSION

The court begins its discussion of Attorney Conkey's conduct in this and other cases in this District with a review of the cases in which Attorney Conkey has filed on behalf of debtors.

### Cases Filed by Attorney Conkey in the United States Bankruptcy Court for the Eastern District of California

A search of the court's database shows that Attorney Conkey has filed and is stated to be the attorney of record for debtors for four cases in this District as follows:

**1. Jo Ann Pierson, Case No. 2015-14033**

a. Chapter 13 Case
b. Filed on October 15, 2015
c. Dismissed on January 19, 2016

Jo Ann Pierson's Bankruptcy Case Summary

Prior to the dismissal, Debtor Pierson filed a skeletal petition on October 15, 2015. Dckt. 1. Attorney Conkey indicated that he was the attorney for Debtor Pierson. Id., pg. 3.

On October 29, 2015, Debtor Pierson, through Attorney Conkey, filed a Motion to Extend Time to File Schedules and Statement of Financial Affairs as Required by Bankruptcy Rule 1007." Dckt. 9. The Motion, in relevant part, states that the extension is necessary to "ensure the accuracy of the Schedules." Case no. 2015-14033-A-13, Dckt. 9, pg. 2. The Motion is signed by Attorney Conkey. Of note, the case manager for this case indicated on October 29, 2015 that the Motion, filed by Attorney Conkey, was "not electronically submitted per LBR."

The court granted the extension on October 31, 2015, and ordered that the missing documents be filed by November 12, 2015. Case No. 2015-14033-A-13, Dckt. 14.

On November 11, 2015, Debtor Pierson filed the remaining schedules. Notably missing from the schedules is a Disclosure of Attorney Compensation. On Debtor Pierson's Statement of Financial Affairs, Question 9, Debtor Pierson indicated that no payments to debt counseling or bankruptcy has been made within one year immediately preceding the commencement of this case. Case No. 2015-14033-A-13, Dckt. 18, pg. 24.

Reviewing Debtor Pierson's Chapter 13 Plan filed on November 12, 2015, the Plan states in Section 2.06 entitled "Debtor's attorney's fees" that "Debtor's attorney of record was paid $in full prior to the filing of the case." Case No. 2015-14033-A-13, Dckt. 20.

The Plan and the Statement of Affairs provide conflicting information as to whether Debtor Pierson has paid any monies to Attorney Conkey for services in connection with the bankruptcy case. Attorney Conkey failed to file Disclosure of Compensation of Attorney for Debtor, Form B203. Furthermore, the Debtor and Attorney Conkey failed to file required Form EDC 3-096, *Rights of Responsibilities of Chapter 13 Debtors and Their Attorneys*.

**2. Paul Riggie, Case No. 2015-28736**

a. Chapter 13 Case
b. Filed on November 10, 2015
c. Dismissed on December 2, 2015

Paul Riggie Bankruptcy Case Summary

Prior to the dismissal, Debtor Riggie filed a skeletal petition on November 10, 2015. Case No. 2015-28736, Dckt. 1. Attorney Conkey stated that he was the attorney for Debtor Riggie. *Id.*, pg. 3. Of note, the case manager for this case indicated on November 10, 2015 that the petition, filed by Attorney Conkey, was "not electronically submitted per LBR."

On November 13, 2015, the court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are Not Timely Filed. Case No. 2015-28736, Dckt. 7. The Notice gave Debtor Riggie a deadline of November 24, 2015, to file the remaining documents, which consisted of all of Debtor Riggie's schedules, proposed plan, Attorney's Disclosure Statement, and Statement of Financial Affairs. *Id*.

Debtor Riggie and Attorney Conkey failed to file the missing documents by the November 24, 2015 deadline. The court issued an Order Dismissing Case For Failure to Timely File Documents on December 2, 2015. *Id.*, Dckt. 14.

On December 4, 2015, Debtor Riggie, through Attorney Conkey, filed the missing documents. *Id.*, Dckt. 19. Included in the filing is the Disclosure of Compensation of Attorney for Debtor, Form B203. *Id.*, Dckt. 19, pg. 21. The Disclosure states:

> "For legal services, [Attorney Conkey] have agreed to accept.....$2,500.00
> Prior to filing of this statement,[Attorney Conkey has] received.....$2,500.00
> Balance Due.....$0.00

*Id.*

However, conflicting with this Disclosure, Debtor Riggie, with the assistance of Attorney Conkey, states under penalty of perjury in the Statement of Financial Affairs, Question 9, that Debtor Riggie has not made any payments to debt counseling or bankruptcy within one year immediately preceding the commencement of this case. *Id.*, Dckt. 19 at 26. Furthermore, the Debtor Riggie and Attorney Conkey failed to file a Form EDC 3-096, *Rights of Responsibilities of Chapter 13 Debtors and Their Attorneys*.

Debtor Riggie and Attorney Conkey chose not to file a Motion to Vacate the Dismissal, even though Debtor and Attorney Conkey filed the missing documents two days after the deadline stated in the Notice of Intent to Dismiss.

On January 13, 2016, the Order Approving Final Report and Discharging Trustee and the Order Closing Dismissed Case was entered. *Id.*, Dckt. 26 and 27.

**3. Beverly Bauer, Case No. 2015-28988**

a. Chapter 13 Case
b. Filed on November 19, 2015
c. Dismissed on December 7, 2015

Beverly Bauer's Bankruptcy Case Summary

In a prior bankruptcy case, Debtor Bauer filed a skeletal petition on November 19, 2015. Case No. 2015-28988, Dckt. 1. Attorney Conkey stated that he was the attorney for Debtor Bauer. *Id.* at 3. The court notes that the bankruptcy case manager for this case indicated that on November 19, 2015, the petition, filed by Attorney Conkey, was "not electronically submitted per LBR."

On November 23, 2015, the court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are Not Timely Filed. *Id.*, Dckt.

7. The Notice gave Debtor Bauer a deadline of December 3, 2015, to file the remaining documents, which consisted of all of Debtor Bauer's schedules, proposed plan, Attorney's Disclosure Statement, and Statement of Financial Affairs. *Id.*

Debtor Bauer and Attorney Conkey failed to file the missing documents by the December 3, 2015 deadline. The court issued an Order Dismissing Case For Failure to Timely File Documents on December 7, 2015. *Id.*, Dckt. 9.

**4. Beverly Joe Bauer, Case No. 2016-20005 (Instant Case)**
a. Chapter 13 Case
b. Filed on January 4, 2016

Beverly Joe Bauer's Second Bankruptcy Case Summary

As discussed *supra*, Debtor Bauer filed a subsequent case on January 4, 2016. Case No. 2016-20005, Dckt. 1. Once again, Debtor Bauer, through Attorney Conkey, filed a skeletal petition.

On January 6, 2016, the court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are Not Timely Filed. *Id.*, Dckt. 7. The Notice gave Debtor Bauer a deadline of January 19, 2016, to file the remaining documents, which consisted of all of Debtor Bauer's schedules, proposed plan, Attorney's Disclosure Statement, and Statement of Financial Affairs. *Id.*

On January 20, 2016, the Debtor Bauer filed a "Motion to Extend Deadline to File Schedules." Case No. *Id.*, Dckt. 9. On January 21, 2016, the court granted the Motion, extending the deadline to February 3, 2016. *Id.*, Dckt. 11.

**Attorney Conkey Is Not Admitted to the Bar of the United States District Court for the Eastern District of California**

The court has searched the District Court website's database to determine if Attorney Conkey is admitted to practice in the Eastern District of California. When the court searched using the name "Conkey," no results appear. According to the record of the United States District Court for the Eastern District of California, Attorney Conkey is not admitted to the Bar for the Eastern District of California and is not admitted to practice in this District.

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F N . 1 .
http://www.caed.uscourts.gov/wconnect/wc.dll?caedprocess~Attorney_Lookup~&tbxLastName=Conkey&tbxFirstName=J

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Adding further concerns, the court researched to see if Attorney Conkey at any point in time attempted to apply for the ability to electronically file using the District's docketing system. The court uncovered that on October 14, 2015, Attorney Conkey submitted a "New eFiler Registration" to acquire login information to electronically file documents. This request was denied because Attorney Conkey was not, and remains not, admitted to practice in the Eastern District.

However, even in light of this denial, Attorney Conkey has proceeded to represent debtors and filed bankruptcy cases in the Eastern District of California for debtors in four bankruptcy cases since his application for e-filing access – three of which were filed following the denial of Attorney Conkey's application due to the fact he is not admitted to practice in the Eastern District.

