

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

May 5, 2015 at 2:00 P.M.

1. [15-20502](#)-C-13 MICHAEL/ANGELA CRAIK MOTION TO VALUE COLLATERAL OF
CMO-1 Cara O'Neill BANK OF AMERICA/TD BANK USA,
N.A.
3-24-15 [[18](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Office of the United States Trustee, and incorrectly served on Creditors Bank of America and TD Bank USA, N.A. on March 31, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claims of Bank of America and TD Bank USA, N.A., "Creditors," is denied without prejudice.

Debtors move for (1) an order valuing the second mortgage of Bank of America and (2) an order avoiding a recorded judgment lien in favor of TD Bank USA, N.A. The motion is accompanied by Debtor Angela Craik's declaration. The Debtor is an owner of the subject real property commonly known as 1808 San Gabriel Street, Roseville, California. The Debtor seeks to value the property at a fair market value of \$375,000 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 \$385,629. Bank of America's second deed of trust secures a loan with a balance of approximately \$38,866.22. Moreover, Debtors assert that TD Bank USA, N.A. is the holder of a judgment lien recorded against Debtors' real property in the amount of \$5,309.09.

The motion is denied without prejudice for two reasons. First, Debtors' motion seeks to affect the interests of two different creditors on two distinct, separate legal theories, improperly joining two requests for relief in one pleading. Second, Debtors have not correctly served Creditors as required by Federal Rule of Bankruptcy Procedure 7004(h).

IMPROPER JOINDER OF CLAIMS

The Motion seeks two types of reliefs:

(1.) An order valuing the second mortgage of Bank of America, secured by a second deed of trust in the property 1808 San Gabriel Street for a loan with a remaining balance of \$38,866.22, determined to be a secured claim of \$0.00, and the balance of the claim is a general unsecured claim .

(2.) An order voiding judgment lien of TD Bank USA, N.A. recorded against 1808 San Gabriel Street in the amount of \$5,309.09, determined to be a secured claim of \$0.00, and the balance is a general unsecured claim.

Debtors' combination of two types of relief in one pleading is procedurally incorrect. While Federal Rule of Federal Procedure 18, incorporated by Federal Rule of Bankruptcy Procedure 7018, permits parties to join two separate requests for relief in one motion, this procedural joinder of multiple claims is applicable only in adversary proceedings, not contested matters. Allowing parties to combine claims and create potentially confusing pleadings into contested matters would not only be prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

Debtors have incorrectly attempted to join a motion to value a secured claim pursuant to 11 U.S.C. § 506(a) with a motion to avoid judgment lien pursuant to 11 U.S.C. § 522(f). Moreover, Debtors have submitted this singular motion in attempts to affect two separate creditors' rights: that of Bank of America and TD Bank USA, N.A. This is improper. Each motion must assert one claim against one party. The motion is denied without prejudice for this independent ground.

SERVICE ISSUE

Service has not been effected as required by Federal Rule of Bankruptcy Procedure 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and Local Rule 9014 require that service be made on federally insured financial institutions by certified mail. Moreover, service must be effected on officers, partners, managing members, and other designated agents for service of process.

The respondent creditors in this case, Bank of America, N.A. and TD Bank USA, N.A., are insured by the Federal Deposit Insurance Corporation.

Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions applies.

The address specified on the FDIC database for Bank of America, N.A. and TD Bank USA, N.A., are as follows:

Bank of America, N.A.
100 North Tryon Street
Charlotte, North Carolina

TD Bank USA, N.A.
One Portland Square
Portland, ME 04101

According to Debtors' proof of service, the address served by Debtors by certified mail was as follows:

Bank of America
1800 Tapo Canyon Road
Simi Valley, California 93060

TD Bank USA, N.A.
C/O IR Law Office
8655 Gibbs Drive, Suite 100
San Diego, California 92123

Debtors here (1.) did not serve the correct address according to the FDIC database, and (2.) did not effect correct service to the attention of an officer, partner, managing member, or other designated agent for service of process. On these bases, and for the reasons detailed above, 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 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 is denied without prejudice.

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 April 8, 2015. 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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The court's decision is to sustain the Objection.

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

1. The Trustee opposes confirmation offering evidence that the Debtor is \$100.00 delinquent in plan payments, and the next scheduled payment of \$100.00 is due on April 25, 2015. Debtor has paid \$0.00 into the plan to date. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. § 1325(a)(6).
2. The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343.
3. The Trustee asserts that Debtor did not complete the Chapter 13 Plan. No creditors are listed in Class 1, 2, 3, 4, 5, or 6 of the

Plan, and Debtor did not provided a dividend to unsecured creditors.

