

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

March 24, 2015 at 2:00 P.M.

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1. [13-29700](#)-C-13 BRUCE/DEBORAH FELT MOTION TO MODIFY PLAN  
CJY-2 Christian Younger 2-13-15 [[58](#)]

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

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

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

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

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

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtors may not be able to make plan payments required under 11 U.S.C. § 1326(a)(6). Debtors have filed an amended Schedule J that reflects Debtors' combined monthly income as \$7,039.04. According to Trustee's records, the latest Schedule I reflects that Debtors' combined monthly

income is \$12,555.98.

**DEBTOR'S RESPONSE**

Debtors provide that they filed an amended schedule J to reflect the changes to their expenses. Since the filing of Debtors' case the income and expense forms have changed. Debtors state that they will file and amended schedule I to reflect a net monthly income of \$7,039.04.

The court docket shows that Debtors have filed an amended schedule I reflecting a net monthly income of \$7,039.04. This resolves the Trustee's only objection. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the  
Plan is granted and the proposed Chapter 13  
Plan filed on February 13, 2015 is confirmed.

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**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

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

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

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

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

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 10,  
2015 is confirmed, and counsel for the Debtor  
shall prepare an appropriate order confirming  
the Chapter 13 Plan, transmit the proposed

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on an incorrect Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2015. 35 days' notice is required.

The Motion to Confirm the Plan has been incorrectly 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). However, because the moving party did not correctly serve Chapter 13 Trustee, the court will not issue a final ruling on this matter.

**The Motion to Confirm the Modified Plan is denied without prejudice.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by creditors.

#### **SERVICE ISSUE**

Debtors' proof of service reflects that on February 11, 2015, Debtors served Jan P. Johnson, Chapter 13 Trustee. However, the Chapter 13 Trustee assigned to Case Number 13-34908-C-13 is David Cusick, not Jan P. Johnson. Because Chapter 13 Trustee David Cusick has not had the opportunity to review the instant motion to confirm modified plan, the motion will be 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 Confirm the Chapter 13 Plan  
filed by the Debtors having been presented to the  
court, and upon review of the pleadings, evidence,  
arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied and  
Debtors' Chapter 13 Plan filed on February 11, 2015  
is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2015. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to deny the Motion to Confirm the Plan without prejudice.</b>
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**TRUSTEE'S OBJECTION**

Debtor is \$1,250 delinquent in plan payments to the Chapter 13 Trustee to date and the next scheduled payment of \$1,250 is due on 03-25-15. Debtor has paid \$6,900 into the plan to date. While Debtor is currently delinquent, he consistently makes his monthly plan payments late but usually pays the payment within 7 days of the due date.

**CREDITOR'S OBJECTION**

Creditor Rony Dhaliwal objects to the Plan for the following reasons:

1. The plan is not proposed in good faith. Debtor failed to include Creditor's claim based on a Creditor's state court judgment in the amount of \$12,475. Furthermore, Debtor has not filed any Motion to Value Collateral regarding his home, (on which creditor has filed a lien).
2. The debtor will not be able to make all payments under the plan: fails to explain how he will be able to make his monthly payments, and the

Plan is based on contradictory statements of Debtor's financial condition. Debtor has claimed that his gross monthly income from employment is \$6,301.95. Docket #81. Debtor has further claimed that he receives \$750 in rent, making his total monthly income \$7,051.95. After deductions, Debtor lists his monthly take-home pay as \$4,677.63. Debtor further lists his expenses as \$3,427.56. Subtracting his monthly expenses from his monthly take-home pay, Debtor yields \$1,250.07 as his monthly net income. It is this amount Debtor proposes to pay toward his Chapter 13 plan. These figures, however, are different from the Statement of Currently Monthly Income and Calculation of Commitment Period where gross wages are listed as \$5,180.67, almost 20% less than the \$6,301.95 amount he claimed in Schedule I. Docket #82.

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

Debtor states that he will be current on Trustee's fees by the hearing.

#### **DISCUSSION**

The docket reflects that Debtor has addressed Trustee's objection concerning delinquent plan payment. The court will assess whether Debtor has become current on his plan payments at the hearing. However, the docket further reflects that Debtor has not replied to Creditor Ronny Dhaliwal's objections. As a result, the court will not confirm the Plan at this time.

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

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

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

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

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

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

**PREVIOUSLY**

On October 21, 2014, the court held an initial hearing on the Motion and continued the matter to permit Debtor to supplement the record and afford the Internal Revenue Service an opportunity to file its 11 U.S.C. § 1305 claim.

At the hearing on January 13, 2015, the court's decision was to continue the Motion to Confirm to February 10, 2015 to give the Internal Revenue Service time to file its claim for post-petition taxes, to ensure the paystubs Debtor provided to the Trustee adequately substantiate the claims made by the Debtor, and to permit Trustee to review documents that Debtor's attorney provided Trustee during the January 13, 2015 hearing.

At the hearing on February 10, 2015, the court's decision was to continue the Motion to Confirm to March 24, 2015 to allow Trustee time to resolve Trustee's final objections (1) IRS issues (might not be that extensive of an issue); and (2) income. The court requested that Debtor's Counsel file a status report. No status report was filed.

**SUMMARY OF TRUSTEE'S OBJECTION**

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

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

1. Trustee is uncertain that Debtor can make the payments required under 11 U.S.C. § 1325(a)(6). Debtor has a \$23,535.86 post-petition liability to the Internal Revenue Service for 2013 taxes. Debtor does not provide any explanation regarding this post-petition liability. Debtor's Schedule J includes a \$1,000 monthly expense for self-employment taxes.
2. Debtor filed a Declaration in support of the Motion; however, it lacks sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). Debtor does not address the changes in income of the non-filing spouse. The non-filing spouse's gross income decreased for \$7,691.02 at the time of filing to \$3,595.57 currently. The monthly net income decreased from \$3,161.51 to \$2,747.29.
3. Debtor added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of \$23,535.86. This creditor has not filed a claim for post-petition taxes and only the creditor has the ability to do so under 11 U.S.C. § 1305.

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

Debtor responds to the trustee and offers the following:

1. Debtor states that when he filed bankruptcy in November 2013, he filed a plan that anticipated the tax liability and set aside \$1,000 to be paid quarterly to the Internal Revenue Service to prevent future post-petition tax liabilities. Debtor asserts that as of October 2014, he has made payments to the IRS of \$8,100.
2. Debtor attached the Declaration of Dianne Vazquez, his non-filing spouse. The Declaration explains that non-filing spouse attended the meeting of creditors and suffered a reduced income amount because her position with the local police force changed and decreased the available over-time pay.
3. The Internal Revenue Service is in the process of filing the 11 U.S.C. § 1305 claim.

#### **Declaration of Ed Weedman in Support of Trustee's Objection**

This declaration was filed on December 30, 2014. The Trustee reiterates that the Internal Revenue Service has not filed a claim for post-petition taxes, as provided for in the proposed plan.

On October 14, 2014, Debtor's non-filing spouse submitted a declaration stating that her new position does not allow her to work eight hours of overtime per month. Overall, the Trustee calculated that from the time the petition was filed to the October 14, 2014, the overall reduction in monthly income from the non-filing spouse totals \$414.22. However, Debtor has still had not provided any supporting evidence, such as paystubs, to the Trustee.

#### **Debtor's Supplemental Response**

Debtor filed a supplemental response on January 6, 2014. Debtor states that he has provided the payroll records for his non-filing spouse for November and December 2014 to the Trustee. Debtor asserts that the paystubs support that the income is consistent with gross income reported of \$3,426.18.

#### **Trustee's Supplemental Declaration**

On January 22, 2015, Trustee filed a declaration showing that he has received and examined the non-filing spouse's paystubs and compared them to Debtor's Schedule I.

#### **DISCUSSION**

On February 10, 2015, the court entered an order continuing the Motion to Confirm to March 24, 2015 to allow Trustee time to resolve Trustee's final objections: (1) IRS issues (might not be that extensive of an issue); and (2) income. The court requested that Debtor's Counsel file a status report. The docket reflects that no status report was filed, and there is no indication the Trustee's issues have been resolved. Thus the motion is denied.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Modified Plan is denied and the plan is not confirmed.