It appears to the court that Attorney Conkey, even though having knowledge that he is required to file documents electronically and that he must be admitted to the Bar for the Eastern District of California to appear in this District, Attorney Conkey disregarded such requirement and intentionally filed bankruptcy cases for debtors.

Attorney Conkey appears to have achieved this by circumventing the electronic filing of documents requirement, and, instead, hand delivered the pleadings to the court for filing. In doing so, Attorney Conkey appears to have exploited the Clerk's Office obligation to accept documents for filing, leaving it to the judges to address any such misconduct by an attorney. Even though the Clerk accepted the documents, the Clerk notified Attorney Conkey that he was required to electronically file documents on repeated occasions.

**Attorney Conkey has Failed to File Accurate Disclosures of Compensation**

The court notes that in three out of the four cases, Attorney Conkey has failed all together to file any required disclosures of compensation. The other case filed by Attorney Conkey, while providing a disclosure of compensation, offers conflicting information over whether the debtor had, in fact, paid the fees.

In the two cases of Debtor Bauer, Attorney Conkey indicated on the Statement of Financial Affairs that the debtor in each of those cases did not pay any form of monies in attorney's fees within the year preceding in contemplation of filing bankruptcy. However, in these cases, Attorney Conkey failed to file a required disclosure of compensation paid and failed to file a plan to indicate if fees, if any, were to be paid for representing Debtor in those bankruptcy cases.

In Debtor Riggie's case, Attorney Conkey did file both a Disclosure and Statement of Financial Affairs. However, in conflict with the Disclosure, Debtor Riggie, with the assistance of Attorney Conkey, states under penalty of perjury in Statement of Financial Affairs, Question 9, that Debtor Riggie has not made any payments to debt counseling or bankruptcy within one year immediately preceding the commencement of this case. Case No. 2015-28736, Dckt. 19, pg. 26.

In Debtor Pierson's case, the Statement of Financial Affairs, Question 9, states under penalty of perjury that no payments to debt counseling or bankruptcy has been made within one year immediately preceding the commencement of this case. Case No. 2015-14033-A-13, Dckt. 18, pg. 24.

However, reviewing Debtor Pierson's Chapter 13 Plan filed on November 12, 2015, the Plan states in Section 2.06 entitled "Debtor's attorney's fees" that "Debtor's attorney of record was paid $<u>in full</u> prior to the filing of the case." Case No. 2015-14033-A-13, Dckt. 20.

Consequently, the Plan and the Statement of Affairs provide conflicting information as to whether Debtor Pierson has paid any monies to Attorney Conkey for services in connection with the bankruptcy case.

This raises additional concerns in the sense that it appears that Attorney Conkey is actively attempting to avoid filing disclosures of his compensation, as required by both Local Rules and Federal Rules of Bankruptcy Procedure. In each of the four cases, Attorney Conkey does not indicate on any of the Statements of Financial Affairs that any fees have been paid by the debtor for attorney compensation in connection with the bankruptcy. However, at least in Debtor Pierson's and Debtor Riggie's cases, subsequent information, noted in the Plan and Disclosure respectively, indicate that Attorney Conkey had been paid in full prior to filing.

This inconsistent information mixed with the fact that Attorney Conkey failed to file necessary disclosures concerns the court over whether Attorney Conkey, in an attempt to receive compensation in matters that he is not admitted to appear on, wilfully intended to not file disclosures of compensation and to appear without being properly admitted.

**DEBTOR'S RIGHTS AND RESPONSIBILITIES**

On February 27, 2016, Attorney Conkey filed the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys." Dckt. 35. The Rights and Responsibility (identified as Form EDC 3-096) states, in the final paragraph before the signatures:

> Initial fees charged in this case are $4000.00 and of this amount $495.0 was paid by the Debtor before the filing of the petition.

The form is signed by typing both the Debtor's and Attorney Conkey's name, and is dated February 20, 2016, forty-seven days after this bankruptcy case was filed. .

Attorney Conkey also filed the Disclosure of Compensation of Attorney for Debtor. The Disclosure states the following:

> Pursuant to 11 U.S.C. § 329(a) and Fed. Bank. P. 2016(b), I certify that I am the attorney for the above named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:
>
> For legal services, I have agreed to accept.....$4,000.00
> Prior to the filing of this statement I have received...$4,000.00
> Balance Due.....$0.00

Based on the above documents, Attorney Conkey states that he has been paid $4,000.00 by Debtor to represent her in this bankruptcy case in the Eastern District of California - which is a legal impossibility because Attorney Conkey is not admitted to practice in the Eastern District of California.

**MARCH 22, 2016 HEARING**

At the hearing, xxxxx

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 Order to Appear 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 Order is xxxx.

**8. 13-31706-E-13 RUDOLPH JUGOZ — MOTION TO MODIFY PLAN**
**SJS-3 Scott Johnson — 2-12-16 [68]**

**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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2016. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Rudolph Jugoz ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 12, 2016. Dckt. 68.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 8, 2016. Dckt. 79. The Trustee objects on the following grounds:

1. The Debtor is delinquent $500.00 in plan payments.

2. There may be a possible liquidation issues. The Plan states that the Debtor intends to sell the real property within six months and pay the balance of the Chapter 13 from the net proceeds. Unfortunately, the plan does not state the percentage to unsecured creditors, the expected net proceeds from the

sale, nor provide for ongoing treatment of the mortgage on the property to Wells Fargo Mortgage.

Debtor has not stated a proposed percentage to unsecured creditors. The Trustee is uncertain if the Debtor is proposing to increase the percentage to unsecur4ed creditors from 0% to 100%.

The Trustee states that there is no Motion to Sell or an Order authorizing the sale of the property. The Trustee's own research uncovered that the Property is currently pending sale. The Property has been scheduled at $402,506.00 but, based on the Trustee's research, there may be substantially more equity.

3. The plan inappropriately proposes the authorization of amounts paid to Wells Fargo Home Mortgage for pre-petition and post-petition arrears in the amount of $1,457.34 for "pre-filing mortgage arrears," and $4,166.57 for "post filing mortgage arrears." The Trustee states that it appears that the Debtor has confused the two categories: The Trustee records reflect $1,457.34 has been disbursed to date for post-petition arrears and $4,166.57 has been disbursed for pre-petition arrears.

4. In Section 2.13 of the proposed modified plan, Debtor increases the amount owed to Franchise Tax Board to include amounts based on a stipulation filed between Debtor and the Franchise Tax Board on February 9, 2016. Dckt. 66. In the stipulation, Franchise Tax Board agreed to file a claim in the amount of $19,475.27 representing amounts currently owed as of February 3, 2016 and relating to the 2014 tax year.

To date, the Franchise Tax Board has not filed a claim so the Trustee cannot pay the creditor unless the order confirming specifically provides otherwise. Additionally, Debtor proposes to pay this claim in Class 5, but then includes a $500.00 budget item on Schedule J for the "estimated payment to FTB for 2014."

**DISCUSSION**

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

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $500.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor is proposing to use the proceeds from the sale of his house to fund the remainder of the plan. However, the Debtor does not propose a dividend to unsecured creditors and there may be substantially more equity in the property than what was scheduled by the Debtor.

The Debtor has supplied insufficient information relating to the sale of the real property, to assist the Trustee in determining the value of the property. Debtor fails to report the any appreciation on the property nor any contingencies if the sale falls through. In fact, the Debtor has failed to file a Motion to Sell. Without authorization of the sale and sufficient information as to the payment to unsecured and authorization of the sale, the objection is sustained.

As to the Trustee's third objection, it appears that this is a mere scrivener's error and could be corrected in an order confirming. However, given the Trustee's other objections and the court's own concerns, the plan cannot be confirmed.

Lastly, the Trustee is correct. A review of the Debtor's claim registry shows that the Franchise Tax Board filed Proof of Claim No. 8 on December 19, 2013. The Proof of Claim indicates a priority claim in the amount of $3,060.33.

However, the Plan provides for the claim amount of $19,475.27. This is substantially more than what is filed. The court is cognizant that the Debtor and the Franchise Tax Board came to an agreement and settlement. The Franchise Tax Board was to file an amended proof of claim, increasing the claim to the agreed amount. However, to date, the Franchise Tax Board has not filed an amended Proof of Claim. Without this, the Plan cannot be effective nor can any party in interest determine the feasibility or viability of the plan.

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

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

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

**9. 15-21707-E-13 JUDITH LAYUGAN** **AMENDED MOTION TO SELL**
**TLA-3 Thomas Amberg** **3-1-16 [138]**

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

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

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

---

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 1, 2016. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

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

**The Motion to Sell Property is denied without prejudice.**

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

A. 8664 La Riviera Drive, Unit D, Sacramento, California

Unfortunately, the Movant failed to give sufficient notice. The Movant attempts to make this Motion pursuant to Local Bankr. R. 9014-1(f)(1), which requires a minimum of 28-days notice. The Movant only provided 21-days notice. As such, the Motion is denied without prejudice.