4. The Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).
5. The Trustee states that Debtor appears unable to make payments in accordance with the plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income on Schedule J reflects a negative \$534.24 and Debtor is proposed plan payments of \$100.00.

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.

3. [15-21311](#)-C-13 DEANDRA JACKSON
DPC-1 Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-8-15 [[19](#)]

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 April 8, 2015. 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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The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor's plan does not provide for Debtor's 2004 Mercury Mariner listed on Debtor's Schedule B. Debtor admitted at the first meeting of creditors that a debt was owed on the vehicle. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate the Debtor either cannot afford the payments called for under the Plan because they have additional debts or that Debtor wants to conceal the proposed treatment of a creditor.

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

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 Not 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 31, 2015. By the court's calculation, Movant provided 35 days' notice. Forty-two days' notice is required.

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

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

INSUFFICIENT NOTICE PERIOD

Federal Rule of Bankruptcy Procedure 2002(b) requires that notice of a motion to confirm pursuant to 11 U.S.C. § 1323 requires 28 days' notice of the time fixed for filing objections. Similarly, Local Rule 9014-1(f)(1) requires 28 days' notice of the hearing and notice that opposition must be filed fourteen days prior to hearing. As Local Rule 3015-1(d)(1) provides, in order to comply with Fed. R. Bankr. P. 2002(b) and Local Rule 9014-1(f)(1), parties-in-interest shall be served at least forty-two days prior to the hearing to constitute sufficient notice.

Here, Debtor filed and served the Motion to Confirm on March 31, 2015, only 35 days before this hearing date. Because Debtors have not provided sufficient notice, the motion is denied without prejudice.

TRUSTEE'S OBJECTIONS

Notwithstanding the insufficient notice provided to parties in interest, Chapter 13 Trustee has objected to the instant motion to confirm on several bases:

1. The plan payments listed in the amended plan conflict with the payments set forth in Debtors' Motion to Confirm and the payments made to date by Debtor. The additional provisions of Debtors' First Amended Plan (Dkt. 58) sets for the plan payments as "Debtors have paid a total of \$895.00 to Trustee through March 23, 2015. Commencing February 25, 2015 monthly plan payments shall be \$555 for the remainder of the plan."

The instant motion lists the plan payments, stating "Debtors have paid a total of \$895.00 through February 2, 2015 to Chapter 13 Trustee. Debtors have proposed to remit payments of \$1,145 starting February 25, 2015 for 58 months."

However, Chapter 13 Trustee's accounting reflects this not to be the case.

2. The additional provisions of the plan state that a portion of the IRS secured claim of \$30,000 "shall survive the bankruptcy and Debtors will arrange payments post-discharge." The plan provides for this debt in Class 2 and schedules the debt as \$7,862.66. The Proof of Claim filed by the IRS shows a secured claim of \$37,,862.66, and that such debt is priority. The plan must provide for full payment under 11 U.S.C. § 1322(a)(2) unless otherwise agreed to by Creditor. The Trustee's record reveals no such agreement.
3. Debtors have not provided a declaration in support of the motion.
4. The additional provisions of Debtors' plan states that Debtors are currently in a trial loan modification. The Trustee has not received any evidence of any application for loan modification or trial loan modification.

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.

Tentative Ruling: The Motion to Avoid Judicial Lien 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, parties requesting special notice, and Office of the United States Trustee on April 20, 2015. Fourteen days' notice is required. That requirement was met.

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

A judgment was entered against the Debtors in favor of M&H Realty Partners V, LP for the sum of \$6,351. The abstract of judgment was recorded with Sacramento County on October 3, 2006. That lien attached to the Debtor's residential real property commonly known as 7208 Beja Court, Elk Court, 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 \$505,900 as of the date of the petition. The unavoidable consensual liens total \$554,899 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 \$1,000 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 M&H
Realty Partners V, LP, San Bernadino County
Superior Court Case No. RCCI 093566, recorded on
October 3, 2006, with the Sacramento County
Recorder, against the real property commonly
known 7208 Beja Court, Elk Grove, 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.

Also #7

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 - No Opposition Filed.

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 March 2, 2015 for hearing set for April 1, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss 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).