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**Also #7**

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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, Creditor, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of Chase Bank, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6537 Cowboy Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$300,406.00. Chase's second deed of trust secures a loan with a balance of approximately \$144,623.39. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Chase Bank USA, N.A. secured by a second deed of trust recorded against the real property commonly known as 6537 Cowboy Way, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$275,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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, Creditor, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of Chase Bank, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8194 Sunrise Blvd., Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$317,821.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$416,807.00. Chase's second deed of trust secures a loan with a balance of approximately \$56,700.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of GMAC Mortgage secured by a second deed of trust recorded against the real property commonly known as 8194 Sunrise Blvd., Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$317,821.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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8. [11-46827](#)-C-13 UBONG INYANG  
PGM-4 Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTOR'S  
ATTORNEY  
2-17-15 [[108](#)]

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**Final Ruling:** No appearance at the March 24, 2015 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, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

#### **FEES REQUESTED**

Peter Macaluso, the Attorney ("Applicant") for Ubong L. Inyang, the Chapter 13 Debtor ("Client"), requests the court permit additional fees pursuant to Local Bankruptcy Rule 2016-1(c)(3) in the amount of \$1,080.00.

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. ***Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional***

**compensation.** Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 1 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

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

Applicant provides the following explanation of services that were substantial and unanticipated post-confirmation work for preparation of loan modification requiring approval from the court.

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

#### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

### **Benefit to the Estate**

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

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

*Id.* at 959.

### **CHAPTER 13 TRUSTEE**

On February 24, 2015, the Chapter 13 Trustee submitted a statement indicating that he has no opposition to the court granting the relief requested by Peter Macaluso.

### **DISPOSITION**

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

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

Fees	\$1,080
------	---------

pursuant to this Application in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Counsel for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtors  
Fees in the amount of \$1,080,

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

\*\*\*\*\*

9. [14-31728](#)-C-13 DANIEL DESMOND  
LBG-3 Lucas Garcia  
CASE DISMISSED 2/19/15

MOTION TO CONFIRM PLAN  
2-4-15 [[37](#)]

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**Final Ruling:** No appearance at the March 3, 2015 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 Dismiss 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because it does not list plan payments.

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

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

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

The Motion to Confirm the Modified Chapter  
13 Plan filed by the Debtors having been  
presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and  
good cause appearing,

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

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 3, 2014. Fourteen days' notice is required. This requirement has been met.

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

<b>The court's decision is to overrule the Objection.</b>
---

#### **PROCEDURAL HISTORY**

The Court first heard this matter on December 9, 2014 and continued the matter to provide Debtors' counsel to file a response and argue for confirmation of the Plan. Brief for Debtors was due December 30, 2014, which was timely filed. Trustee reply was due on January 13, 2015, which was timely filed.

At the hearing on January 27, 2015, the court continued the hearing to February, 24, 2015. The Chapter 13 Trustee then filed a motion to continue the hearing from February 24, 2015 to March 24, 2015 because counsel for Debtor would be unable to attend the February hearing due to medical reasons. The court granted the Trustee's motion on March 3, 2015. Dckt. 141.

#### **OPPOSITION**

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

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

The income listed on Schedule I is not clear. Line 8h is listed as "Recycle Vol. Ret. \$350, Income Tx Refunds \$600." The income on Line 8h, in Column 1 for Debtor is listed as \$350.

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

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

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

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's second objection and have filed amended Schedules I and J. Debtors explain that:

1. Line 57(a) of form 22 seeks a \$500 adjustment to means test because in Debtor Roosevelt Nixon's trade, high voltage hazards escalate with age so he must retire in 2015 at age 62. Debtors request a special circumstances exception from the means test to account for retirement in a trade where it is not safe to work past 62. Accounting for the \$500 special circumstances exception, the Plan complies with the means test.
2. Following retirement, Debtor Roosevelt Nixon expects that the retirement loan payments will stop because some corpus will be drawn upon to pay off the loans upon retirement.
3. Debtors expect to receive state and federal tax refunds of \$12,200.
  - a. For 2013 taxable year, Debtors paid \$20,952 in income tax withholdings and received a tax refund of \$11,048. Debtor Roosevelt Nixon's withholdings for 2014 taxable year to date is \$19,300. The tax refund is expected to be below \$9,000. Roosevelt Nixon's withholdings for 2014 state taxes is

approximately \$7,200. State taxes payable for 2014 will likely approach \$4,000, and the state tax refund will likely be \$3,200.

- b. Schedule I, Line 13 is explained as follows: Debtors have allocated \$5,100 of the tax refunds to boost disposable income after retirement. The Plan anticipates a boost of \$300 per month in order to continue to pay the Trustee \$500 a month for 17 additional months following receipt of the refunds for a total of \$5,100.
  - c. Debtors have allocated \$7,100 of the tax refunds to pay for deferred costs. Debtors have deferred auto maintenance, clothing replacement, and home repairs and maintenance until receipt of tax refunds.
4. Debtors have budgeted \$1,104 per month for health insurance upon Debtor Roosevelt Nixon's retirement at 62. Debtors do not qualify for Medicare until age 65 in three years.

#### **TRUSTEE'S REPLY**

Trustee has reviewed the proposed order confirming plan (Dkt. 51) seeking to resolve the objections to confirmation. Trustee has reviewed the order confirming plan, which proposes \$3,200 lump sum before May 25, 2015, and \$3,200 before May 25, 2016. Trustee's objection will be satisfied if the Court is willing to confirm the plan as amended in the proposed order confirming.

#### **DISCUSSION**

The court granted the Debtors' Motion to Value the secured claim of Deutsche Bank National Trust Company on December 9, 2014. The granting of that motion resolved the Trustee's first Objection. Debtors have responded to Trustee's second objection and have filed an amendment to Schedules I and J. Because the court will confirm the plan as amended in the proposed order confirming, the objection is overruled and the Plan is confirmed.

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

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

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

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

\*\*\*\*

12. [14-30830](#)-C-13 HOLLY BURT  
CAH-2 Anthony Hughes

MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
2-6-15 [[37](#)]

Also #13

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

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

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

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 6, 2015. Fourteen days' notice is required. Here, although Movant served all parties well in excess of fourteen days, the language included in the notice advised the recipients that no written opposition was required, and hence the court will treat this notice under Local Rule 9014-1(f)(2) and permit opposition to be presented in court hearing on March 24, 2015.

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

<b>The Motion to Value secured claim of The Bank of New York Mellon, "Creditor," is granted.</b>
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 23173 Lone Pine Drive, Auburn, California. The Debtor seeks to value the property at a fair market value of \$185,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$193,140.34. The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$98,163.10. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon's secured by a second deed of trust recorded against the real property commonly known as 23173 Lone Pine Drive, Auburn, 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 \$185,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2015. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to deny the Motion to Confirm the Plan without prejudice.</b>
--

**TRUSTEE'S OBJECTION**

The Chapter 13 Trustee objects to the plan for the following reasons:

1. Debtor cannot afford the plan payments. The Plan relies on the outcome of the hearing on Bank of New York/Mellon's motion to value collateral, set for hearing the same day as this motion.
2. Trustee is unable to determine whether the Plan is Debtor's best efforts under 11 U.S.C. § 1325(b). The income Debtor reported on Schedule I is based on a recent change in employment made just prior to filing and had not become effective by the 341 date. Trustee has been unable to verify whether the income on Schedule I is being reported accurately as no paystubs have been provided for the current employment.

**DISCUSSION**

Although the court is prepared to grant the pending motion to value collateral of Bank of New York/Mellon (see item 12), Trustee's second objection has not yet been resolved.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2015. Fourteen days' notice is required.

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

<b>The court's decision is to sustain the Objection.</b>
--

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

Trustee states that Debtor proposes to avoid the judgment liens of GCFS Inc. and Wells Fargo c/o Cash LLC, but has not filed motions to avoid the liens. The Plan does not have sufficient monies to pay the claims in full and therefore should also be denied confirmation.

#### **DEBTOR'S OPPOSITION**

Debtor's opposition addresses Trustee's concerns as follows:

1. Debtor has obtained an order granting the motion to value the Wells Fargo second mortgage. The order was entered on March 1, 2015 stemming from a February 24, 2015 hearing. Cash LLC collecting for

Wells Fargo does not have a secured claim. Debtor listed this in Schedule D and classified Wells Fargo in the plan as a class 2 creditor. Wells Fargo filed a claim in the first case [#14-28298] indicating that the claim was unsecured. Considering the absence of a security interest, there is no need to file a motion to value collateral with regard to Wells Fargo.