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

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

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

**IT IS ORDERED** that the Motion is denied without prejudice.

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

**ALTERNATIVE RULING**

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

A. 8664 La Riviera Drive, Unit D, Sacramento, California

The proposed purchaser of the Property is JBA Enterprises, LLC and the terms of the sale are:

1. Purchase Price of $95,000.00.

2. It is a short sale. The proposed sale is subject to the consent of both lenders, Bank of America, N.A.

3. The Movant will not receive any monies.

**CREDITOR NON-OPPOSITION**

Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as trustee for BCAT 2015-16TT, by and through its servicing agent Shellpoint Mortgage Servicing filed a non-opposition on March 17, 2016. Dckt. 139.

The Creditor states that it has no opposition to the instant Motion subject to the Creditor's lien on the Property is either paid off in full or paid off pursuant to a short sale agreement approved by Creditor.

**DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed short sale provides for the sale of the Property and the satisfaction of the liens on the Property without any further liability to the estate. The property is listed in Class 3 of the modified plan. Furthermore, the Creditor filed a non-opposition to the instant Motion.

Therefore, the Motion is granted.

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

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

The Motion to Sell Property filed by Judith Layugan 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 Judith Layugan, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to JBA Enterprises, LLC or nominee ("Buyer"), the Property commonly known as 8664 La Riviera Drive, Unit D, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $95,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 136, and as further provided in this Order.

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

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

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

**10. 16-20113-E-13 DPC-1 — VICTOR NAVARRO AND KRISTINA ZAPATA-NAVARRO — Michael Benavides — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 2-22-16 [23]**

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

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

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

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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 Debtors, Debtor's Attorney on February 22, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

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

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

1. The plan will not complete within 60 months. Nationstar Mortgage asserts that it has pre-petition arrears of $12,672.06, though the plan only provides for $8,767.95. Nationstar Mortgage has not filed a Proof of Claim to date.

2. Debtor may not be able to make the plan payments. Debtor Victor Navarro testified at the Meeting of Creditors that he has a

domestic support obligation of $175.00 per month. This expense is not disclosed on the Debtor's Schedule I or J. Debtor also state that they have five children living at home but no dependants are listed.

Additionally, the Trustee argues that the Debtor's budget is not realistic. The stated budget, which totals $1,120.00 per month, is not sufficient for the support of the Debtors and their dependants, where Schedule J lists utilities of $120.00, food of $650.00, $0.00 for clothing personal care, and medical/dental expenses, $120.00 for transportation, and $0.00 for auto insurance.

3. Section 2.06 of debtor's plan indicates that Debtor's counsel has opted in under Local Bankr. R. 2016-1(c), however, Debtor has failed to file Rights and Responsibilities of Chapter 13 Debtors and their Attorneys as required by Local Bankr. R. 2016-1(c)(2).

The Trustee's objections are well-taken.

First, the Trustee asserts that th Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 80 months due to the plan not providing for Nationstar Mortgage's full pre-petition arrears claim. Unfortunately, Nationstar has not filed a Proof of Claim nor provided evidence in their papers of the amount of the pre-petition arrears. Without such, the court cannot determine if the Debtor's plan does not, in fact, provide for the full curing of Nationstar's arrears.

As to the Trustee's second objection, the court concurs that the Debtor's budget is not realistic. A review of the Debtor's Schedule J indicates the following expenses:

| Expense | Amount |
|---|---|
| Rent/Mortgage | $0.00 |
| Electricity, heat, natural gas | $120.00 |
| Water, sewer, garbage collection | $50.00 |
| Telephone, cell phone, Internet, satellite, and cable services | $180.00 |
| Food and housekeeping supplies | $650.00 |
| Transportation | $120.00 |
| **TOTAL EXPENSES** | **$1,120.00** |

Dckt. 12, Schedule J. The Debtor stated at the Meeting of Creditors that the Debtor has five children, yet does not list them on Schedule J. Furthermore, the Debtor's budgeted items are far below what a standard household of seven would require. The court nor any other party in interest can determine the feasibility and viability of the plan when the Debtor's budget is facially

insufficient to support the Debtors and the plan payments. 11 U.S.C. § 1325(a)(6).

Lastly, the Debtor and Debtor's counsel failed to file a Rights and Responsibilities of Chapter 13 Debtors and their Attorneys. The plan indicates that the Debtor's counsel has opted for the "no-look" fee of Local Bankr. R. 2016-1(c). However, in order to opt for such, the Debtor must file Rights and Responsibilities of Chapter 13 Debtors and their Attorneys as required by Local Bankr. R. 2015-1(c)(2). The failure to do so is grounds to deny confirmation. 11 U.S.C. § 1325(a).

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

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

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

**11. 16-20113-E-13 MDE-1** | **VICTOR NAVARRO AND KRISTINA ZAPATA-NAVARRO** Michael Benavides | **OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC** 1-29-16 [18]

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 29, 2016. By the court's calculation, 57 days' notice was provided. 14 days' notice is required.

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

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

Nationstar Mortgage LLC, the secured creditor, opposes confirmation of the Plan on the basis that the plan fails to cure the arrears of the Creditor.

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts pre-petition arrears of $12,572.62. The Plan only provides for the curing of $8,767.95.

Creditor filed Proof of Claim No. 1 on March 18, 2016, which asserts a secured claim in the amount of $213,845.82, including a pre-petition

arrearage of $14,273.25. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The Objection to Confirmation is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 Debtor's Chapter 13 Plan is not confirmed.

**12. 14-29023-E-13 SJS-2 DEBTOR DISMISSED: 02/18/2016 JOINT DEBTOR DISMISSED: 02/18/2016**

**DARREN CARTER AND AMY ALEXANDER-CARTER**

**MOTION TO MODIFY PLAN 2-16-16 [64]**

**Final Ruling:** No appearance at the March 22, 2016 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Modify Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**13. 11-36625-E-13 DARRYL YOUNG** **MOTION TO MODIFY PLAN**
**PGM-1 Peter Macaluso** **2-11-16 [70]**

**Final Ruling:** No appearance at the March 22, 2016 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 11, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

**14. 14-30925-E-13 JAMES KENNEDY** **MOTION TO MODIFY PLAN**
**TLA-4 Thomas Amberg** **2-16-16 [108]**

**Final Ruling:** No appearance at the March 22, 2016 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

Chapter 13 Plan filed on February 16, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**15. 15-27943-E-13 JULIENE ALEXANDRE — MOTION TO MODIFY PLAN**
**SNM-3 Stephen Murphy — 2-1-16 [38]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2016. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

Juliene Alexandre ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 1, 2016. Dckt. 38.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 8, 2016. Dckt. 43. The Trustee opposes confirmation on the following grounds:

1. The plan will complete in 65 months. According to the Trustee's calculation, the plan takes longer than 60 months because the Debtor is proposing to pay 100% of unsecured creditors while including attorney fees and trustee fees in the monthly payment. This would require the plan to last 65 month to pay all claims.

2. The Debtor is proposing to surrender real property commonly known as 2548 Marquette Court. The last filed Schedule J reflects an expense of $1,367.63 for rental/home ownership. It is unknown as to where Debtor is currently residing and if the rental/home ownership expense remains the same.

**DISCUSSION**

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

The Trustee's objections are well-taken.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 65 months due to the proposed claims to be paid through the plan. The Trustee computes this as follows: The Debtor's plan proposes a monthly payment of $170.00. This is approximately $160.86 after Trustee fees. Approximately, $9,340.96 remains to be paid to unsecured creditor and approximately $510.00 remains to be paid for attorney fees. Under the proposed plan, it would take 61 months from the time of the Objection to complete the plan. The Debtor already 4 months in, that means the plan would take a total of 65 months to complete.. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

As to the Trustee's second objection, the court concurs that the Plan cannot be confirmed when the Debtor has not provided all accurate financial information. Under the proposed plan, the Debtor is proposing to surrender real property at where the Debtor has listed as her residence. However, the Debtor has not filed a change of address. Additionally, the Debtor does not explain her current living situation, whether the rent/mortgage payment is the same, where the Debtor is currently living, etc. Without this information, it is impossible for the court nor any party in interest to determine the feasibility or viability of the plan.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is denied

**16. 15-29850-E-13 JESUS/SANDY MARTINEZ MOTION TO CONFIRM PLAN**
**TOG-3 Thomas Gillis 2-8-16 [19]**

**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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2016. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Jesus and Sandy Martinez ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 8, 2016. Dckt. 19.