Although here Responding Party did not file an opposition to the instant motion, and the court may consider such lack of response to be a statement of no opposition, the court notes that Respondent-Counsel requested that the original hearing date be rescheduled from April 1, 2015 to May 6, 2015 to accommodate Counsel's maternity leave. The court further notes that Responding Party has lodged a Motion to Confirm Plan for the same hearing date of May 6, 2015. Therefore, the court will permit oral argument to be presented at the May 6, 2015 hearing.

The Motion to Dismiss is denied and the case is not dismissed.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. The Trustee asserts the Debtor is \$34,863.38 delinquent in plan payments under terms of the Amended plan filed October 27, 2014 (Dkt. 102). The next scheduled payment of \$4,184.85 is due on March 25, 2015. The case was filed on March 7, 2014, and Debtor has paid \$11,170 into the Plan to date.

2. Debtor's Amended Plan filed on October 27, 2014 has not been set for confirmation.

The court notes that Debtor has filed a third amended plan, and has set said plan to be confirmed concurrently with the instant motion. The court is satisfied that Debtor is prosecuting her case, and working toward resolution of Trustee's concerns. The motion is denied and the case is not 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
denied and the case is not dismissed.

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 March 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.

Chapter 13 Trustee opposes confirmation of a third amended plan filed on March 10, 2015, Dckt. 161, for a number of reasons:

1. The Trustee offers evidence that the Plan is not Debtor's best effort.
11 U.S.C. § 1325(b).
 - a. Debtor's amended Schedule J shows that Debtor's monthly net income totals \$4,363.01. However, it appears the Debtor's monthly net income should be \$923.16, based on a calculation with figures derived from the Stipulation for adequate protection that Debtor entered into with Blue Sky on February 3, 2015, Dckt. 145. The Stipulation provides in part that Debtor will pay Blue Sky \$3,439.85 per month commencing February 7, 2015. Therefore, Debtor's plan payment could be increased by \$178.16 per month.
 - b. Debtor has paid \$11,915 into the Plan to date. Debtor's amended Plan calls for payments of \$745 for 49 months. Based on the proposed amended Plan, Debtor has created an "appearance" of overpayment of the Plan by \$2,975 wherein Debtor would not have to make another payment into the Plan for four months.

- c. Section 6 of Debtors plan states "Please see additional provisions," however no additional provisions are appended.
- 2. Debtor's Statement of Financial Affairs is incomplete. Debtor amended the Statement of Financial Affairs on October 27, 2014. Debtor lists information in question 16, and provides no other information in the entire document.

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.

Tentative Ruling: The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 20, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was not met.

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

The Bankruptcy Code permits the Debtors, Marty K. Humlick and Maria E. Humlick ("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 follows:

A. 825 Obanion Road, Yuba City, California.

However, Movant has not timely given the notice required for a Motion to Sell. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires that 21 days notice be given to parties in interest for "a proposed use, sale, or lease of property of the estate other than in the ordinary course of business," unless the court orders otherwise. Movant served notice on the necessary parties on April 20, 2015. This is only 15 days before the hearing date. Movant has not otherwise secured court approval to file this Motion on shortened time. The court must deny the Motion for this deficiency.

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 Marty K. Humlick and Maria E. Humlick ("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 to Sell is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF MOVANT CAN PROPERLY MOVE THE COURT FOR AN ORDER SHORTENING
TIME**

ALTERNATIVE RULING

The Bankruptcy Code permits the Debtors, Marty K. Humlick and Maria E. Humlick, ("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 follows:

A. 825 Obanion Road, Yuba City, California.

Looking at the motion, the proposed purchaser of the Property is Roy Lanza and the terms of the sale are that Mr. Lanza will purchase the Property, by short sale, for \$725,000.00, and also pay an additional amount of \$6,365.64 and \$4,225.12 to satisfy the amount required by CCO Mortgage to release its lien. The total amount that Buyer will pay is \$731,017.62. Movant believes this is a fair price, asserting in a declaration that \$725,000 is the fair market value of the real property. There are two lienholders: 1st Deed of Trust holder, Bank of New York Mellon and servicer Nationstar Mortgage, LLC to whom Debtors owe approximately \$1,021,608, and 2nd Deed of Trust holder RBS Citizens, N.A. and servicer CCO Mortgage to whom Debtors owe approximately \$105,860.76.