2. Debtor's counsel has anticipated a stipulation from the creditor, which has not yet materialized. Debtor filed a motion to void the abstract on March, 18, 2015 set for hearing on April 14, 2015.

## **DISCUSSION**

The docket reflects that Debtor has addressed Trustee's concern as to Wells Fargo's claim but not as to GCFS Inc.'s claim. Therefore, the court will deny the Plan without prejudice.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

**TRUSTEE'S OBJECTION**

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because the supporting motion states:

"Evelyn is not able to ride public transportation. Our daughter used to drive her, but is no longer able as she moved farther away, so she had to get a cheap form of car." Dckt. 78.

Trustee is concerned that Debtors have incurred monthly payments in association with this purchase which will prevent Debtors from making the plan payments.

**DEBTORS' RESPONSE**

Debtors responded to the Trustee's concerns stating that "they purchased a car for \$2,500.00 and no longer have a need to incur debt." Dckt. 88.

#### **DISCUSSION**

The docket demonstrates that Debtors have addressed and assuaged Trustee's only concern. Debtors state that they have not incurred additional monthly expenses that will interfere with plan payments. Therefore, the court finds that the modified Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the  
Plan is granted and the proposed Chapter 13  
Plan file on February 11, 2015 is confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

**TRUSTEE'S OPPOSITION**

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

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

1. The Modified Plan proposes to provide for Solano County Tax Collector as a Class 2 secured claim. However, Trustee objected to the claim and requested the claim be disallowed absent a motion to allow the administrative claim. The court sustained the Trustee's objection and disallowed the Solano County Tax Collector's claim as an "Unsecured Administrative Claim" without prejudice to any secured claim which the Creditor may have in this case. Trustee does not oppose the inclusion of Solano County Tax Collector as Class 2 creditor provided the court specifically orders Trustee to make such payments.

2. The Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6). Debtors filed amended schedules I and J. Trustee's specific concerns relate to auto insurance, life insurance, an exhibit (D-a State Farm Statement) in support of these expenses, and transportation costs.
- a. Auto Insurance. Schedule A lists Debtors' vehicles as 2002 Coleman Laramie Tent Trailer, 2002 Hyundai Accent, and a 15' Open Bow Boat. Debtors amended schedule J budgets \$111.91 for this expense where previously Debtors budgeted \$200. However, it appears they are part of their monthly auto insurance premiums for a total \$510.86/month. Debtors exhibit D reflects insurance for these vehicles per month is \$75.63. Trustee would note that the State Farm Statement also includes monthly premiums for seven other vehicles. Debtors have not disclosed these vehicles, and Trustee is unsure who they actually belong to.
  - b. Life Insurance. Amended schedule J budgets \$500/month for life insurance where they previously budgeted \$0. Exhibit D indicates the monthly premium for Debtors is \$500. Trustee would note the State Farm Statement also includes life insurance premiums for what appears to be other family members for total monthly premium of \$673.96. Trustee is uncertain when Debtors obtained life insurance policy since their prior schedule J did not include this expense.
  - c. Transportation. Debtors budget \$600 per month for transportation costs. Debtors motion and declaration indicate they work for the same company but different locations and hours. Debtors state this expense includes gas, bridge tolls (\$25/week totaling \$400/month), and vehicle maintenance. Trustee calculates bridge tolls at \$25/week per Debtor would total \$216.67/month, not \$400.

#### **DEBTORS' REPLY**

On March 18, 2015, Debtors responded to Trustee's opposition. Debtors state that they will provide an order confirming plan which will address the Trustee's objection as follows: "IT IS FURTHER ORDERED that: Solano County Tax Collector shall be paid as a Class 2 Claim with a monthly dividend of \$506.41 and an interest rate of 18.00%." Dckt. 108.

Debtors state that they will be filing supplemental declarations to their Motion to Confirm Second Modified Plan Filed on January 20, 2015 on March 19, 2015, that will address the Trustee's concerns regarding their ability to make plan payment based on auto insurance, life insurance and transportation.

The docket reflects that on March 19, 2015, Debtors filed supplemental declarations to clarify inconsistencies identified by the Chapter 13 Trustee. These declarations are filed by Debtors and their three children, and provide that: (1) Debtors made an error in their original calculation of transportation costs, and the modified plan corrects this error; (2) Debtors' child(ren) have life insurance policies that appear of their life insurance statements; and (3) the additional vehicles appearing on Debtors' auto insurance forms belong to the children, which they pay for independently.

## **DISCUSSION**

The court is satisfied that Debtors have resolved Trustee's objections to the motion to modify the plan. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed on January 20, 2015 is confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2015. Fourteen days' notice is required.

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

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

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

1. Trustee is uncertain if the Plan has been proposed in good faith because (1) Debtors are over median income as indicated by the Statement of Current Monthly Income on Form 22C-1, which lists Debtors' ordinary and necessary business expenses of \$34,309; and (2) Debtors failed to properly complete the CMI contrary to 11 U.S.C. § 1325(b)(1)(B).
2. Debtors cannot afford the plan payments. The Plan relies on the motion to value collateral of creditor AGI Publishing set for hearing on March 3, 2015. If the motion is not granted, Debtors plan is unfeasible.
3. The Plan does not provide for Spartan Mortgage Services, Inc.'s lien

against real property at 1928 G St, Rio Linda, CA, listed on Schedule D. Failure to provide treatment could indicate that Debtors either cannot afford the proposed plan payments and/or want to conceal the proposed treatment of creditor.

4. The Plan may fail the Chapter 7 liquidation analysis pursuant to 11 U.S.C. § 1325(a)(4). On Schedule A, Debtors list interest in real property located at 1928 G Street, Rio Linda, CA with value of \$260,000. A website, [www.eppraisal.com](http://www.eppraisal.com), provided an estimated value ranging from \$356,542 - \$585,406. Further, Trustee is uncertain if Debtors have disclosed all assets. A review of business bank statements reveal monthly deposits reported as FDMS-SETTLEMENT. Debtors do not disclose any assets on Schedule B that resemble a settlement award.
5. Debtors did not provide profit and loss statements. In order to determine feasibility of the plan, Trustee requests that business debtors provide 6 months of profit and loss statement for the 6 months immediately preceding the filing of a bankruptcy petition. Each profit and loss should report gross receipts for the month and then itemize all expenses and deductions from the months' earnings. In this case, Debtors provide only 1 profit and loss which combines the consolidates 6 months worth of income and 6 months worth of expenses.

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

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

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

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

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

\*\*\*\*

18. [12-37145](#)-C-13 TANASHE NASH  
DJC-3 Diana Cavanaugh

MOTION TO APPROVE LOAN  
MODIFICATION  
2-9-15 [[84](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the March 24, 2015 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 9, 2015. Twenty-eight days' notice is required. That requirement was met.

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 Loan Modification filed by Tanashe Marie Nash ("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 1, has agreed to a loan modification which will reduce Debtor's mortgage payment from \$1,544.67 to \$1,460.09 a month. The principal balance of Debtor's note will be \$216,369.17. The modification will provide for a reduced interest rate of 4.875%.

The Motion is supported by the Declaration of Tanashe Marie Nash. 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.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from parties in interest, Chapter 13 Trustee having filed a statement of non-opposition, 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 [name of 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 court authorizes  
Tanashe Marie Nash ("Debtor") to amend the  
terms of the loan with Bank of America, N.A.,  
which is secured by the real property commonly  
known as 580 Candela Circle, Sacramento,  
California, on such terms as stated in the  
Modification Agreement filed as Exhibit A in  
support of the Motion, Dckt. 87.

\*\*\*\*\*

**Also #20**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

The court continued the hearing on this motion from February 24, 2015 to March 24, 2015.

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

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

1. According to the Trustee's calculations, the plan will complete in more than 60 months, possibly taking 71 months. It appears that this is due to the proposed percentage increase to unsecured creditors from 0.00% to 100%. The Trustee would not that Debtor's Moton reflects a percentage to unsecured creditors of 58.08%, but section 2.15 of the plan proposes 100%.
2. Debtor's modified plan proposes to reclassify Nissan Motor

Acceptance Corp from Class 2 to Class 3, but does not authorize payments made under the confirmed plan. Debtor's Motion indicates \$4,398.92 was paid to this creditor through October 2014. To date, the Trustee has disbursed a total of \$4,613.77, which consists of \$3,582.24 principal, and \$1,031.52 interest.