**TRUSTEE'S NON-OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on February 19, 2016.

**CREDITOR'S OPPOSITION**

Wells Fargo Bank, N.A. ("Creditor") filed an opposition to the instant Motion on March 15, 2016. Dckt. 26. The Creditor opposes confirmation on the ground that the plan does not provide the curing of the Creditor's pre-petition arrears.

**DISCUSSION**

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

The objecting creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts pre-petition arrears of $369.78.

Unfortunately, however, the creditor has failed to file a proof of claim. The Creditor does not provide evidence of the arrears or a declaration to authenticate the assertion.

The Creditor does note, in a footnote, the following:

> Secured Creditor received payment from Debtor in the sum of $369.78 on December 30, 2015. Secured Creditor acknowledges payment may have been intended to be applied towards the pre-petition arrears, however, the payment was received two (2) days after Debtor's petition was filed.

Dckt. 26, pg.2, fn. 1. On the one hand, Creditor alleges that there is a $369.78 arrearage and honestly discloses that it received a payment of $369.78 on December 30, 2015 from the Debtor. This bankruptcy case was filed on December 28, 2015 at 5:06 p.m. If the check was mailed, it is likely that Debtor mailed the payment and then filed bankruptcy – not appreciating the significance of a check being an authorization to pay, not a payment in and of itself.

In any event, the Original Plan and this First Amended Plan require Debtor to make the monthly payments on Creditor's secured claim to this Creditor directly. Prior to confirmation, Debtor must comply with the plan terms, making the payment required to the Chapter 13 Trustee and the Class 4 direct creditor payments (as to this Creditor).

Regardless, though, the Creditor has not provided evidence that a pre-petition arrear exist nor has the Creditor filed a proof of claim. Therefore the objection is overruled.

Therefore, in light of the Trustee's non-opposition, no further objections remaining and upon independent review by the court, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 8, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**17. 16-20252-E-13 LEONARD SCROGGINS — MOTION TO AVOID LIEN OF NAOMI HELENE WHITCHER**
**MWB-1 Mark Briden — 2-5-16 [15]**

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

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

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

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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, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 5, 2016. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Naomi Whitcher ("Creditor") against property of Leonard Scroggins ("Debtor") commonly known as 1113 Echo Road, Redding, California (the "Property").

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $160,000.00 as of the date of the petition. The unavoidable consensual liens total $333,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) and (2) in the amount of $160,000.00 on Schedule C.

**Trustee's Response**

On March 8, 2016, the Chapter 13 Trustee, David Cusick ("Trustee") filed a response to Debtor's motion. Trustee states that the lien Debtor seeks herein to avoid is held by Debtor's ex-wife, and therefore some or all of the debt may constitute a domestic support obligation.

**FAILURE TO PROVIDE EVIDENCE IN SUPPORT OF THE MOTION**

According to Debtor's declaration, a judgment was entered against Debtor in favor of Creditor in the amount of $93,970.00. Dckt. 17. The declaration states further that an abstract of judgment was recorded with Shasta County on November 28, 2011, which encumbers the Property.

However, Debtor's evidence in support of the motion, attached as Exhibits "A-1" and "A-2," are 2 pages of a report issued by First American Title Company. Exhibit "A-1," "A-2," Dckt. 18. No certified or otherwise properly authenticated copy of the abstract of judgement has been provided. The title report does not constitute properly authenticated evidence under Federal Rules of Evidence 602, 701, 801, and 802.

Therefore, Debtor has failed to provide any evidence showing the presence and value of the judgement lien sought to be avoided and the motion is denied.

While the court bases its decision on the grounds stated above, the court shares Trustee's concern about the nature of the debt supporting the judgement lien on Debtor's property. 11 U.S.C. § 522(f)(1)(A) excepts from avoidance any debt for a domestic support obligation.

11 U.S.C. § 522(f)(1) provides for the avoidance of:

> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)

11 U.S.C. § 523 provides, in relevant part:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b),or 1328(b) of this title does not discharge an individual debtor from any debt–
>
> (5) for a domestic support obligation;. . .

Here, the creditor appears to be the ex-wife of the Debtor. Debtor lists Creditor as a secured creditor under Schedule D. Further, a review of the docket shows that no proof of claim has been filed.

However, any portion of the judicial lien fixing domestic support obligations cannot be avoided. Debtor has not provided affirmative evidence that the judgment lien is for a domestic support obligation.

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

**IT IS ORDERED** that the Motion to Avoid Judicial Lien is denied without prejudice.

**18. 16-20252-E-13 MWB-2** **LEONARD SCROGGINS HELENE WHITCHER 2-13-16 [20]** **MOTION TO AVOID LIEN OF NAOMI**

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

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

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

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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, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 13, 2016. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Naomi Witcher ("Creditor") against property of Leonard Scroggins ("Debtor") consisting of 5 building lots commonly known as Tehama County APN 103-020-13; 103-020-12; 103-020-02; 103-020-03; and 103-020-04 (the "Property").

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $7,500.00 per lot, or $37,500.00 as of the date of the petition. FN. 1.

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FN.1. Debtor's declaration values each lot at a value of $9,000.00, or $45,000.00. It is unclear whether this is an attempt at re-valuing the property, or if some error was made. However, Debtor claims that there are senior liens on the Property totaling $59,166.00. Therefore, it would seem that exemptions could be impaired under either valuation.

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**TRUSTEE'S RESPONSE**

On March 8, 2016, the Chapter 13 Trustee, David Cusick ("Trustee") filed a response to Debtor's motion. Trustee states that the lien Debtor seeks herein to avoid is held by Debtor's ex-wife, and therefore some or all of the debt may constitute a domestic support obligation. The Trustee has also submitted as Exhibit "1," a release of lien filed by the Shasta County Tax Collector. Exhibit 1, Dckt. 33.

**FAILURE TO PROVIDE EVIDENCE IN SUPPORT OF THE MOTION**

According to Debtor's declaration, a judgment was entered against Debtor in favor of Creditor in the amount of $93,970.00. Dckt. 22. The declaration states further that an abstract of judgment was recorded with Tehama County on July 1, 2009, which encumbers the Property. However, no certified copy of the abstract of judgement or any other evidence has been provided. Evidence supporting a motion must be properly authenticated under Federal Rules of Evidence 602, 701, 801, and 802. Because Debtor has failed to provide any evidence showing the presence and value of the judgement lien sought to be avoided, the motion is denied.

**POSSIBLE DOMESTIC SUPPORT OBLIGATIONS**

While the court bases its decision on the grounds stated above, the court shares Trustee's concern about the nature of the debt supporting the judgement lien on Debtor's property. 11 U.S.C. § 522(f)(1)(A) excepts from avoidance any debt for a domestic support obligation.

> 11 U.S.C. § 522(f)(1) provides for the avoidance of:
>
> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)
>
> 11 U.S.C. § 523 provides, in relevant part:
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b),or 1328(b) of this title does not discharge an individual debtor from any debt–
>
> (5) for a domestic support obligation;. . .

Here, the Creditor appears to be the ex-wife of the Debtor. Debtor lists Creditor as a secured creditor under Schedule D. Further, a review of the docket shows that no proof of claim has been filed. However, any portion of the judicial lien fixing domestic support obligations cannot be avoided.

**RELEASE OF LIEN**

The court also notes that a release of lien has been filed by the Shasta County Tax Collector. Exhibit 1, Dckt. 33. No proof of claim has been filed by the Shasta County Tax Collector in this case. Without the lien of the Tax Collector, alleged to be valued at $50,000.00, there would be no impairment of Debtor's claimed exemption.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien is denied without prejudice.

**19. 15-29663-E-13 MICHAEL WALKER** **MOTION TO CONFIRM PLAN**
**MET-2 Mary Ellen Terranella** **2-9-16 [31]**

**Final Ruling:** No appearance at the March 22, 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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 9, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

| | | | |
|---|---|---|---|
| **20.** | **15-28165-E-13 TOG-3** | **LEON VICENTE AND ANGELA XILOJ<br>Thomas Gillis** | **MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC<br>2-10-16 [36]** |

**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). The Defaults of the non-responding parties are entered by the court.

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, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 10, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Ditech Financial, LLC ("Creditor") is denied without prejudice.**

The Motion to Value filed by Leon Vicente and Angela Xiloj ("Debtor") to value the secured claim of Ditech Financial, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6828 Blue Duck Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $134,581.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence

of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 8 filed by Ditech Financial, LLC is the claim which may be the subject of the present Motion. **However, the Proof of Claim No. 8 does not provide any evidence as to Ditech being the creditor [as that term is defined in 11 U.S.C. § 101(10) and (5)] whose rights are to be effected by this Motion**.

