

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

May 3, 2016 at 2:00 P.M.

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1. [15-24101](#)-C-13 EBONY HUDSON MOTION TO MODIFY PLAN  
CA-2 Michael Croddy 3-22-16 [[37](#)]

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. 35 days' notice is required. That requirement was met.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan  
filed by the Debtors having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on March 22, 2016 is confirmed, and counsel for the Debtors 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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2. [15-29610](#)-C-13 IVONNE/RICHARD SCHAFER  
DPC-1 Peter Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-3-16 [[23](#)]

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 3, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor is \$2,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,000.00 is due before the hearing date. Debtor has paid \$0.00 into the plan to date.
2. The plan relies on a motion to value being filed for the claim of Bank of New York Mellon.
3. The plan fails the chapter 7 liquidation analysis.
4. It appears that the plan is not Debtor's best efforts. Debtor's non-exempt assets total \$655, and the plan proposes a 0% dividend to unsecured creditors.
5. It appears that Debtor cannot make the plan payments. There are discrepancies between the Schedules and Debtor's admissions at the 341 meeting.

**The Trustee subsequently withdrew the Objection.** Dkt. 47.

The court's decision is to overrule the objection 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 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 as moot.

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the Motion to Confirm the Plan to May 24, 2016 at 2:00 p.m.</b>
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#### **Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors have failed to file a Motion to Value Collateral of California Service Bureau -- the reason the Trustee's first objection to confirmation was sustained.

#### **Debtor's Reply**

Debtors have filed a motion to value that is set for hearing on May 24, 2016 at 2:00 p.m. Debtors request a continuance to that date.

#### **Discussion**

The court's decision is to continue the Motion to Confirm the Plan to May 24, 2016 at 2:00 p.m. so it may be heard in conjunction with the motion to value collateral.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is  
continued to May 24, 2016 at 2:00 p.m.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the Motion to Confirm the Plan to June 28, 2016 at 2:00 p.m.</b>
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**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The proposed amended plan is pending an unresolved Trustee's Objection to Exceptions scheduled for an evidentiary hearing on June 14, 2016.

**Discussion**

The court's decision is to continue the Motion to Confirm the Plan to June 28, 2016 at 2:00 p.m. so it may be heard after resolution of the Trustee's Objection to Exceptions scheduled for an evidentiary hearing on June 14, 2016.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to June 28, 2016 at 2:00 p.m.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 18, 2016. Fourteen days' notice is required. That requirement was met.

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

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



unsecured creditors.

### **Trustee's Supplemental Objection**

Since the hearing held on March 16, 2016, the following objections remain:

1. In response to the objection that the plan is an attorney fees case, Debtor pointed out that the second mortgage was valued.
2. Debtor proposed to make monthly auto payments in place of spousal support payment.
3. Debtor has failed to report the status of home insurance proceeds.
4. Debtor fails to explain the pre-petition transfer of certain real property.

### **Discussion**

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 March 29, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The plan is dependent on a loan modification.
2. Debtor mistates the amount paid to the Trustee thus far.

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 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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. 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 Bosco Credit LLC, "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 780 Wexford Circle Granite Bay, California. The Debtor seeks to value the property at a fair market value of \$1,200,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$969,000 (in addition to a \$309,000 prepayment penalty). Bosco Credit LLC's second deed of trust secures a loan with an unknown balance as no claim has been filed. Because the first deed of trust is partially under-collateralized, the respondent creditor's debt 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 Bosco Credit LLC secured by a second deed of trust recorded against the real property commonly known as 780 Wexford Circle 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 \$1,200,000 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.**

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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 March 22, 2016. Forty-two days' notice is required. That requirement was met.

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

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

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$814 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$407 is due on August 25, 2015. Debtors have paid \$1,152 into the plan to date.
2. The plan fails to provide for the priority claims of The Employment Development Department and The Franchise Tax Board.
3. The plan exceeds 60 months, the maximum statutory allotment.
4. The Plan fails the liquidation analysis because Debtors amended their schedules to add two possible actions valued at \$0.00. These actions may have significant value.
5. The plan does not provide a specific for paying creditors Hollaways a lump sum.

**Creditors' Opposition**

James and Linda Hollaway oppose confirmation fo the following grounds:

1. Debtor misrepresented his disposable income.
2. Debtor made false representations re community property interests.
3. Debtor is ineligible for relief under chapter 13 because his debts exceed the requisite limit.