For this Motion, the Movant has provided the Seller's Estimated Closing Statement ("HUD-1") showing the distribution of the short sale proceeds. The Closing Statement provides that \$668,379.40 will be disbursed to the Bank of New York Mellon to pay of the first deed of trust, and \$10,586.08 will be disbursed to RBS Citizens, N.A. to pay off the second deed of trust. Movant provides that the Lenders have agreed to these terms. All costs of sale will be paid in full from sale proceeds. There will be a 6% sales commission.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Marty K. Humlick and Maria E. Humlick,

the Chapter 13 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 Marty K. Humlick and Maria E. Humlick, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Roy Lanza or nominee ("Buyer"), the Property commonly known as 825 Obanion Road, Yuba City, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$725,000.00, and an additional amount of \$6,365.64 and \$4,225.12, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 56, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 13 Debtor hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

* * * *

Also #12

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

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 February 24, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 grant the Motion to Dismiss.

PREVIOUSLY

Although originally set for hearing on April 1, 2015, the court noted that Debtor had filed a motion to confirm plan, set for hearing on May 5, 2015 at 2:00 p.m., as well as a second Motion to Value Collateral of First U.S. Community Credit, set for hearing on April 21, 2015 at 2:00 p.m. The court continued the instant motion to dismiss to May 5, 2015 at 2:00 p.m. to take place concurrently with the Debtor's Motion to Confirm.

SUMMARY OF MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's because Debtor has caused unreasonable delay prejudicial to creditors under 11 U.S.C. § 1307(c). Trustee's Objection to Confirmation (DPC-1) and the Objection to Confirmation filed by First U.S. Community Credit Union were sustained by the court upon hearing on January 13, 2015. Debtor has not filed an amended plan or set it for confirmation. Trustee asks the court to grant an order dismissing unless Debtor files and serves an amended plan and motion to confirm by March 18, 2015, as well as a response explaining the delay.

DEBTOR'S RESPONSE

Debtor filed a response to Trustee's motion on March 18, 2015. Debtor

attributes the delay to filing a second motion to value the secured claim of First U.S. Community Credit, as Debtor needed to obtain two separate appraisals and locate necessary documents. Debtor states that he has remained current on monthly payments, and believes that this new motion to value will be successful based on the debt owed to the first mortgage holder (Central Mortgage), and the value of the residential property.

DISCUSSION

On April 21, 2015, the Debtor brought before the court a motion to value the collateral of First U.S. Community Credit Union. The Debtor-Movant did not appear at said hearing, and the court denied the motion for lack of prosecution.

Due to Debtor's failure to appear at the April 21, 2015 hearing on Debtor's Motion to Value Collateral, the court is not satisfied that the Debtor is actively prosecuting his case. Moreover, the court is satisfied that the delay caused by Debtor's failure to appear and obtain an order valuing First U.S. Community Credit Union's collateral is causing unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c).

Cause exists to dismiss this case. 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.

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 March 19, 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.

CHAPTER 13 OPPOSITION

Chapter 13 Trustee filed a motion opposing this motion to confirm plan, objecting to confirmation on the basis that while Debtor filed a motion to confirm plan, Debtor did not provide a proof of Service to the court.

CREDITOR OPPOSITION

Creditor, First U.S. Community Credit Union, filed an opposition to the Debtor's motion to confirm on the basis that Debtor's plan proposes to value Creditor's interest in its collateral, real property commonly known as 550 W. Broad Street, Nevada City, California. However, Creditor believes that its claim is at least partially secured with respect to the subject property.

DISCUSSION

The court notes that on April 21, 2015, the Debtor brought before the court a motion to value the collateral of First U.S. Community Credit Union. The Debtor-Movant did not appear at said hearing, and the court denied the motion for lack of prosecution. Thus, because Debtor's plan relies upon a motion to value the collateral of First U.S. Community Credit Union, and the

court denied said motion to value, the motion to confirm plan is denied.

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.

11. [15-22040](#)-C-13 MILDRED JONES
CAH-1 Anthony Hughes

MOTION TO VALUE COLLATERAL OF
HYUNDAI MOTOR AMERICA
4-2-15 [[15](#)]

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 April 2, 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.

The Motion to Value secured claim of Hyundai Motor America, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owners of a 2013 Hyundai Sonata which she testifies has approximately 34,000 miles on it. The Debtor seeks to value the property at a replacement value of \$16,674 as of the petition filing date. Debtor in this motion wishes to value the claim of Creditor Hyundai Motor America to be a secured claim of \$16,674, with the balance of Creditor's claim determined to be general unsecured.