**DISCUSSION**

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine who the proper creditor is on this loan.

As an exhibit, the Debtor provides a Corporate Assignment of Deed of Trust between "HSBC Finance Corporation as Successor Servicer to Household Finance Corporation Of California" and "Ditech Financial, LLC." The assignments provided the following:

> convey, grant, assign, transfer and set over the Deed of Trust, without recourse, representation or warranty, together with all rights, title, and interest secured thereby, all liens, and any rights due or become due thereon

Dckt. 40, Exhibit A.

However, this transfer only indicates that the Deed of Trust was transfer, not the underlying note on which the obligation arises.

It is well established that the mere assignment of a deed of trust does not in and of itself transfer the obligation it secures. It is also well established law that an assignment of a deed of trust (or other security) is of no force and effect if would work to transfer the security to anyone other than the person who is the creditor on the obligation secured. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034 (9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); and Cal. Civ. Code §2936.

Debtors provide no exhibits showing that Ditech is the actual owner of the underlying obligation. There are no assignment or transfer of the note appears on the docket transferring any interest to Ditech. The court is not certain how Debtors can name Ditech as the actual lender for an obligation that appears to be owed to another originating entity. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

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FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan

servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

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

Therefore, the Motion is denied without prejudice.

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

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

**21. 11-39275-E-13 MARK/DIANE WERNER**
**SG-2 Shareen Golbahar**

**CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE**
**11-19-15 [167]**

**Tentative Ruling:** The Objection to Notice of Mortgage Payment Change 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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 19, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Objection to Notice of Mortgage Payment Change is sustained.**

Mark and Diane Werner ("Debtor") filed the instant Objection to Notice of Mortgage Payment Change on November 19, 2015. Dckt. 167.

The Debtor objects to the transfer of claim and Notice of Mortgage Payment Change of Greentree Servicing LLC filed by RCO Legal, P.S. The Debtor argues that on May 8, 2015, Greentree Servicing LLC filed a Notice of Transfer of Claim for Proof of Claim No. 25 with an asserted classification of secured in the amount of $389,003.004. Greentree Servicing LLC had also filed a Notice of Mortgage Payment Change on June 30, 2015, which claims that the secured payment of principal and interest has changed, with the current monthly principal amount of $2,170.13.

The previous creditor on Proof of Claim No. 25 was The Bank of New York Mellow, who and by through their servicer National Bankruptcy Services, LLC on behalf of Specialized Loan Servicing LLC. The Debtor and the previous creditor entered into a trial loan modification that was approved by the court on September 2, 2013. Dckt. 137. The modification provided:

1. A fixed interest rate of 2%.

2. Modified payment of 969.99 including principal, interest, and taxes.

3. A reduction of principal by $192,922.26, leaving a mortgage balance of $196,025.78.

The Debtor asserts that they were unaware of the issue regarding the Notice of Mortgage Payment Change and only became aware of the matter on November 3, 2015. The Debtor states this resulted in the Debtor seeking alternative counsel to object.

The Debtor asserts that the classification of the claim should be secured and the claim should be allowed in the amount of $196,025.78 and the Monthly Mortgage Payment should be set at the modified amount of $969.99 pursuant to the court approved terms of the loan modification agreement at a fixed interest fate of 2%.

The Debtor further objects on the ground that the Claim and Notice of Mortgage Payment Change does not sufficiently authenticate and substantiate the asserted balance, especially in light of the Debtor's loan modification.

**TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response to the instant Objection on December 28, 2016. Dckt. 177. The Trustee states that the Trustee cannot locate a Motion to Approve a Permanent Loan Modification. The Trustee argues that the court only granted the Trial Period loan modification. Dckt. 137.

**STIPULATION**

On January 12, 2016, the parties filed a stipulation to continue the hearing. Dckt. 181. On January 13, 2016, the court entered an order continuing the Objection to 3:00 p.m. on March 22, 2016. Dckt. 183. The court further ordered that on or before February 2, 2016, Ditech Financial LLC fka Green Tree Servicing, LLC shall file either (1) an amended proof of claim or (2) a supplemental response to the Objection with proof of transfer.

**DITECH RESPONSE**

Ditech Financial LLC f/k/a/ Green Tree Servicing LLC ("Ditech") filed a supplemental response on February 2, 2016. Dckt. 189. Ditech states that on July 1, 2011 a Proof of Claim was filed on behalf of The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders of the CWABS Inc., Asset-Banked Certificates, Series 2005-16, the creditor.

On November 1, 2013, Ditech asserts that the servicing obligations with regard to the Debtor's loan were transferred from Specialized Loan Servicing, LLC to Ditech.

On May 8, 2015, a Transfer of Claim was filed by Ditech in the instant case. Dckt. 161. The Transfer of Claim was filed due to the transfer of servicing obligations. However, Ditech admits that the Transfer of Claim improperly states that the claim was transferred to Ditech rather than just the servicing obligation.

On February 2, 2016, Ditech withdrew its Claim. Dckt. 186. On February 2, 2106, Ditech filed a Notice of Transfer of Servicing Rights. Dckt. 187.

**DISCUSSION**

First, to address the Trustee's comment concerning the breadth of the order approving the loan modification, the civil minutes which granted the loan modification stated the following:

> Based on the foregoing, the court grants the motion for the Debtor to enter into a permanent loan modification, the motion complying with the provisions of 11 U.S.C. § 364(d) and the terms set forth being reasonable.

Dckt. 133. It appears that, while the initial Motion contemplated only the trial period, further continuances and evidence from the Debtor that the final trial loan payment had been received indicates that the court was approving the permanent modification, therefore, the Trustee's objection is overruled.

**Loan Modification Approval**

The court's review of the Motion to Approve the Loan Modification (Dckt. 102) and the Loan Modification Terms (Exhibit 2, Dckt. 105) disclose that this has been a somewhat unusual loan modification process. The Loan Modification Terms are set forth in a letter dated May 14, 2012 from National Loan Services, LLC on behalf of Specialized Loan Servicing, LLC. These Terms, authorized by the court, provide:

a. If Debtor completes the three trial period plan payments;

b. Then

   i. "[a]ny unpaid late fees will be waived, interest and advances that we paid, will be added to the principal balance, and principal reduction will be applied. We will then permanently reduce the principal balance by the amount of $192,977.26. In addition, we will reduce your interest rate to 2.000%.

c. To accept the offer for the loan modification,

   i. "To accept this offer, please make your first Trial Period Plan payment by 6/1/2013. The payment must be in the exact amount of your Trial Period Plan payments. In order to receive a permanent modification, it is very

important that you make these payments on time and in the right amount."

d. The three Trial Period Plan payments were to be made by the following dates:

i. 1st payment: 969.99 by June 1, 2013

ii. 2nd payment 969.99 by July 1, 2013

iii. 3rd payment: $969.99 by August 1, 2013

e. "After you make all trial period payments on time, and if you continue to meet all fo the eligibility requirements of this modification program, you mortgage will be permanently modified.

The terms of this agreement were the final terms, with one of the conditions being the Debtor making three trial period payments. All other terms were fixed, so when the court authorized the Debtor to enter into the Loan Modification Agreement on those terms, that was the authorization for the final modification, not merely a trial modification where the final terms were to be later determined.

Specialized Loan Servicing responded to the Motion to Approve the Loan Modification, stating that the condition precedent to the loan being modified was Debtor making the three trial period payments. Dckt. 110. As noted in the court's Civil Minutes for the August 6, 2013 hearing on the Motion to Approve Loan Modification, Debtor had made two of the payments, and only the August 2013 payment was pending.

The court continued the hearing on the Motion to Approve Loan Modification to August 27, 2013, to allow for the August 2013 payment to be made, or not made, to determine the pending condition for the loan modification. The court then granted the Motion, having been presented evidence that the August 2013 payment had been made by Debtor. Civil Minutes, Dckt. 133; Order, Dckt. 137.

There are no further orders required of the court. The Loan Modification; on the terms specified in Exhibit 2, Dckt. 105; has been authorized by the court.

**Status of Notice of Mortgage Payment Change**

Reviewing the docket, Ditech filed a Notice of Mortgage Payment Change on February 9, 2016, but withdrew the Notice on February 10, 2016.