### **Discussion**

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

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

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

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

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

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9. [16-20563](#)-C-13 SHEILA FOSTER  
MET-2 Mary Ellen Terranella

MOTION TO AVOID LIEN OF D&B  
WESTERN PROPERTIES  
3-21-16 [[33](#)]

Thru #12

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. 28 days' notice is required. This requirement was met.

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

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

A judgment was entered against the Debtor in favor of D & B Western Properties for the sum of \$30,895.70. The abstract of judgment was recorded with Solano County on September 26, 2015. That lien attached to the Debtor's residential real property commonly known as 621 Daniels Avenue, Vallejo, California.

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 \$72,169 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.760 in the amount of \$75,000 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. According to Debtor, 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).



## DISCUSSION

Although opposition has not here been presented to the instant motion, the court is responsible for and has an independent duty to correctly apply the law, even when not raised by an interested party in opposition. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); see also *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)). While the court does not present its own evidence in support of this ruling, the court does consider the record in this case as set forth on the Docket.

On March 8, 2016, Geoffrey H. Saft, Brenda S. Voelker, and Medallion Silver LLC, ("Objectors") objected to the plan on the basis that the subject real property commonly known as 621 Daniels Ave. Vallejo, California, was foreclosed prior to the filing of this bankruptcy case, and as such, Medallion is not subject to the plan. Objection to Plan, Dckt. 18. Debtor filed a previous bankruptcy case, Case No. 15-27814, filed one day before the scheduled foreclosure sale of the real property. Medallion obtained relief from the automatic stay in the prior case on January 8, 2016. Civil Minute Order granting, Exhibit A, Dckt. 20. That case was dismissed on January 28, 2016, Case No. 15-27814, Dckt. 70. On January 25, 2016, a sale was held and trustee's Deed was recorded on January 29, 2016. Dckt. 20, Exhibit B. Acrew Management LLC was the successful bidder at the foreclosure sale.

The court, in light of the papers presented by Objectors, is convinced that Debtor does not own or have an interest in the real property that is the subject of the instant motion. That being the case, the court will deny the instant 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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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10. [16-20563](#)-C-13 SHEILA FOSTER  
MET-1 Mary Ellen Terranella

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
GEOFFREY H. SAFT, BRENDA S.  
VOELKER, AND MEDALLION SILVER,  
LLC  
3-8-16 [[18](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 8, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The court's decision is to sustain the Objection.</b>
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#### **APRIL 5, 2016 HEARING**

At hearing on April 5, 2016, the court continued all objections related to the subject property, 621 Daniels Avenue, Vallejo, California, to the date of Debtor's Motion to Avoid Lien on the disputed property.

#### **MOTION**

Movant, Geoffrey H. Saft, Brenda S. Voelker, and Medallion Silver LLC, object to the plan on the basis that the subject real property commonly known as 621 Daniels Ave. Vallejo, California, was foreclosed prior to the filing of this bankruptcy case, so Medallion is not subject to the plan.

Debtor filed a previous bankruptcy case, Case No. 15-27814, filed one day before the scheduled foreclosure sale of the real property. Medallion obtained relief from the automatic stay in the prior case on January 8, 2016. Civil Minute Order granting, Exhibit A, Dckt. 20. That case was dismissed on January 28, 2016, Case No. 15-27814, Dckt. 70.

On January 25, 2016, a sale was held and trustee's Deed was recorded on January 29, 2016. Dckt. 20, Exhibit B. Acrew Management LLC was the successful bidder at the foreclosure sale, but not the foreclosing beneficiary. The plan provides for Debtor to pay Medallion \$930 per month on a claim of \$55,789. Medallion is not asserting a claim on the current case due to foreclosure sale. Medallion obtained interest in the real property, extinguishing Debtor's interest in said real property.

## **DISCUSSION**

The court has reviewed the docket in the previous case, Case No. 15-27814, and Movant appears to be correct that Debtor no longer has an interest in said real property. The effect of a trustee's sale of real property pursuant to a power of sale under a deed of trust is to extinguish the trustor's interest in said real property. See California Civil Code §2924 et seq., *McDonald v. Smoke Creek Live Stock Co.* (1930) 209 Cal. 231, 286 P. 693.