CHAPTER 13 TRUSTEE'S OPPOSITION

Trustee objects to the instant motion on the basis that Debtor has served Hyundai Motor America, but in Debtor's Plan and Schedule D, Debtor identified the Creditor as Hyundai Finc.

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Hyundai Motor America," however as Trustee points out, Debtor has identified "Hyundai Finc" as the

creditor in Debtor's Plan and Schedule D. The court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. Additionally, the Creditor has not filed a proof of claim upon which the court may rely. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

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 Hyundai Motor America secured by an asset described as a 2013 Hyundai Sonata is determined to be a secured claim of \$16,674, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of said Vehicle is \$16,674, and is encumbered by liens securing claims which exceed the value of the asset.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN REMEDY THE IDENTITY OF THE CREDITOR TO THE SATISFACTION OF THE COURT

ALTERNATIVE RULING

The motion is accompanied by the Debtor's declaration. The Debtor is the owners of a 2013 Hyundai Sonata which she testifies has approximately 34,000 miles on it. The Debtors seek to value the property at a replacement value of \$16,674 as of the petition filing date. As the owners, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor Hyundai Motor America's lien on the vehicle's title secures a purchase-money loan incurred on September 3, 2012, more than 910 days prior to filing of the petition, with a balance of approximately \$27,681. 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 \$16,674. 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.

CHAPTER 13 TRUSTEE'S OPPOSITION

Trustee objects to the instant motion on the basis that Debtor has served Hyundai Motor America, but in Debtor's Plan and Schedule D, Debtor identified the Creditor as Hyundai Finc.

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 Hyundai Motor America secured by an asset described as a 2013 Hyundai Sonata is determined to be a secured claim of \$16,674, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of said Vehicle is \$16,674, and is encumbered by liens securing claims which exceed the value of the asset.

* * * *

12. [14-32243](#)-C-13 ANDRES DELGADILLO
RPH-1 Robert Huckaby

CONTINUED MOTION TO VALUE
COLLATERAL OF MERIWEST CREDIT
UNION
1-26-15 [[24](#)]

Also #13

NO 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 January 26, 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.

The Motion to Value secured claim of Meriwest Credit Union, "Creditor," is set for evidentiary hearing on -----.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, California. The Debtors seeks to value the property at a fair market value of \$240,000.00 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 \$328,953. Meriwest Credit Union's second deed of trust secures a loan with a balance of approximately \$48,646.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

Meriwest Credit Union, Creditor, states that the principal balance owed to Creditor as of the filing of the bankruptcy petition was \$41,648.39. Creditor objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$368,500.00 based on a Value Sure Automated Valuation Model. Creditor argues that its claim is therefore secured by the subject property.

PREVIOUSLY

This motion was continued to 2:00 p.m. on May 5, 2015, to allow the parties to conduct discovery, with the court stating that if the matter had not been resolved, the court would set an evidentiary hearing at the continued hearing date.

MAY 5, 2015 HEARING

To date, the docket reflects that no supplemental papers have been filed by the Parties, indicating to the court that it is necessary to set a date for evidentiary hearing.

At the hearing-----

13. [14-32243](#)-C-13 ANDRES DELGADILLO
DPC-1 Robert Huckaby

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-4-15 [[32](#)]

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 4, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to continue the Objection to take place concurrently with the Debtor's Motion to Value on -----.

PREVIOUSLY

At a hearing on February 24, 2015, the court continued the Motion to Value on which Debtor's plan relies to May 5, 2015. As this Objection relies on the resolution of the Motion to Value, it was continued to the same date.

SUMMARY OF OBJECTION

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

1. Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a pending Motion to

Value the secured claim of Meriwest Credit Union on a second deed of trust. The Motion is set for hearing on February 24, 2015 and if it is not granted, Debtor's plan lacks sufficient monies to pay the claim in full.

2. Debtor lists Meriwest in Class 4 of the Plan with a monthly payment of \$2,049. Creditor filed a secured claim (Claim 3-2) indicating mortgage arrears in the amount of \$4,582.80 and a regular monthly payment of \$1,968.58. The plan states that this debt is current, so it appears to not comply with applicable law. 11 U.S.C. § 1325(a)(1).

DISCUSSION

Trustee's objection relies upon the pending Motion to Value the Collateral of Meriwest Credit Union. At the hearing, the court set that matter for evidentiary hearing. The court shall here continue the instant Objection to Confirmation to be heard in conjunction with said evidentiary hearing.