3. Debtor's modified plan proposes to add Maita Subaru Mazda to Class 4 for a 2010 Nissan Maxima. Debtor's Motion and Declaration indicate that creditor Nissan Motor Acceptance Corporation is being reclassified to Class 3 due to the vehicle being totaled, and Maita Subaru Mazda is added in Class 4 for a new secured car payment. Debtor's Amended Schedule J now includes a vehicle payment of \$389.00 per month.

Trustee is uncertain if Debtor received court authorization to make such a purchase and is unable to locate a Motion to Incur Debt to purchase this vehicle.

4. Debtor's original Schedule I, filed May 2, 2013, reflects monthly 401K loan payments of \$92.56. At the 341 Meeting on June 6, 2013, the Trustee learned this debt was to be paid in two years. Debtor's proposed modified plan does not offer to increase the plan payments by \$92.56 upon payoff of this loan, which would be approximately June 2015.

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

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

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

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

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

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**Tentative Ruling:** The Motion to Incur Debt 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 25, 2015. Twenty-eight days' notice is required. By the court's calculations, Movant provided twenty-seven days' notice.

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

**The Motion to Incur Debt is denied without prejudice.**

The motion seeks permission to purchase a 2010 Nissan Maxima S Sedan 4D, which the total purchase price is \$20,471.21, with monthly payments of \$338.89.

However, Movant has not timely given the notice required for a Motion to Incur Debt. Local Rule 9014-1(f)(1) provides that twenty-eight days' notice is required, however Movant-Debtor has provided only twenty-seven days' notice.

Because Debtor did not give sufficient notice, 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 Incur Debt filed by Amanda Hydo, 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 to Incur Debt is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT MAKES AN ORAL MOTION TO SHORTEN TIME AND CAN SHOW PROPER GROUND FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FOREGOING ISSUES:

#### **ALTERNATIVE RULING**

The motion seeks permission to purchase a 2010 Nissan Maxima S Sedan 4D, which the total purchase price is \$20,471.21, with monthly payments of \$338.89.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

Chapter 13 Trustee raises a number of concerns implicated by the instant motion.

1. Debtor entered into a sales contract on September 29, 2014, for which four monthly payments have become due. Debtor did not court obtain permission prior to entering into said sale contract.
2. The monthly payment listed on the sales contract reflects \$338.89. However, Debtor has listed an expense fo the auto on Schedule J at \$389.00 per month.
3. The interest rate is excessive at 13.73%. Debtor has not indicated whether she researched any other dealers that would give her a better rate, or that this rate was the best she could find.

#### **DISCUSSION**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In *re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In *re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase a well used vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 2007 Nissan Maxima. When it was damaged, the Debtor received \$4,000.00 in insurance proceeds. Rather than using the proceeds to purchase an affordable vehicle, the Debtor seeks to borrow an additional \$16,470.21 to purchase a \$20,470.21 vehicle.

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 13.73%.

Most troubling, however, is the fact that Debtor completed the purchase of the vehicle on September 29, 2014, without court approval and in direct violation of the confirmed plan. In fact, the Debtor represents in her

declaration, under penalty of perjury, that she has not yet entered into a sales contract for the vehicle, stating that she is "in possession of a proposal from the desired lender," not that the attached exhibit is a sales contract already executed. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

The motion is denied.

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 Incur Debt 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 Motion is denied and Amanda Hydo, Debtor, is not authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 42.

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

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

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

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

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

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

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

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

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

1. Post-petition arrears overstated. Section 6.03 of Debtor's proposed plan states, "Beginning March 2015 the trustee will pay \$100.00 per month to Provident Funding Associates as and for the post petition mortgage delinquency of \$7,101.85 owing to creditor." Trustee's records reflect that 41 mortgage payments of \$1
2. Lump sum payment. Trustee is uncertain Debtor will have the ability to make a lump sum payment of \$20,000 from the sale of a motorcycle by the 53rd month (February 2016 where Debtor's petition was filed September 19, 2011). Debtor's plan identifies the motorcycle as a 2008 model, but Schedule B identifies it as a 2006 model. Further, Harley Davidson Credit Corp filed a secured claim in the amount of \$13,506.12 regarding a 2007 motorcycle and indicated the value of

the property at that time was \$20,600

#### **DEBTOR'S REPONSE**

Debtor responds to each of Trustee's concerns, providing:

1. Debtor's calculation of post-petition arrears is based upon the Trustee's own computer statement of payments made. Trustee's calculations show that only 36 payments were actually disbursed. With 41 payments due and only 36 actually paid, Debtor is delinquent 5 postpetition payments of \$1,365.74 each, plus late charges of \$54.62 each. If this reading is incorrect and post-petition arrears are less, the modified plan is not affect. The post-petition delinquency would be cured at an earlier point, and the residuals would be become a payment to unsecured claimants.
2. Debtor states that the motorcycle is being paid through the plan, and thus the \$20,000 includes the payoff of the motorcycle. Debtor will sell the motorcycle for at least \$20,000 and pay this to the Trustee. Trustee will need to do a "check exchange" to pay off the lien at the time of sale to give clear title to the purchaser, but will receive the full \$20,000 as proposed by the plan before paying off the lien. Additionally, in the interim, the lien claim will be reduced by the Debtor's monthly plan payments made between now and the sale date.

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

Based on the Debtor's response to Trustee's objection, Trustee no longer opposes Debtor's proposed modified plan.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed on February 12, 2015 is confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 18, 2014. Fourteen days' notice is required.

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

<b>The court's decision is to sustain the Objection.</b>
--

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

1. The plan lists the last name of the Debtors "Smith" not "Seth."  
Failure to provide adequate notice to the creditors to identify the debtor should result in denial of the motion under FRBP 9004(b).
2. It appears that Debtors cannot make plan payments as they are presently delinquent. Debtors have not made a single payment to date. At the first meeting of creditors, Debtors admitted their schedules are no longer accurate because Debtors have separated and now have 2 households. Debtors admitted they are no longer able to afford the proposed plan payments.
3. It is not clear if Debtor Jessica Seth is employed.

The docket reflects that Debtor has not responded to Trustee's concerns. Accordingly, the court will sustain the Objection.

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

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

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

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

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

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**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on September 2, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Persolve, LLC dba Account Resolutions Associates for the sum of \$22,264.44. The abstract of judgment was recorded with Yolo County on January 5, 2015. That lien attached to the Debtor's residential real property commonly known as 1047 Carrie Street, West Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$140,000 as of the date of the petition. The unavoidable consensual liens total \$143,532.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$10,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

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

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

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

**IT IS ORDERED** that the judgment lien of Persolve, LLC dba Account Resolutions Associates, Yolo County Superior Court Case No. G131062, Document No. 2015-0000096-00, recorded on January 5, 2015, with the Yolo County Recorder, against the real property commonly known 1047 Carrie Street, West Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2015. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to deny the Motion to Confirm the Plan without prejudice.</b>
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**TRUSTEE'S OBJECTION**

In addition to reiterating the Creditor's concerns detailed below, the Chapter 13 Trustee objects to the Plan for the following reasons:

1. The Plan appears to propose that the Trustee and/or the Court authorize Debtors to default on their Class 4 claim of One West Bank. Debtors claim that in order to qualify for a loan modification they must default on the note. On October 22, 2013, One West Bank filed Court Claim #2, indicating that Debtors are \$26,099.35 in arrears. it appears that Debtors do not need authorization to default as they are currently in default.
2. The Plan misclassifies One West Banks' Class 4 claim. Based on arrearages on this claim, the plan requires that Debtors provide for ongoing mortgage payments to be paid in Class 1 while Debtors cure the delinquency through the plan.
3. The Plan proposes to retain Debtors' rental property at a loss of income in the amount of \$858 per month.

4. The Plan does not propose to pay Toyota Motor Credit's secured claim.
5. The Plan does not propose equal distribution payments to administrative claims.
6. It appears Debtors cannot make the payments as they indicate that they have incurred a "huge" dental bill and have spent the \$10,000 received post-petition from former counsel.