The recorded deed, presented by Movant, shows that Acrew was the successful bidder at the nonjudicial foreclosure sale, which was recorded January 29, 2016 in Solano County, California. As such, the real property is not property of the bankruptcy estate pursuant to 11 U.S.C. § 541. Finally, the court notes that Debtor has not filed a responsive motion to the instant objection to rebut the factual allegations alleged.

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 Movant, Geoffrey H. Saft, Brenda S. Voelker, and Medallion Silver LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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11. [16-20563](#)-C-13 SHEILA FOSTER  
Mary Ellen Terranella

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY D&B  
WESTERN PROPERTIES  
2-25-16 [[13](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2016. Twenty-Eight days' notice is required. This requirement was met.

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

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

Creditor, D & B Western Properties, is a Class 2 secured creditor. Creditor opposes confirmation of the Plan on the basis that the plan attempts to modify the rights of Creditor whose claim is secured only by a security interest in real property that is Debtor's principal residence, located at 621 Daniels Ave., Vallejo, California. Over 4 months prior to filing this case, Creditor recorded an abstract of judgment in Solano County, California, where the residence is located. The plan lists an incorrect amount claimed by Creditor is \$0, and Creditor has filed a secured proof of claim indicated that the total amount of the claim is \$32,257.24 as of the filing of case.

The plan incorrectly states that the total liens and encumbrances secured by the collateral, Debtor's principal residence, exceed the value of the collateral, thereby allowing the Creditor's claim to be reduced to 0. Debtor has not filed, set, or served any motion to value the collateral of Creditor, and is thus attempting to reduced Creditor's secured claim in a way that must result in denial of confirmation.

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

Debtor responds to Creditor's basis for objection, providing that Debtor has filed a motion to avoid the judgment lien of Creditors, and the

hearing is scheduled for May 3, 2016 at 2:00 p.m.

## **DISCUSSION**

The court has determined that Debtor does not own the property which Creditor asserts secures the debt owed. Creditor's objection to plan is based upon the premise that Creditor holds a secured debt. Since the debt is not secured, Creditor's basis for objection to confirmation of plan is moot. Accordingly, the court's decision is to overrule the Objection to Plan.

The court will continue the instant objection to take place concurrently with the Debtor's Motion to Avoid Lien of Creditor.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor, D & B Western Properties, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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12. [16-20563](#)-C-13 SHEILA FOSTER  
DPC-1 Mary Ellen Terranella

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
3-9-16 [[29](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2016. Twenty-Eight days' notice is required. This requirement was met.

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

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

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

1. Debtor admitted at the 341 meeting on March 3, 2016 that she has not filed her tax returns during the 4 years preceding the filing of the petition. The first meeting was continued to March 31, 2016 to allow Debtor time to file said taxes.
2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of American Honda Finance set for hearing on March 22, 2016.
3. Debtor has failed to provide the Trustee with his/her Employer Payment Advices received 60 days prior to the filing.

Chapter 13 Trustee asks the court to continue this objection to April 12, 2016 at 2:00 which is after the meeting of creditors set for March 31, 2016.

#### **CHAPTER 13 STATUS REPORT**

On April 1, 2016, Chapter 13 Trustee filed a status report. Chapter 13 Trustee reports that Debtor admitted at the continued meeting of creditors on March 31, 2016 that she had not yet filed the missing tax returns, though

they are complete and would be sent in on April 1, 2016. Trustee has not received any paystubs from Debtor, and the Motion to Value was granted.

## **DISCUSSION**

The court notes that on March 22, 2016, the court granted Debtor's motion to value the collateral of American Honda Finance, Dckt. 41.

The court further notes that Debtors have a pending Motion to Avoid Lien of D & B Western Properties, set for hearing on May 3, 2016. Creditor D & B Western Properties' Objection to Confirmation was continued to said date (May 3, 2016).

The court does not have proof that Debtor has provided Trustee with the requisite tax returns and paystubs.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

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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, creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2016. 28 days' notice is required. This 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). The defaults of the non-responding parties and other parties in interest are entered.

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

The Motion to Approve Loan Modification filed by Francisco Ruz, Jr. ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment to \$740.07 a month, a reduction of \$610.93 per month from the current mortgage payment. The modification provides that the new principal balance on the loan is \$159,803.10, and that the loan term has been extended 40 years. The new interest rate is 3.75%. Under the terms of the loan modification agreement, Debtor will pay the monthly escrow amount of \$200 per month.