On February 22, 2016, Ditech Financial LLC f/k/a Green Tree Servicing, LLC filed a substitution of attorneys. Dckt. 191. Then Ditech filed a Notice of Withdrawal on March 14, 2016, withdrawing the Notice of Mortgage Payment Change filed on June 30, 2015.

It appears that Ditech and its new attorneys are "cleaning-up" the creditor's portion of this file and the loan modification.

**RULING**

Therefore, the Objection to the Notice of Mortgage Payment Change filed on June 30, 2015, filed between Dckt. Nos. 163 and 164) is sustained and is of not force and effect. This Notice of Mortgage Payment Change has also been "withdrawn" by Ditech Financial LLC f/k/a Green Tree Servicing, the successor loan servicer for the creditor holding this claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to the Notice of Mortgage Payment Change filed on June 30, 2015, filed between Dckt. Nos. 163 and 164) is sustained and is of not force and effect. This Notice of Mortgage Payment Change has also been "withdrawn" by Ditech Financial LLC f/k/a Green Tree Servicing, the successor loan servicer for the creditor holding this claim.

**22. 14-30877-E-13 TROY HARDIN MOTION TO MODIFY PLAN**
**PGM-1 Peter Macaluso 2-15-16 [50]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Troy Hardin ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 15, 2016. Dckt. 50.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to Debtor's Motion to Confirm Modified Plan on March 8, 2016. Dckt. 59. The Trustee opposes confirmation on the basis that:

1. Debtor's proposed modified plan may not provide for treatment of the Internal Revenue Service's claim. Under Debtor's confirmed plan, this creditor is provided for as a Class 5 claim. Debtor's proposed modified plan would provide for the claim in both Class 2 and Class 4. However, the plan does not specify what portions will be paid directly by the Debtor, and

Debtor's Supplemental Schedule J does not include payments to this creditor.

2. Debtor's proposed modified plan may not provide for treatment of the claim of Sacramento County Utilities. Under Debtor's confirmed plan, this creditor is provided for as a Class 5 claim. Debtor's proposed modified plan would provide for the claim in both Class 5 and Class 4, in the amount of $400.04 each. It is unclear whether this claim is owed to Sacramento County Utilities or the City of Sacramento; whether the debt is secured, priority, or both; and whether Debtor wants to pay this creditor through the proposed plan.

3. Debtor has not explained changed expenses claimed under his Supplemental Schedule J. Debtor's transportation, vehicle insurance, and car registration expenses have increased from $170.00 to $400.00, $0.00 to $144.45, and $0.00 to $35.00, respectively. Debtor has failed to provide any justification for the increased expenses.

**DEBTOR'S REPLY**

On March 15, 2016, Debtor filed a Reply to the Trustee's Opposition. Dckt. 62. Debtor states the following:

1. Debtor requests that the Internal Revenue Service's Class 4 claim be stricken as duplicative. Debtor clarifies that this creditor is provided for as a Class 2 claim.

2. Debtor requests that the Sacramento County Utilities' Class 4 claim be stricken as duplicative. Debtor clarifies that this creditor is provided for as a Class 5 claim.

3. Increased expenses were incurred from Debtor's changed employment position, reflected in Debtor's declaration. As Debtor is now an employee not provided with a vehicle, he no longer receives tax deductions for transportation costs, including gasoline, vehicle registration, and insurance costs.

**DISCUSSION**

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

The Trustee's objections are well-taken.

As to the first two objections, the Debtor's plan appears to duplicate creditors in different classes. For the Internal Revenue Service, the Debtor state that the Internal Revenue Service is meant to be included in Class 2 and requests that the order confirming strike the Internal Revenue Service being listed in Class 4. The Debtor asks the court to strike the Class 4 claim for Sacramento County Utilities, as it was meant to be listed as a Class 5 claim.

While it is possible that the order confirming may clarify the striking of the duplicative listing, the Debtor does not provide a response as to which is the actual name of the creditor as to the utilities claim nor does the

Debtor address what, in fact, is the proper classification of the debt (whether priority, secured, etc). Instead, the Debtor merely requests that the Class 4 listing be struck. This is not sufficient.

The Debtor also did not provide sufficient declaration to explain the expenses. While it is true, as pointed out by the Debtor, that he stated under penalty perjury that "I had to transition from my personal business and get a job," the Debtor does not provide evidence or declarations that this led to the need for a vehicle. The conclusion that the Debtor intended for the court and other parties in interest to discern from that eleven-word phrase is that the Debtor is no longer self-employed, therefore had to get a job, therefore he could not claim a deduction, therefore his expenses must have increased. The court disagrees that such a conclusion can be drawn from that single line in the Debtor's declaration. The Debtor is required to provide competent evidence to justify the modification of a plan.

Here, the Debtor appears to have tried to do the "bare minimum" to get the plan confirmed. The court is surprised that Debtor's counsel, Peter Macaluso, who appeared for many years before the court, did not properly prepare a complete and accurate declaration to support the modified plan. This is even further emphasized by Debtor's counsel not including a supplemental declaration from the Debtor in the reply. Rather, the Debtor and Debtor's counsel relies solely on that phrase in the declaration. The information and evidence should have been properly stated and provided in the declaration or Motion.

Therefore, due to the Debtor's failure to accurately schedule two different claims in the plan and the Debtor's failure to properly provide declaration to justify the modification, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

**23. 15-27379-E-13 MARCELLO FREIRE**
**MMM-2 Mohammad Mokarram**

**MOTION TO APPROVE LOAN MODIFICATION**
**1-19-16 [26]**

**Final Ruling:** No appearance at the March 22, 2016 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Trial Loan Modification filed by Marcello Freire ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") proposes the following trial period payments for the trial loan modification:

1. Principal and interest amount.....$1,892.22
2. Escrowed property insurance amount.....$ 88.52.
3. Escrowed property taxes amount.....$ 507.32.
4. Escrowed shortage amount.....$ 29.79.
5. Total Trial Period Plan payment.....$2,517.85.
6. Payment dates:

    a. February 1, 2016
    b. March 1, 2016.
    c. April 1, 2016.

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

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The proposed trial modification will allow the Debtor to attempt to qualify for a permanent loan modification that would reduce the Debtor's overall monthly mortgage payment. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Marcello Freire having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Marcello Freire ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 6306 Old Orchard Way, Orangevale, California, on such terms as stated in the Trial Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 29. The final terms must be presented to the court by a separate motion for authorization for Debtor to enter into the final loan modification (those terms not stated in the Trial Loan Modification).

**24. 15-27379-E-13 MARCELLO FREIRE — MOTION TO MODIFY PLAN**
**MMM-3 Mohammad Mokarram — 1-19-16 [31]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 63 days' notice was provided. 35 days' notice is required.

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

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

Marcello Freire ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 19, 2016. Dckt. 31.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 8, 2016. Dckt. 37. The Trustee objects on the ground that the Debtor's plan is based on the trial modification of the Debtor's mortgage. The Plan proposes to reclassify Wells Fargo Bank, N.A. from Class 1 to Class 4 to be paid directly from the Debtor under the trial loan modification.

The Trustee states that the Debtor's modified plan does not provide any provision should the modified plan be granted and then the Debtors are unsuccessful in obtaining the trial loan modification. The Debtor has not shown

that they will be able to make payments under the plan in the event that the loan modification is denied.

**DISCUSSION**

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

The Trustee's objection is well-taken.

A review of the Debtor's proposed plan (Dckt. 33) indicates that the Debtor is proposing to move Wells Fargo Bank, N.A. from Class 1 to Class 4 based on the trial loan modification that is part of the Debtor's Motion to Approve Loan Modification. On March 22, 2016, the court granted the Debtor's Motion for the trial modification of the loan.

However, as stated by the Trustee, the Debtor's plan does not provide options for if the loan modification does not become permanent or if the Debtor defaults under the modification. Without this information, the court nor any other party in interest would be able to determine the feasibility or viability of the plan when contingencies are not in place for the trial modification. The court cannot determine the Debtor's ability to make plan payments when the court does not have the information as to what happens to the plan if the trial loan modification does not become a permanent modification. 11 U.S.C. § 1325(a)(6).

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

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

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

**25. 10-47485-E-13 DIANE SCHERTZ**
**GW-5 Gerald White**

**MOTION FOR COMPENSATION BY THE LAW OFFICE OF GERALD L. WHITE FOR GARY H. GALE, DEBTORS ATTORNEY(S)**
**2-22-16 [86]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 22, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion for Allowance of Professional Fees is granted.**

Gary Gale, the Attorney ("Applicant") for Diane Schertz, the Chapter 13 Debtor ("Client"), makes a Second Interim 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 July 8, 2015 through February 17, 2016. Applicant requests fees in the amount of $1,140.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 24, 2016.