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

Creditor One West Bank, holding a lien on real property commonly known as 3100 Fiji Island Street, West Sacramento, California, objects to the Plan because the Plan lists arrearages owed to Creditor as \$0 rather than \$26,099.35--the amount of Creditor's claim. The plan proposes that the Trustee and court

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

Debtors reply to Creditor's and Trustee's objections to confirmation of the plan as follows:

1. As to Trustee's concern that the plan does not provide for Toyota Motor Credit's secured claim, Debtors contend that the Bankruptcy Code does not require a Chapter 13 plan to provide treatment for a secured claim. 11 U.S.C. § 1322(b).
2. As to Trustee's concern that there is a negative cash flow on the rental residence, Debtors provide in their supplemental declaration that they need to leave open the option that someday, the rental property will become their place of residence, and require it as a backup. Furthermore, Debtors provide that Bank of New York Mellon/Bank of America has not objected to this Plan, which is a "Loan Modification Anticipation Plan" which impairs this creditor severely. Absence of objection by this creditor is encouragement, not guarantee, that there will be a successful loan modification someday, and thus retaining a second home with a negative cash flow is justified.
3. As to treatment of One West Bank's claim, Debtors provide that One West Bank's claim is not treated in Class 4, as objecting parties allege, but is in the "Additional Provisions" section, which in pertinent part provides that "the plan does not impair the claim." In response to One West's assertion that One West will not approve a loan modification until Debtors are delinquent, Debtors provide that they will attempt a loan modification when delinquent. Debtors provide that under §§ 1322 and 1325, it is acceptable to classify the One West claim as "not impaired."

#### **DISCUSSION**

The court will not grant Debtor-Movant's instant motion to confirm the plan for two reasons: first, because the court is uncertain as to the feasibility of the plan, and second, because Debtors have not properly provided for the provisions for possible loan modifications.

First, Debtors' counsel is correct in asserting the 11 U.S.C. § 1322(b) does not require treatment of a secured claim. When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the creditor's secured claim, raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Second, in reviewing the section 6 Additional Provisions, it appears that Debtors are attempting to advance a Chapter 13 Plan to include provisions for possible loan modifications (sometimes referred to by the court as "Ensminger Plan Provisions")-that of the secured claim of Select Portfolio Servicing, Inc. and another of the secured claim of One West Bank. The second loan modification attempt is contested by One West Bank and Trustee.

Asserted correctly, the court has confirmed provisions of these sorts as part of plans in other cases. These provisions contains several basic points. First, the creditor is paid an adequate protection payment, applied to the post-petition payment amounts which are due. Second, the debtor must diligently pursue a loan modification. Third, if the creditor rejects the loan modification, the creditor is granted relief from the stay 14 days after the rejection unless the debtor has filed a modified plan and motion to confirm which provides for proper payment of the creditor's claim as permitted under the Bankruptcy Code without a voluntary modification by the creditor.

Here, the court is unconvinced as to the certain provisions of the proposed Ensminger Plan Provisions. First, it is not a requirement to asserting a possible loan modification provision that a creditor "waive a default." Second, in the event of a denial, a Debtor shall have 14 days to file a modified plan and motion to confirm, not 28 days, as stated in section 6.13 of the additional provisions.

Debtors have not fully addressed the Trustee's and Creditor's concerns to the satisfaction of the court. Therefore, the court will not approve the Plan at this time.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 2, 2015. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 12-20049-B-13J) was filed on January 3, 2012 and dismissed on February 11, 2015, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor provides that he filed the prior bankruptcy case in efforts to stop a trustee's sale of his home. In 2013, Debtor lost his job. After looking for work, Debtor was hired as an operator for the City and County of San Francisco. During this time, Debtor fell behind on plan payments, as well as on his modified mortgage payments which he was making outside the plan. Trustee moved to dismiss his case. Rather than modify the plan and increase payments to include all missed mortgage payments, Debtor decided to file a new case with payments that are lower than they would have been had he attempted to modify. Debtor represents that he now has two new jobs, and with the plan, which provides for feasible plan payments, Debtor believes that this case has a good chance of success.

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

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

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

\*\*\*\*

26. [14-29160](#)-C-13 RICHARD ANDERSON  
DBJ-1 Douglas Jacobs

MOTION TO CONFIRM PLAN  
2-2-15 [[33](#)]

**Also #27**

On March 16, 2015, Debtor filed a Notice of Withdrawal (Dkt. 46), withdrawing the instant Motion to Confirm from the court's calendar.

27. [14-29160](#)-C-13 RICHARD ANDERSON  
FF-2 Douglas Jacobs

OBJECTION TO CONFIRMATION OF  
PLAN BY MELISSA ERICSSON  
3-10-15 [[42](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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The motion to confirm having been withdrawn by Debtor, the Objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection is  
overruled as moot.

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28. [15-20763](#)-C-13 EUSEBIO RAMIREZ AND ROCIO MOTION TO VALUE COLLATERAL OF  
TOG-1 RUIZ BANK OF AMERICA, N.A.  
Thomas Gillis 2-20-15 [[14](#)]

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 20, 2015. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of Bank of America, N.A., "Creditor," is continued to April 28, 2015 at 2:00 p.m.</b>
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The Motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 282 Cahil Circle, Colusa, California. The Debtors seeks to value the property at a fair market value of \$110,314.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$137,300. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$78,350. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

**CREDITOR'S OBJECTION**

Bank of America, N.A., Creditor, objects to Debtors' Motion to Value, estimating the value of the subject property to be closer to \$184,591.00.

Creditor objects to (1) Debtor's valuation of the property, asserting that they have provided no basis for their valuation, and (2) Debtors have not submitted any evidence to show the validity and extent of the senior lien.

## **DISCUSSION**

Creditor Bank of America, N.A. expresses great distress at Debtors' "self-serving" valuation, stating that Debtors provide no basis for their valuation, and that "reliance on Debtors' own belief, without providing any foundation for such belief, is improper." Creditor's Opposition, pg. 4 (Dkt. 22). The court reminds Creditor, however, that as the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). A court's reliance on such owner valuation is not, as they assert "improper," but the law of the Ninth Circuit.

Moreover, Creditor opposes Debtors' assessment of the senior lien on their property, providing that Debtors fail to prove the validity, priority, and extent of any senior lien by way of admissible and unauthenticated evidence. Creditor Bank of America, N.A. seems to overlook that Debtors have submitted a declaration containing information as to their obligation to the senior lien on the property, written under penalty of perjury. Such declaration is admissible evidence before this court.

Creditor Bank of America, N.A., however, contends that the fair market value of the property is closer to \$184,591 based on "the preliminary analysis of comparable neighboring properties," without providing any basis for their own valuation by way of declaration or admissible appraisal.

However, the court is willing to provide Creditor with a thirty (30) day continuance to April 28 at 2:00 p.m. within which to obtain a verified appraisal. Such appraisal must be submitted to the court on or before April 23, 2015 (thirty days from the date of this hearing), if Creditor would like the court to consider it.

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

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

The Motion to Value Collateral filed by  
Debtors, having been presented to the court,  
and upon review of the pleadings, evidence,  
arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion pursuant to  
11 U.S.C. § 506(a) is continued to April 28,  
2015 at 2:00 p.m.

**IT IS FURTHER ORDERED** that Creditor Bank of  
America, N.A. shall submit a verified appraisal  
as to the valuation of the real property commonly  
known as 282 Cahil Circle, Colusa, California, on  
or before April 23, 2015 if Creditor wishes the  
court to consider such valuation.

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29. [15-20764](#)-C-13 JOHN/OLIVIA D'ANTONIO  
BLG-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF  
HSBC FINANCE CORPORATION  
2-13-15 [[16](#)]

Also #30

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**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

<b>The Motion to Value secured claim of HSBC Finance Corporation, "Creditor," is granted.</b>
---

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4720 Yorkshire Way, Granite Bay, California. The Debtor seeks to value the property at a fair market value of \$296,413 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$365,000. HSBC Finance Corporation's second deed of trust secures a loan with a balance of approximately \$32,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Finance Corporation secured by a second deed of trust recorded against the real property commonly known as 4720 Yorkshire Way, Granite Bay, 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 \$296,413 and is encumbered by senior liens securing claims which exceed the value of the Property.