The Motion is supported by the Declaration of Francisco Ruz, Jr. 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. Debtor provides that at the time of filing the case, Debtor was receiving a net monthly income of \$4,314.00 in net income per month and had \$3,914.00 in monthly expenses. Debtor's current monthly income has decreased to \$4,014.00 and due expenses of \$3,614.00.



## CHAPTER 13 TRUSTEE

Chapter 13 Trustee, David Cusick, submits an opposition to Debtor's motion, providing that Debtor has not submitted a current schedule I or J in support of the motion. The current schedule J has no property tax or insurance expense. However, the declaration in support of the motion reflects that Debtor now pays these expenses and decrease in income of \$300.

## DISCUSSION

The court shared Trustee's concern, and is uncertain of the terms of the loan modification and is not satisfied that Debtor has explained the change in current monthly income and expenses. First, Chapter 13 Trustee is correct to note that while Debtor has submitted a declaration in support of the instant motion, which avers that Debtor's income has been decreased by at least \$300 and expenses by the same (roughly \$300), no current or modified schedule I or J has been filed in support of the motion to reflect this change. Debtor merely states that the change has occurred without further explanation as to why the income has decreased, and how Debtor was able to decrease his expenses each month, despite taking on the additional expense of monthly escrow payments. Furthermore, Chapter 13 Trustee notes that the current schedule J does not reflect an expense of property tax or insurance.

As to the monthly escrow payment, the Debtor has not made clear what the additional monthly escrow payment will be. In Debtor's actual motion, Dckt. 30, it is stated that the escrow payment will be \$300 per month. In Debtor's declaration, Dckt. 32, it is stated that the escrow payment will be \$200 per month. It not being clear to the court what Debtor's expenses or income are and whether Debtor is able to afford the terms of the loan modification, the Motion to Approve the Loan Modification 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 Approve the Loan Modification filed by Debtor Francisco Ruz, Jr., 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 for Loan Modification is denied.

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14. [16-20677](#)-C-13 SEAN/JENNIFER PARSONS  
Pro Se

MOTION TO SET ASIDE DISMISSAL  
OF CASE  
4-7-16 [[25](#)]

DEBTOR DISMISSED:  
03/08/2016  
JOINT DEBTOR DISMISSED:  
03/08/2016

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, parties requesting special notice, and Office of the United States Trustee on April 20, 2016. 14 days' notice is required. This requirement was met.

The Motion for Order to Vacate Dismissal 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.

**The Motion for Order to Vacate Dismissal is denied.**

Sean and Jennifer Parsons ("Debtor") filed the instant Motion for Order to Vacate Dismissal on April 7, 2016. Dckt. 25. Chapter 13 Trustee noticed and set the motion for hearing, after noting that Debtors had failed to do so, Dckt. 29 & 30.

The instant case was filed on February 8, 2016 as a Chapter 13. Dckt. 1. Debtor was issued a Notice of incomplete filing and notice of intent to dismiss case if documents were not timely filed on February 10, 2016, which missing documents included all opening documents, including a chapter 13 plan, schedules, statement of financial affairs, and summary of assets and liabilities Dckt. 9. Debtors applied for an extension to file schedules, Dckt. 12, which this court granted, and the deadline was extended to March 7, 2016, Dckt. 16. On March 8, 2016, the court issued an order dismissing

the case for the Debtor's failure to timely file. Dckt. 19.

On April 7, 2016, Debtors filed a motion to set aside dismissal, stating only that they planned to submit all paperwork on April 8, 2016.

### **CHAPTER 13 TRUSTEE OPPOSITION**

On April 20, 2016, Trustee filed an opposition to this motion and set the matter for hearing. Trustee opposes this motion, stating that Debtors did not further obtain an extension to file missing documents, and that the motion does not explain why Debtors were unable to in the first place timely file their documents or set this motion for hearing.

### **DISCUSSION**

The court agrees that Debtors have not sufficiently explained or plead to the court why dismissal should be vacated in this instance. The case was dismissed on March 8, 2016. One month later, Debtors filed the missing documents and filed a motion to vacate, without any explanation as to why Debtors were unable to meet the requirements of the court in the first instance. At this time, nearly two months after the Debtors' case was dismissed, they ask that the court vacate dismissal.