The Debtor received her discharge on March 7, 2016. Dckt. 92.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

**Benefit to the Estate**

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

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including Providing a review and notice of notices of payment change, as well as general case management communications. The estate has $1,980.00 of unencumbered monies to be administered as of the filing of the application. The monies are being held in trust by the Applicant. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Review of Notices of Payment Change: Applicant spent 1.95 hours in this category. Applicant assisted Client with analysis of payment changes from Wells Fargo Bank on Client's first deed of trust, as well as on Client's second deed of trust held by Wells Fargo Bank and Wells Fargo Bank Home Equity.

Case Management Communications: Applicant spent 1.85 hours in this category. Applicant reviewed and responded to Trustee and court correspondence and documents, communicated with the Debtor and Trustee to manage the case, and advised Client on post-confirmation and close-out issues.

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

| **Names of Professionals and Experience** | **Time** | **Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| Gary Gale | 3.8 | $300.00 | $1,140.00 |
| **Total Fees For Period of Application** | | | $1,140.00 |

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

| Application | Interim Approved Fees | Interim Fees Paid |
|---|---|---|
| First Interim | $6,491.00 | $6,491.00 |
| Total Interim Fees Approved Pursuant to 11 U.S.C. § 331 | $6,491.00 | $6,491.00 |

**Fees**

**Hourly Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $1,140.00 pursuant to 11 U.S.C. § 331 and prior Interim Fees in the amount of $6,491.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Applicant is authorized to pay the fees from the available funds held in trust on behalf of the Debtor by the Applicant, and once such trust funds are exhausted the Trustee may pay such remaining unpaid portion of these fees through the Chapter 13 Plan, the following amounts as compensation to this professional in this case:

Fees $1,140.00
Costs and Expenses $ 0.00

and prior interim fees of $6,491.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gary Gale (“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 Gary Gale is allowed the following fees and expenses as a professional of the Estate:
>
> Gary Gale, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 1,140.00
> Expenses in the amount of $ 0.00,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of and costs of $6,491.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Applicant is authorized to pay the fees allowed by this Order from the available funds held in trust on behalf of the Debtor by the Applicant, and the Trustee is authorized to pay any portion of these fees in excess of the applied monies held in trust, through the Chapter 13 Plan.

**26. 16-20089-E-13 SS-2 JEFFREY STEWART AND MADIHAH ALMUSTAFA-STEWART Scott Shumaker**

**MOTION TO CONFIRM PLAN 2-9-16 [38]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

Jeffrey and Madihah Stewart ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 9, 2016. Dckt. 38.

**TRUSTEE'S OPPOSITION**

Chapter 13 Trustee, David Cusick ("Trustee"), filed an opposition to Debtor's Motion to Confirm Modified Plan on February 26, 2016. Dckt. 56. The Trustee opposes confirmation on the basis that:

1. Debtor has not commenced plan payments as required by 11 U.S.C. § 1325(a)(2). Debtor is delinquent $2,011.00 in plan payments, with another payment of $2,011.00 due March 25, 2016.

2. Debtor failed to appear at the First Meeting of Creditors on February 18, 2016. Therefore, the Trustee does not have adequate information to determine whether the plan is suitable

or confirmable under 11 U.S.C. § 1325. The meeting has been continued to March 17, 2016.

3. Debtor has failed to provide the Trustee with all tax transcripts or copies of the most recent Federal Income Tax Return or a statement that no such documentation exists. This is required 7 days before the date set for the first meeting of creditors.

4. Debtor has failed to provide the Trustee with all required business documentation, including 2 years of tax returns, 6 months of profit and loss statements, and proof of license insurance, or a statement that no such documentation exists. This is required 7 days before the date set for the first meeting of creditors.

5. Trustee may not be able to administer the claim of Class 1 creditor Rico, DD, Inc. because this creditor has not been listed on Debtor's Schedule D, Debtor has not provided an address for the creditor, and no Proof of Claim has been filed for this creditor.

6. Creditor Rico, DD, Inc. has filed a Motion for Relief from the Automatic Stay in this case, scheduled for March 15, 2016.

7. Debtor has not paid his filing fee as required by 11 U.S.C. § 1325(a)(2). The Court has issued an Order to Show Cause against the Debtor.

On March 8, 2016, Rico, DD, Inc. ("Creditor") also filed an opposition to Debtor's Motion. Dckt. 72. The Creditor states as follows:

1. Debtor has not met his requirements under 11 U.S.C. § 1325 because he has not commenced plan payments.

2. Because Debtor is not making plan payments, Creditor is not receiving adequate protection for its claim. Furthermore, Creditor has not been listed on Debtor's Schedule D, and Debtor has not provided an address for the creditor, which would be required to provide for Creditor's claim. This has also left Creditor without adequate protection.

3. Debtor has not met his requirements under 11 U.S.C. § 1325 because, as noted by the Trustee, Debtor has failed to provide required tax and business documents, and has failed to appear at the scheduled meeting of creditors.

4. Debtor has filed this case in bad faith. Debtor claims that Creditor is being paid $1,500.00 monthly as adequate protection while Debtor pursues a pending unlawful detainer action against Creditor. However, Debtor already entered into an ordered stipulation whereby Debtor agreed to vacate property of the Creditor. Debtor is seeking to overturn that result by claiming fraud on the part of the Creditor even though no fraud was

present here. Furthermore, Debtors will not be able to litigate that claim because they do not have standing.

5. Debtor's plan may not be feasible under 11 U.S.C. § 1325(a)(6) because Creditor has a pending motion for relief from the automatic stay. If the motion is granted, Debtor may not be able to make payments under his plan.

**DISCUSSION**

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

The Trustee and Creditor's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $2,011.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

Furthermore, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor has failed to timely provide the Trustee with business documents including: business documentation, including 2 years of tax returns, 6 months of profit and loss statements, and proof of license insurance, or a statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

As to the issue of filing fee, the Trustee is correct in that the Debtor has failed to make the required filing fee payment by the deadline. The failure of the Debtor to comply with all requirements of the Code, here being the payment of required fees, is an independent ground to deny confirmation. 11 U.S.C. § 1225(a)(2).

The specifics of the Creditor's claim and argument are also grounds to deny confirmation. On March 15, 2016, the court granted the Creditor's Motion for Relief from the Automatic Stay. As such, the ability of the Debtor to make necessary plan payments.

Furthermore, the Creditor, who holds a security interest in real property, also alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditor are insufficient to provide it with adequate protection during the period of the plan. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), stands for the proposition that "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

*Timbers*, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See*, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., In re Sanchez, 384 B.R. 574, 576 (Bankr. D. Or. 2008); In re Denton, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

The Debtor's plan provides for adequate protection payments in the amount of 1,500.00. The Debtor states in the plan that there is a pending law suit in state court to undo the foreclosure sale and disallow the Creditor's claim. However, the Debtor is proposing the adequate protection payment until either the Debtor succeeds on the lawsuit or fails. The Creditor, however, argues that these payments do not adequately protect the Creditor's interest and that such payments indicates that the Debtor's plan is not proposed in good faith. In the absence of any countervailing evidence and upon the independent review of the plan and case history, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too.

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

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

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

**27. 15-28596-E-13 FLOYDETTE JAMES** **MOTION TO CONFIRM PLAN**
**PLG-1 Steven Alpert** **2-3-16 [21]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Floydette James ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 3, 2016. Dckt. 21.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 8, 2016. Dckt. 34. The Trustee opposes confirmation on the following grounds:

1. The Debtor is $2,285.96 delinquent in plan payments.

2. The Debtor's plan relies on the Motion to Value Collateral of Wells Fargo Bank, N.A.

**DISCUSSION**

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

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Wells Fargo Bank, N.A. On March 22, 2016, the court granted the Debtor's Motion to Value. Therefore, this objection is overruled.

However, the basis for the Trustee's objection is that the Debtor is $2,285.96 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

**28. 15-28596-E-13 FLOYDETTE JAMES** **MOTION TO VALUE COLLATERAL OF**
**PLG-2 Steven Alpert** **WELLS FARGO BANK, N.A.**
**2-4-16 [29]**

**Final Ruling: No appearance at the March 22, 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, and Office of the United States Trustee on February 4, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.**

The Motion to Value filed by Floydette James ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1752 Beale Circle, Suisun City, California ("Property"). Debtor seeks to value the Property at a fair market value of $305,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 6 filed by Wells Fargo Bank, N.A. is the claim which may be the subject of the present Motion.

**NO OPPOSITION**

Creditor has not filed an opposition.

**DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately $405,142.99. Creditor's second deed of trust secures a claim with a balance of approximately $37,513.22. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

the real property commonly known as 1752 Beale Circle, Suisun City, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $305,000.00 and is encumbered by senior liens securing claims in the amount of $405,142.00, which exceed the value of the Property which is subject to Creditor's lien.

**29. 10-42398-E-13 JAMES/MARIE MARSHALL** **CONTINUED MOTION FOR CONTEMPT**
**SNM-4** **1-11-16 [89]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
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The court having previously issued an order on the Motion for Contempt based on the stipulation filed by the parties (Dckt. 101) setting the Motion for a status conference on June 22, 2016 (Dckt. 103), **the Motion is removed from calendar.**

**30. 13-31975-E-13 JACK/LINDA GANAS**
**PD-1 Peter Cianchetta**

**CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JACK GEORGE GANAS AND LINDA MAE GANAS AND/OR MOTION TO APPROVE LOAN MODIFICATION**
**2-10-16 [97]**

**Final Ruling: No appearance at the March 22, 2016 hearing is required.**
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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, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise 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 in interest are entered.

**The Motion is granted and the court:(1) Approves the Compromise between Debtor and Wells Fargo Bank, N.A.; and (2) Authorizes Debtor to enter into the Loan Modification Agreement with Wells Fargo Bank, N.A.**

Wells Fargo Bank, N.A., the Defendant, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Jack and Linda Mae Ganas, the Debtor-Plaintiff, ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising in the Adversary Proceeding No. 14-02080 and the Movant's underlying Proof of Claim in the Settlor's bankruptcy case.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 99):

A. Movant will issue a check in the amount of $3,500.00 made payable to the order of Cianchetta and Associates and deliver the check to Peter C. Cianchetta, at 8788 Elk Grove Blvd.,

Suite 2A, Elk Grove, California as and for attorney's fees. Movant will also provide Settlor with a proposed loan modification agreement regarding the property commonly known as 613 McDevitt Drive, Wheatland, California ("Property") with an unpaid principal balance in the amount of $89,338.17 and the first payment due on October 1, 2015. This Agreement is not intended as a loan modification agreement or to provide the terms regarding Settlor's acceptance of a loan modification agreement. Rather, on August 14, 2015, Movant provided Settlors with a formal loan modification agreement that provides the terms and conditions of the loan modification as well as the actions the Settlors must take to accept the modification.

B. In exchange for the foregoing, Settlors agree to voluntarily dismiss the Adversary Proceeding and Complaint with prejudice as to Movant within seven days after the entry of the order on the stipulated Motion to Approve Compromise that will be filed jointly by the parties.

C. There is no admission of liability.

D. The Settlor fully, finally, and forever settle and release all demands, claims, and claims for relief relating to this matter only.

**DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

**Probability of Success**

The Movant asserts that given the stipulated nature of the compromise and the extensive litigation that remains if the case proceeds, the parties believe that the settlement is in the best interest of all parties.

**Difficulties in Collection**

The Movant argues that if the case went to judgment, there would be some uncertainty as to whether such payment on the judgment would occur. In view of the potential collection difficulties, the parties believe the settlement is in the best interest.

**Expense, Inconvenience and Delay of Continued Litigation**

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

**Paramount Interest of Creditors**

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

**Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The compromise provides for the immediate settlement of the claims arising in the Adversary Proceeding. More significantly, this settlement allows the parties to effectuate the loan modification previously worked out between the parties. Finally, the settlement provides for reimbursement of reasonable attorneys fees for Settlor's attorney. Though paid directly to the attorney, these are fees due counsel for services provided to the Debtor in this case.

**AUTHORIZATION TO COMBINE DIFFERENT CLAIMS FOR RELIEF IN ONE MOTION**

Movant has chosen to title this Motion as if it is requesting two separate claims for relief – Motion to Approve Compromise and Motion For Loan Modification. Dckt. 97. As counsel for Movant is well aware, Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 which allow for combining different claims for relief in one complaint is not applicable for Motions. See Fed. R. Bank. P. 9014.

The reason for the Supreme Court expressly making the multi-claim provisions of Rule 18 not applicable to the bankruptcy law and motion practice is evident. As with the present motion, contested matters are provided for a very short notice period (only 28 days) for addressing substantive matters in bankruptcy court. These contested matter proceedings include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate– proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. The Supreme Court and Rules Committee excluded the provision of Fed. R. Bankr. P. Rule 7018 and Fed. R. Civ. P. Rule 18 from the rapid law and motion practice in the bankruptcy court. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

Here, Movant purports to request two separate claims, without seeking relief from this court to make the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable to this contest matter proceeding as permitted in Federal Rule of Bankruptcy Procedure 9014(c). Normally, the court would deny such a motion.

However, it appears that this may well be a situation where making the provisions of Federal Rule of Civil Procedure 18 applicable to contested matter practice is proper. Here, the "compromise" is merely the parties agreeing to proceed with the loan modification. As stated in the Settlement Agreement, the loan modification agreement was "provided to Debtors" on August 14, 2015.

The court orders that the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 are made applicable to this Contested matter to combine the two different claims for relief - (1) Approval of the Settlement and (2) Authorization for Debtor to Enter into the Loan Modification (post-petition secured credit).

**CONTINUANCE OF HEARING**

However, the present Motion highlights one of the problems when parties try to cram multiple claims for relief into one Motion. The Parties have not:

A. Stated with particularity in the Motion (Fed. R. Bankr. P. 9013) the terms of the loan modification; or

B. Filed a copy of the proposed loan modification (Fed. R. Bankr. P. 4001(c)(1)(A) and (B)).

The Settlement Agreement expressly states that it is not the loan modification agreement.

Unfortunately, the present request is nothing more than a directive to the court to sign and order stating that "whatever the parties have done and are going to do, it's OK with the court." As all of the attorneys involved in this Contested Matter know, the court does not issue such "deaf, mute, and blind" orders.

Though it pains the court given the substantial work of the parties and their attorneys, and what appears to be a mutually advantageous settlement, the court must continue the hearing for the parties to file a copy of the Loan Modification Agreement (the court being willing to waive the Fed. R. Bank. P. 4001(c)(1)(A) and (B) and 9013 deficiencies). FN.1.

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FN.1. The court notes that Movant has filed an eight page "points and authorities." It appears that this document is short on the "points and authorities," and actually contains many of the grounds which must be stated with particularity in the Motion. Possibly, if counsel for Movant had complied with the basic pleading requirements for the Motion as regularly required by the court, he would have noticed that the Motion was devoid of the approval of loan modification grounds and there was no loan modification agreement being presented to the court.

To the extent that counsel seeks to argue at the hearing that the basic terms are stated in the "points and authorities, so hang the rule and just issue an order," such arguments are rejected by the court. Merely because an attorney chooses to create his or her own rules is not the same as complying with the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and Federal Rules of Evidence adopted by the Supreme Court.

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The court continues the hearing to 3:00 p.m. on March 22, 2016. The supplemental exhibit consisting of a copy of the Loan Modification Agreement shall be filed and served on the Chapter 13 Trustee and the U.S. Trustee on or before March 17, 2016. No supplemental declaration is required to properly authenticate the exhibit, the court accepting it as being jointly filed by the settling parties when it is filed by Movant.

The court shall review the loan modification agreement and may remove the continued hearing from the calendar and issue a final order granting the motion and granting the two different claims for relief if the court does not have any questions or concerns relating to the Loan Modification Agreement.

**REVIEW OF LOAN MODIFICATION AGREEMENT**

Following the March 14, 2016 hearing, the Parties filed the Loan Modification Agreement. Exhibit A, Dckt. 108. Upon review of the terms of the Loan Modification Agreement, the court grants the second relief sought in the Motion and authorizes Debtor to enter into the Loan Modification on the terms set forth in the "Loan Modification Agreement (Deed of Trust) filed as Exhibit A, Dckt. 108.

The court also approves the compromise and authorizes Debtor to so resolve the disputes on the terms stated in the Settlement Agreement filed as Exhibit A, Dckt. 99.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Wells Fargo Bank, N.A., Defendant, ("Movant") 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 Approve Compromise and Approve Loan Modification is granted, and

A. Jack and Linda Ganas are authorized to, and the settlement of the controversy with Wells Fargo Bank, N.A. is approved on the terms and conditions set forth in Exhibit A, Dckt. 99; and

B. Jack and Linda Ganas are authorized to enter into the Loan Modification with Wells Fargo Bank, N.A. on the terms set forth in the "Loan Modification Agreement (Deed of Trust) filed as Exhibit A, Dckt. 108.