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**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

<b>The Motion to Value secured claim of CALHFA Mortgage Assistance Corporation, "Creditor," is granted.</b>
---

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4720 Yorkshire Way, Granite Bay, California. The Debtor seeks to value the property at a fair market value of \$296,412 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$365,000. CALHFA Mortgage Assistance Corporation's second deed of trust secures a loan with a balance of approximately \$16,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CALHFA Mortgage Assistance Corporation secured by a second deed of trust recorded against the real property commonly known as 4720 Yorkshire Way, Granite Bay, 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 \$296,412 and is encumbered by senior liens securing claims which exceed the value of the Property.

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31. [13-22766](#)-C-13 EUFRACIO/FLORANGEL  
SJS-6 JOVELLANOS  
Scott Sagaria

MOTION TO SELL  
2-13-15 [[92](#)]

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**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.**

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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, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 13, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as 3224 Boulder Creek Way, Antelope, California.

The proposed purchasers of the Property are Tariq Abbasi and Sheila Abbasi and the terms of the sale are for the sale price of \$225,000 in all cash in a short sale, subject to the first deed of trust of JP Morgan Chase Bank in the amount of \$380,176. The Debtors provide that the sale is an arms-length transaction. Debtors will not relinquish title or possession of the subject property prior to payment in full of the purchase price. Real estate agents Dean Adams Residential Brokerage and Pacific West Real Estate have agreed to cooperate in the sale of the Property receiving commissions in the combined amount of \$13,500.

**TRUSTEE'S RESPONSE**

Chapter 13 Trustee provides that he does not oppose the short sale, however, the Settlement Statement under Exhibit B, page 6, reflects payoff of

first mortgage loan, but there is no evidence provided of creditor's agreement to the short sale.

Based on the evidence before the court, while the court determines that the proposed sale is in the best interest of the Estate, the court will deny the motion without prejudice as it is unclear if the creditor has agreed to the short sale. If the Movant can present evidence of such agreement at the hearing, the court is prepared to grant the motion.

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

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

The Motion to Sell Property filed by Eufracio Pardo Jovellanos, Jr. and Florangel Velicaria Jovellanos the Debtors in Possession 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 Eufracio Pardo Jovellanos, Jr. and Florangel Velicaria Jovellanos the Debtors in Possession, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Tariq Abbasi and Sheila Abbasi or nominee ("Buyer"), the Property commonly known as 3224 Boulder Creek Way, Antelope, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$225,000, on the terms and conditions set forth in the Settlement Statement, Exhibit B, Dckt. 95, 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 Debtors in Possession be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Debtors in Possession be and hereby are authorized to pay a real estate broker's commission to Dean Adams Residential Brokerage and Pacific West Real Estate in the combined amount of \$13,500

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

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

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

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

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

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

**The Motion to Extend the Automatic Stay is denied.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-26601) was filed on May 13, 2013 and dismissed on February 4, 2015, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor provides that the reason for her delinquency in her previous case was due to medical problems and due to expenses stemming from her son's medical problem. Debtor provides that she was making a diligent effort in her previous case, making 17 payments for a total payment to Trustee of \$6,050. Debtor states that she will be able to make plan payments of \$400 a month in the instant bankruptcy case because her car loans have "recently seasoned for 910 days and they can be reduced to fair market value."

#### **CREDITOR'S OPPOSITION**

Creditor opposes extension of the automatic stay in this case, providing that Debtor's presumptive bad faith under 11 U.S.C. § 362(c)(3)(C) is not rebuttable, as evidence by her actions when, as Creditor was in the process of repossessing her vehicle, Debtor "jumped in car and drove unit off lift. Pulled unit in garage and closed garage." Creditor asserts that Debtor "breached the peace and contravened the order of this court."

#### **DISCUSSION**

The court will deny the instant motion to extend automatic stay. By operation of law, the stay was terminated on March 11, 2015, thirty days after the filing of the instant bankruptcy case. 11 U.S.C. § 362(c)(3)(A) provides that if a chapter 13 case of a debtor was pending within the preceding 1-year period but was dismissed, and a debtor subsequently files a second chapter 13 bankruptcy case within that year, "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor *on the 30th day* after the filing of the later case[.]" 11 U.S.C. § 362(c)(3)(B) further provides that "on the motion of a party in interest for the continuation of the automatic stay and upon notice and a hearing, the court may extend the stay . . . after notice and a hearing completed *before the expiration of the 30-day period* . . . ."

The intent of Congress is clear-a debtor may receive an order from the court extending the automatic stay as to the debtor beyond the 30 days, only if that 30-day period has not yet expired. Here, Debtor filed her chapter 13 bankruptcy case on February 9, 2015. On March 10, 2015, Debtor's counsel filed for an extension of the automatic stay, one day before the expiration of that stay. On March 11, 2015, the automatic stay expired by operation of law. As of this court's hearing on March 24, 2015, the automatic stay will already have been terminated as to the Debtor for 13 days. The court makes not judgment as to the good or bad faith of the Debtor in this case.

The motion is denied and the automatic stay is not extended.

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

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

The Motion to Extend the Automatic Stay 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 denied and the automatic stay is not extended pursuant to 11 U.S.C. § 362(c)(3)(B) as to the Debtor.

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

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

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

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

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 12-35521) was filed on August 24, 2012 and dismissed on July 15, 2014, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor provides that the instant bankruptcy case was filed in order to cure pre-petition arrears owed on the primary residence for the first deed of trust and HOA fees. Since the filing of his previous case, Debtor received back title in his name for his home and from the HOA. Debtor is a self-employed real estate agent with Keller Williams and has an average gross monthly income of \$4,700. Debtor's plan allows for monthly plan payments of \$2,375-Debtor has the ability to fund the current plan and obtain a discharge. Debtor further provides that since his last case was dismissed, Debtor's situation has changed. The custody battle in which he was embroiled over his daughter is complete, and he is living at home and able to pursue his real estate career.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

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

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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

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

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

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

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

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

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

On March 3, 2015, Chapter 13 Trustee David Cusick opposed the instant motion to confirm plan on the following basis:

1. Debtor cannot make plan payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor indicates that his income has increased and refers to Exhibit A to support the increase. Trustee has reviewed Exhibit A, and found update schedules I & J and an attachment itemizing business expenses. On Schedule I, Debtor reports net business income of \$9,638 per month. On Schedule J, Debtor lists no expenses for the business and on the attachment, Debtor itemizes business expenses of \$7,700. Nowhere is gross business income reported or the net income after expenses. Debtor also does not show any supporting documentation that income has increased or how he was able to increase the income. Finally, in section 6.01 of the plan, Debtor indicates that he will refinance his property before the balloon payment is due on note held by Sterling Bank and Trust that becomes due in April 2015. Debtor has not filed any motion to obtain credit that the Trustee is aware of, raising concern of plan feasibility.
2. Debtor's plan payment is insufficient to fund the plan. Rush financing is in Class 1 of the plan. The plan provides additional provisions in

Section 6.01, wherein interest only payments of \$366.67 will be paid, with the principal balance due on or before the completion of the 4th year of the plan. Plain language of section 2.09 is secured claims that are modified by this plan, or that have matured or will mature before the plan is complete. It appears the claim will be paid in full prior to conclusion of the 60 month plan proposed and therefore should be provided for in class 2 of the plan.

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

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

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

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

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

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**Also #36**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. Forty-two days' notice is required. That requirement was met.

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

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

**Trustee's Objection**

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor is \$11,637.00 delinquent in plan payments to Trustee to date and the next scheduled payment of \$5,987.00 is due March 25, 2015.

**Creditor's Objection**

Creditor Robert Guerra opposes confirmation of the Plan on the basis that:

1. The Plan proposes to pay only a fraction of Creditor's debt. Creditor has a non-dischargeable debt for fraud in the amount of \$125,000 and the Plan only proposes to pay Creditor \$562.50 per month for five years.
2. The Plan was not filed in good faith, evidence by the fact that the plan does not reflect Debtors' substantial salary increase.

**Discussion**

The docket reflects that Debtor has not addressed Trustee's or Creditor's concerns. Therefore, the court will not confirm the Plan.

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

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

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

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

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

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**Tentative Ruling:** The Motion to Dismiss 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, and Office of the United States Trustee on January 27, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The court's decision is to grant the Motion to Dismiss, the case is dismissed.</b>
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This matter was continued from the February 10, 2015 2:00 p.m. hearing. The court docket reflects no further filings beyond the original filings to the instant motion.