Upon consideration, the motion to vacate dismissal is denied without prejudice to filing another case. Here, there are too many problems created by reopening a previously dismissed case, including the problem that debts incurred by the Debtor after the filing of the first case would not be discharged if the court were grant Debtor's request. Debtors may file a new case if they still desires bankruptcy relief.

The debtors are advised that upon the filing of a new bankruptcy case, the automatic stay provisions of 11 U.S.C. § 362(a) will expire within thirty days of filing the petition for the new case pursuant to 11 U.S.C. § 362(c)(3)(A), which provides that if a bankruptcy case of a debtor was pending within the preceding 1-year period but was dismissed, the stay shall terminate with respect to debtor on the 30th day after the filing of the later case. Under 11 U.S.C. § 362(c)(3)(B), debtors may apply to the court upon notice and hearing to extend the stay beyond thirty days. 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 Vacate Dismissal of Case 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 to Vacate is denied without prejudice to filing a new bankruptcy case.

Also #16

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

**The Motion to Confirm the Amended Plan is denied as moot.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors filed this motion on March 14, 2016. On March 25, 2016, Debtors filed a subsequent plan and motion to confirm.

On April 19, 2016, Trustee filed an opposition to this motion, pointing out that Debtors filed a fourth amended plan for hearing on the same date, and that the new motion and subsequent amended plan cause the instant motion to be 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 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, Dckt Control No. SJS-3, is denied as moot.

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 15, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Tentative Ruling:** The Motion to Extend Automatic Stay has been set for hearing on the notice required by court order, Dckt. 12. Debtor was ordered to file and serve on all parties the instant motion and supporting pleadings and notice of the May 3, 2016 hearing on this motion, and further ordered that opposition to this motion be filed and served on or before April 27, 2016.

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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Court Order, Dckt. 12, Briefing Schedule - Hearing Required.

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 April 13, 2016. 28 days' notice is required.

The Motion to Extend Automatic Stay has been set for hearing on the notice required by Order of the court, Dckt. 12.

<b>The Motion to Extend the Automatic Stay is denied.</b>
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**HISTORY**

Miracle Wanzo ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case.

The Debtor filed two previous chapter 13 cases, both of which were dismissed within a year of filing this case. First, Case 14-28488-C-13 was filed on August 21, 2014, and dismissed on June 28, 2015 because Debtor was in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c), specifically debtor became delinquent in plan payments. Case No. 14-28488, Dckts. 31 & 39.

Next, Case No. 15-25621-E-13 was filed on July 15, 2015, and dismissed on February 18, 2016 because again Debtor was in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c), in that debtor became delinquent in plan payments. Case No. 15-25621, Dckts. 24 & 35.

On April 1, 2016, Debtor filed the instant chapter 13 bankruptcy case. Understanding that no stay was in place under the provision because this is Debtor's third bankruptcy case in less than a year, Debtor applied under 11 U.S.C. § 362(c)(4)(B) to impose a stay during the first 30 days in order to forestall a trustee's sale to be conducted on Debtor's residence on April 6, 2016. The court entered the order granting emergency stay effective until May 13, 2016, Dckt. 12, and further ordered briefings and a hearing in order to determine whether to extend the stay should continue beyond the May 13, 2016 date. thirty days is the Debtor's second bankruptcy petition pending in

the past year. The Debtor's prior bankruptcy case (No. Xxxx) was dismissed on xxxx, 20xx, after Debtor [reason prior case was dismissed]. See Order, Bankr. E.D. Cal. No. xxxx, Dckt. Xx, xxxx, 20xx. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

#### **DEBTOR'S MOTION**

On April 13, 2016, Debtor filed the instant motion to extend the stay pursuant to 11 U.S.C. § 362(c)(3)(B). Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor provides that in the prior case, Debtor was attempting to stop a trustee's sale on her home and pay back taxes. Debtor is self-employed and sells merchandise online. Her income varies from month to month. In the prior case, Debtor fell behind on payments because she had some banking issues, and states that Debtor has since resolved those issues.

Debtor asserts that her circumstances have changed because Debtor is making more money, has cut some expenses and provided for self-employment taxes. Debtor has also offered unsecured creditors 20% more to show good faith. Debtor states she is able to afford plan payments because although mortgage arrears have increased in this case, the amount of the class 1 monthly mortgage payments went down from \$1,391.67 to \$979.48 based on the proof of claim filed by lender in last case.