Creditor, Robert Guerra, seeks dismissal of Debtor's case based on the following:

1. Debtors' failure to confirm a Chapter 13 plan has cause unreasonable delay that is prejudicial to Creditor. 11 U.S.C. § 1307(c)(1). Creditor is the largest unsecured creditor of the estate with a \$125,000 plus judgment which is non-dischargeable under 11 U.S.C. § 523(a)(2). Creditor asserts that Debtors have filed two bankruptcy cases (including the instant one) in order to avoid debt payment to Creditor. Creditor is a pensioner who has receive little in payment of his non-dischargeable judgment against Debtors. Debtors' bankruptcy

filings and failure to submit a confirmable bankruptcy plan have been cause highly prejudicial delays to him.

- a. Creditor obtained a non-dischargeable judgment against Debtors from the Bankruptcy Court of the Central District of California (Adversary Case No. 97-01766). Creditor asserts that when each of the bankruptcy cases was filed, a wage garnishment was in place against Debtors.
- b. The Debtors filed a previous Chapter 13 bankruptcy case in October of 2012, in which the Debtors' proposed plan paid unsecured creditors no money and sought to discharge Creditor's non-dischargeable debt. Creditor objected and Debtors filed an amended Chapter 13 plan paying a de minimis dividend over five years and excepting Creditor's claim from discharge. Creditor again objected to the amended plan and filed a motion to dismiss on the grounds that Debtors were ineligible for Chapter 13 by reason of having too much debt to qualify. Debtors then converted their prior case to Chapter 7.
- c. The instant Chapter 13 bankruptcy was filed by Debtors on July 22, 2014. The initial plan and amended plan in the instant action sought to pay Creditor little to no monies. Creditor filed objections to both plans on the basis that they were not filed in good faith and failed to include all of Debtors' disposable income. Both proposed plans have been denied by the court to date. Debtors have not submitted any further amended plans that may be confirmable.

#### **DEBTORS' RESPONSE**

Debtors respond that they have been prosecuting their case in good faith, pointing out that they are current on fees and payments, have paid over \$30,000 into the plan to date, and only await confirmation of a plan for Trustee to begin distributing funds.

Debtors further provide that after filing this case on July 22, 2014, Debtors disclosed receiving a post-petition raise, and incorporated all changes in a First Amended Chapter 13 plan and motion to confirm on November 11, 2014. By the confirmation hearing on January 13, 2015, Debtors had satisfactorily resolved objections from Trustee and Creditor Wells Fargo Bank, N.A., each willing to set forth the resolution in the order confirming the plan. The only objection outstanding as of January 13, 2015 was that of Creditor-Movant, Robert Guerra.

Debtors assert that this is Creditor's second motion to dismiss, as they were successful in defeating Movant's first motion to dismiss on December 3, 2014.

Debtors filed a second amended plan on February 5, 2015 addressing the Creditor-Movant's above concerns and have set the confirmation of that plan for March 24, 2015, today's hearing.

#### **DISCUSSION**

The court is not satisfied that Debtors are adequately prosecuting their Chapter 13 case. The court is concerned by the Debtors' inability to confirm a plan, and the prejudice this delay creates for Creditor Robert Guerra, who in

1997 obtained a non-dischargeable fraud judgment against Debtors from the Bankruptcy Court of the Central District of California (Adversary Case No. 97-01766).

Further, as noted by Trustee's objection to the motion to confirm plan, Debtors are \$11,637.00 delinquent in plan payments to Trustee to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

In light of the unreasonable delay that is prejudicial to Creditor Robert Guerra, as well as Debtors' inability to confirm chapter 13 plan due to delinquency in plan payments, the motion is granted and the case is dismissed.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

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37. [15-20380](#)-C-13 MATTHEW/ERIN O'BRIEN  
DPC-1 Scott Shumaker

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
2-18-15 [[20](#)]

**Also #38**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 18, 2015. Fourteen days' notice is required.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments or comply with the Plan as the Plan relies on a motion to value collateral being filed for Hyundai Motor Finance, listed in Class 2B--which Debtor has not filed to date.

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

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

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

The Objection to the Chapter 13 Plan filed by the

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

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

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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, Creditor, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of Hyundai Motor Finance, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2012 Hyundai Accent GLS. The Debtor seeks to value the property at a fair market value of \$11,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2011, more than 910 days prior to the filing of the petition, with a balance of approximately \$13,702. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$11,000. See

11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Hyundai Motor Finance secured by a 2012 Hyundai Accent GLS, is determined to be a secured claim in the amount of \$11,000, 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 \$11,000 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

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

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

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

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

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

**TRUSTEE'S OBJECTION**

The Plan fails the liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$13,358.70 and Debtors propose to pay 3% to unsecured creditors, which amounts to approximately \$2,725.84. According to the amended Schedule C, [dckt. 55, p. 9], non-exempt equity of \$13,358.70 exists Debtors' Ericsson Stock account.

Debtors may not be able to make the plan payments. The case was filed August 31, 2014. Debtors' Declaration in Support of Confirmation, [dckt. #51], indicates that Jennifer Stouffer was receiving state disability income until June 2014, which was a higher amount than her normal income. Debtors have adjusted Schedule I to reflect the reduction in income, proper tax withholdings, and future bonuses. Debtors amended Schedule I reflects gross income for Ms. Stouffer in the amount of \$11,184.85 per month, where the original schedule listed \$10,155.26. The amended schedule also lists gross income for Mr. Stouffer of \$6,915.27, where the original schedule listed \$8,249.23. Debtors' Declaration does not offer any explanation for the \$1,333.96 decrease in Mr. Stouffer's gross income.

Trustee requested updated pay advices by email on February 19, 2015, which

have not yet been received.

## **DISCUSSION**

The docket reflects that Debtors have failed to address the Trustee's concerns. Therefore, the court will not confirm the Plan at this time.

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

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

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

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

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

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**Final Ruling:** No appearance at the March 24, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2015. 28 days' notice is required.

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

<b>The court's decision grant the Motion for Substitution and Suggestion of Death.</b>
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Joint Debtor Joann Davis gives notice of death of her husband and co-debtor Maceo D. Davis, Sr. and requests the court substitute Joann Davis in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16<sup>TH</sup> EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

*See also, Hawkins v. Eads, supra.* While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, co-debtor has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the Motion to Substitute Party.

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 Substitute After Death 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 Motion is granted and Joann Davis is substituted as the successor-in-interest to Maceo D. Davis and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2015. Forty-two days' notice is required. That requirement was met.

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

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

**The Chapter 13 Trustee withdrew his objection to confirmation on March 11, 2015. Dckt. # 91.**

The Chapter 13 Trustee formerly opposed confirmation on the following grounds:

1. The plan is not the Debtor's best effort. 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$18,189.20 through December 2014 (7 months); then, beginning January 25, 2015, payments of \$2,728.20 for 53 months, with a 60% dividend to unsecured creditors, which totals \$14,315.01.

Debtor's current net disposable income listed on Schedule J filed on August 26, 2014 reflects \$3,153 per month; however, Debtor is proposing plan payments of \$2,728.20, which is a difference of \$424.80 per month. The Debtor's Declaration in support of the motion states that the new plan provides for plan payments to be reduced by \$400, which makes it possible for Debtors to make the plan payment. Paragraph 7 provides for the changes; however, Debtor did not file an amended Schedule J.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 21, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 18, 2015. Fourteen days' notice is required.

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

<b>The court's decision is to sustain the Objection.</b>
--

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

1. Debtors are \$384.00 delinquent in plan payments.
2. The Disclosure of compensation of Attorney for Debtors appears to list that the attorney services do not include some services required under LBR 2016-1(c), such as relief from stat actions. Dckt. 1, p. 39. Trustee believes that Debtors' attorney is opting out of 2016(c)(1), and thus a motion for an award of attorney's fees is required.
3. Section 2.06 of the Plan is blank, while § 2.07 lists the monthly administrative expenses as \$0.00.
4. Debtors have failed to provide trustee with a tax return statement for the most recent pre-petition tax year for which a return was

required, or a written statement that no such documentation exists.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2015. Fourteen days' notice is required.

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

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

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

1. Debtors failed to appear at the First Meeting held on February 19, 2015.
2. Debtors are \$800 delinquent in plan payments.
3. The Plan proposes to pay \$9,000 in attorney fees. This is excessive as only \$6,000 is allowed in a non-business case under Local Rule 2016-1(c)(1).
4. The Plan may fail the liquidation analysis as Debtors have failed to provide sufficient information to verify the value of their vehicles and boat as requested by the Trustee.
5. Debtors have only reported a profit and loss statement for one

month--rather than the six that are required.

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

Debtors filed an opposition to the Objection addressing each of the Trustee's concerns in turn:

1. Debtors plan to appear at the continued 341 Meeting scheduled for March 19, 2015.
2. Debtors are now current on their plan payments.
3. The Plan incorrectly listed attorney's fees as \$9,000 when they are instead \$6,000. Debtor requests to clarify this error.
4. Debtors emailed Trustee information to verify the value of their vehicles and boat on March 17, 2015.
5. Debtors emailed the Profit and Loss Statements to Trustee on March 13, 2015.

Based on Debtor's Response and the representations made therein, and so long as the appropriate corrections are made, the court is satisfied that Debtors have resolved Trustee's objections. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed.

\*\*\*\*

44. [14-32492](#)-C-13 MARIA MENDOZA  
DPC-1 Peter Cianchetta

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-11-15 [[14](#)]

Also #45

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

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

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

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

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

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

<b>The court's decision is to overrule the Objection to Confirmation of Plan.</b>
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not provide Trustee with a tax transcript or copy of her Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002 (b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Beneficial Financial. If the motion is not granted, Debtor lacks sufficient

monies to pay the claim in full.

#### **DEBTOR'S OPPOSITION**

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

#### **DISCUSSION**

This hearing was continued from March 10, 2015 because the docket reflected that on February 18, 2015, Debtor filed a motion to value the collateral of Beneficial Financial, Inc. Set for hearing on March 24, 2015. (Dkt. 18). The court granted the Debtor's request and continue the Chapter 13 Trustee's objection to March 24, 2015 at 2:00 p.m. to be heard concurrently with the Debtor's pending motion to value. Dckt. 27. The court is prepared to grant Debtor's pending motion to value, resolving Trustee's second objection. Moreover, Debtor has provided in her response that she has made her tax return available to Trustee. The court is satisfied that Debtor has resolved Trustee's objections.

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

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

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

**IT IS ORDERED** that Objection to  
confirmation the Plan is overruled and the  
proposed Chapter 13 Plan filed on December  
30, 2015 is confirmed.

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45. [14-32492](#)-C-13 MARIA MENDOZA  
PLC-1 Peter Cianchetta

MOTION TO VALUE COLLATERAL OF  
BENEFICIAL FINANCIAL I, INC.  
2-18-15 [[18](#)]

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**Tentative Ruling:** The Motion to Value appears to have 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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 18, 2015. Twenty-eight days' notice is required. While that requirement was met, the notice uploaded to the court's docket reflects that an incomplete Notice of Hearing was served, containing only one page. This Notice does not present interested parties with sufficient information to extrapolate whether opposition must be presented in writing, or whether opposition can be presented at the hearing.

<b>The Motion to Value secured claim of Beneficial Financial I, Inc., "Creditor," is denied without prejudice.</b>
--

Debtor, Maria Mendoza, ("Movant") seeks to value the claim of Creditor Beneficial Financial I, Inc., which holds a secured interest in the real property commonly known as 846 Cedar Lane, Olivehurst, California.

**NOTICE**

However, it appears Movant has not provided proper notice for the relief requested. Local Rule 9014-1(d)(3) provides that the notice of hearing "shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with nay opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in th emotion being resolved without oral argument and the striking of untimely written opposition."

Here, the Notice of Hearing provided to the court provides no such information, and only the first page, of what the court can only assume was meant to be a more extensive Notice of Hearing, was uploaded to the court docket.

If the Movant can show proper notice was served to parties in interest at the hearing, the court will issue the following alternative ruling:

## ALTERNATIVE RULING

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 846 Cedar Lane, Olivehurst, California. The Debtors seeks to value the property at a fair market value of \$40,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$71,609.00. Beneficial Financial I, Inc.'s second deed of trust secures a loan with a balance of approximately \$0. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

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

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

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Beneficial Financial I, Inc. secured by a second deed of trust recorded against the real property commonly known as 846 Cedar Lane, Olivehurst, 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 confirm bankruptcy plan. The value of the Property is \$40,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

**Trustee's Objection**

In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

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

1. The Plan does not authorize payments made to Vericrest Financial, Inc. The Debtors are proposing to change the treatment of this creditor from Class 1 to Class 3.
2. Creditor Solano First Credit Union is an unsecured creditor, but the Plan treats the creditor's claim as a Class 3 secured claim.
3. Page 8 conflicts with other sections of the Plan. It was likely part of the original Plan but was not deleted from the current proposed Plan.

## **Discussion**

Th court notes that Debtor has uploaded as an exhibit a proposed order confirming plan. Contingent upon the Trustee's evaluation and approval of the proposed order, the modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the  
Plan is granted and the proposed Chapter 13  
Plan is confirmed.

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**Final Ruling:** No appearance at the March 24, 2015 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 20, 2015. Twenty-eight days' notice is required. That requirement was met.

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 Loan Modification filed by Jeffery Eugene Smith and Deborah Rose Smith ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,678.00 a month to \$1,672.88 a month. The modification will also reduce the overall debt owed on their mortgage from \$426,609.45 down to \$422,326.55, cure the outstanding mortgage delinquency, and leave all other terms and conditions unchanged.

The Motion is supported by the Declaration of Jeffery Eugene Smith and Deborah Rose Smith. 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. 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 [name of 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 court authorizes Jeffery Eugene Smith and Deborah Rose Smith ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 1434 County Club Drive, Placerville, California, on such terms as stated in the Modification Agreement filed as Exhibit in support of the Motion, Dckt. 20.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The Motion does not cite applicable Bankruptcy Code sections.
2. Trustee is uncertain of Debtors ability to afford plan payments. Debtor filed a supplemental Schedule I indicating a new employer. Dckt. 80. No calculation is provided as to how Debtor estimates his income for his new position. Debtor's employment location switched from Sacramento to Stockton. Accordingly, Trustee is concerned that the new employment position may require additional transportation costs.
3. It appears Debtors are trying to include a post-petition claim for monthly contract installment amounts for four months. Section 6 -

Additional Provisions for Section 2.08(c) states "Additional Distribution due to suspended Monthly Contract Installment Payment Commencing in February 2015: \$172.92 per month for 52 months." This totals \$8,991.84. Per the Trustee's records only \$6,744.00 (three months) is due for post petition delinquent monthly contract installments. Debtors have not included a claim amount for post-petition delinquent monthly contract installments.

## **DEBTORS' RESPONSE**

In response to the Trustee's concerns, the Debtors filed a reply, which contends:

1. To Trustee's first objection, the Debtors state that while the statute upon which the motion is based was not specifically cited, the grounds upon which the relief requested is based are clearly stated in the Motion and that the statement of the basis for relief sufficiently defines the issues involved.
2. To Trustee's second, objection, the Debtors state that while the place of employment has changed, the frequency of travel has decreased, resulting in a net change of no significant amount. The Supplemental Declaration of Debtors in Support of Reply to Trustee's Objection to Confirmation of First Amended Chapter 13 Plan dated May 1, 2015 states that the cost of transportation, as set forth in the Schedule J filed herein on May 30, 2014, has not changed and that the amount stated in that schedule is still the debtors' estimate of their transportation expenses.
3. To Trustee's third objection, the Debtors state that the calculation was based on the number of Plan payments that have been missed since the inception of the confirmed Plan. The amount that should be paid to the Class 1 creditor, in addition to the ongoing monthly contractual installment and arrears as provide for by the confirmed plan is correctly calculated at \$172.98 per month for the final 52 months of the Plan.

## **DISCUSSION**

The court notes that Debtors attempt to deflect responsibility for stating legal authority by stating that they have provided the basis for relief sufficiently defining the issues involved. However, Trustee's objection is not unfounded, and Debtors should note that failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d) (5), 1001-1(g).

However, the court will not deny the instant motion on this basis alone. While the court is satisfied with Debtors' explanation as to Trustee's second concern (that Debtor's frequency of travel has decreased), the court is unable to assess whether Debtors have provided a claim amount for post-petition delinquent monthly installments, or whether Debtors have actually calculated the correct amount due for post-petition delinquent monthly contract installments.

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

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

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

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

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

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