#### **CHAPTER 13 TRUSTEE**

Chapter 13 Trustee opposes Debtor's motion to extend stay, stating the Debtor has provided no actual evidence of changed circumstances regarding business income, such as income statements or banking records. Debtor states that her income has increased in this case. In Case No. 14-28488, Debtor reported income of \$3,800 per month. In Case No. 15-25621, Debtor reported income of \$3,900 per month. In this case, Debtor reports on her schedule I a monthly income of \$4,500. However, Debtor did not attach a statement showing gross receipts, ordinary and necessary business expenses, or the total

monthly net income as required, increasing 15% without any supporting evidence.

Debtor states in her motion that her mortgage has decreased from \$1,391.67 to \$979.48 based on the proof of claim filed by lender in the last case. However, in the current case, Debtor's plan states a monthly contract installment amount of \$979.48 which appears to exclude escrow. Debtor also filed a schedule J which does not include any expense for property taxes or insurance, and as such, the mortgage may actually remain the same when all factors are considered.

## **DISCUSSION**

The court agrees that Debtor has not sufficiently shown to evidenced to the court that circumstances have sufficiently changed enough to make the present plan succeed. First, Debtor's assertion that her income has increased in this instant case by 15% is unsubstantiated. Debtor herself explains in her moving papers that as a self-employed merchandise seller online, her income varies from month to month. Yet in the same breath, Debtor asserts that her monthly income has substantially increased in efforts to show that plan payments in the present case will not be an issue. Debtor has provided no evidence to the court to substantiate this claim by providing, as suggested by Trustee, gross receipts, ordinary and necessary business expenses, or the total monthly net income. This is of great concern because the reasons for the prior dismissals in the two previous cases were because Debtor was not making plan payments.

Next, the court agrees that Debtor appears to be misconstruing the decrease in mortgage payments, and instead appears to disregard the costs associated with property taxes, insurance, and monthly escrow payments. The court is not satisfied that Debtor's circumstances have actually changed, and that this case will merely be a repetition of the last two cases, which were both dismissed within this last year.

The Debtor has not 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 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 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 stay is not extended pursuant to 11 U.S.C. § 362(c) (3) (B).

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18. [16-20792](#)-C-13 WESLEY STETENFELD  
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
4-6-16 [[16](#)]

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**Final Ruling:** No appearance at the May 3, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

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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 March 15, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee, David Cusick, opposes the motion to confirm on the basis that Debtor cannot make payments under the plan, 11 U.S.C. § 1325(a)(6) and the plan is not Debtor's best efforts, 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$2,150 for 60 months with a dividend of 44% to unsecured creditors, totaling \$50,160. Debtor filed amended schedule J on February 16, 2016 and then filed a second amended schedule J on March 15, 2016 and failed to explain why the expense have decreased for a household of 1 by \$597 in a matter of 3 months.

Trustee's prior Objection to Confirmation, DPC-1, was heard and sustained on March 1, 2016. The objection raised the following issue, which has not been addressed in the amended plan: Debtor's paystubs provided to Trustee for October and November 2015 reflect a \$1,400 bonus total for the year which is not listed on schedule I. Debtor admitted at the 341 meeting that he receives quarterly bonuses. Debtor has failed to propose to pay the bonus into the plan.

**DISCUSSION**

The Trustee's concerns are well-taken. Debtor has amended his schedules to reflect a not insignificant decrease in expenses, Schedule J, totaling almost \$600 in only 3 months. While this decrease is not concerning in and of itself, that Debtor has filed no accompanying declaration to assure the Trustee or the

court that these decreases are not by an arbitrary amount or a fiction raises doubt as to whether these expenses have actually decreased. Whether Debtor can thus afford plan payments is a valid concern under 11 U.S.C. § 1325(a)(6). Moreover, Debtor has failed to account for the \$1,400 bonus, which Trustee has already voiced concern over via an Objection to Confirmation, DPC-1, and which concern the court agreed with and sustained.

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

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

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The court's decision is to sustain the Objection.</b>
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make plan payments called for under the plan or comply with the plan, 11 U.S.C. § 1325(a)(4). Debtor's plan relies in part on rental income in the amount of \$600. No evidence, such as by way of declaration, from Debtor's brother has been filed with the court or provided to Trustee.

The court agrees that the lack of evidence upon which this court may rely throws into question the reliability of an income source that is necessary in order for Debtor to afford plan payments. 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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