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 Chapter 13 Trustee's Objection to Confirmation is continued to -----.

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

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

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 19,
2015 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval

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

Tentative Ruling: The 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 March 24, 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.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee opposes the motion to confirm based on the following:

1. The Trustee offers evidence that the Plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtor's second amended plan proposes payments based on an increase in Debtor's income. However, Debtor has not provided Trustee with recent verification as to the increase.
2. The Trustee provides that according to Trustee's calculations, the Plan will complete in approximately 108 months as opposed to 60 months proposed. This exceeds the maximum amount of time under 11 U.S.C. § 1322(d). The over-extension is due in part to the Debtor's failure to list a dollar amount that will be paid into the plan upon sale of the real property and the Trinity Café in the last 12 months of the plan.

DEBTOR'S RESPONSE

Debtor responds to Trustee's objection to the motion to confirm second amended plan. Debtor states that seeks in good faith to propose a plan acceptable to Trustee, and that Debtor's Second Amended Plan was and is

designed to be completed within 60 months.

Debtor explains that he owns the Trinity Café restaurant in Mt. Shasta, California. Debtor's Plan indicates restaurant revenues fluctuates based upon tourist seasons. Debtor's plan provides that Debtor intends to sell Trinity Café, and anticipates that the sale will net at least \$30,000-\$50,000. Debtor's Plan states the net sale proceeds are to be given to the Trustee to assist in fulfilling Debtor's plan.

Finally, Debtor notes that Trustee's objection is premised on the lack of detail in the second amended plan, and Debtor offers to file a Third Amended Plan so as to address each of Trustee's objections to the Second Amended Plan, or provide additional financial statements to the Trustee to demonstrate that Debtor's Plan is feasible.

DISCUSSION

The court is satisfied that the second amended plan is Debtor's best efforts, and that Debtor is actively prosecuting his case. However, the court shares the Trustee's concerns and does not find the second amended plan to provide sufficient information to conclude that the plan is in fact feasible. 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.

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 April 9, 2015. 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 -----
-----.

The court's decision is to sustain the Objection.

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

1. Debtors' cannot afford to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors's plan relies on a Motion to Value the Collateral of Chase in Class 2, which is set for hearing April 14, 2015.
2. Debtors cannot make plan payments, and has failed to list an expense for real property taxes and insurance on Schedule J.
3. Debtors' plan is not in their best efforts under 11 U.S.C. § 1325(b). Debtors are over the median income and propose plan payments of \$1,445 for 60 months with no less a 0% dividend to unsecured creditors.
 - a. Debtors' form 22C reflects monthly disposable income of

\$627.88 for 60 months, totaling \$37,672.80. Trustee's review of form 22C is \$1,577.88 for 60 months totaling \$94,672.80.

- b. On Debtors' form 22C, Debtors list separate household for Joint Debtor in the amount of \$950. Joint Debtor Angela Butler lives in the state of Ohio, however Debtor has claimed a household of 4, which consists of both Debtors, and 2 children. Debtor has used the IRS National and Local Standards for a household of four and Debtor is not entitled to claim additional expenses of \$950. Debtor does not address if this expense is projected to continue.
- c. Joint Debtor Angela Butler admitted at the First Meeting of Creditors held on April 2, 2015 that she was resigning from her current employment in Ohio and moving back to California, where she will be obtaining other employment and expects to be earning a higher income.
- d. Debtors deducted \$1,214.45 for Childcare expenses on form 22C and Schedule J for school and after school care.

DEBTORS' RESPONSE

Debtors respond to each of Trustee's objections in turn:

- 1. The Motion to Value the Collateral of U.S. Bank, N.A. was granted by this court on April 14, 2015.
- 2. As of April 15, 2015, Joint Debtor Angela Butler moved back to California from Ohio. She is currently residing with other Joint Debtor at 900 Monticello Court, Vacaville, California.
- 3. Joint Debtor's last day of employment with Case Western Reserve was April 3, 2015. She is currently unemployed.
- 4. Debtors deducted \$1,214.45 per month for Childcare expenses, which are reasonable and necessary because Debtors' family was the victim of a serious crime during which the youngest dependent suffered life threatening injuries, Debtors require the additional support provided at a private school in order to heal and protect their dependents.
- 5. Debtors' homeowner's insurance is included in the monthly mortgage payment, but property taxes are not. Debtors will amend schedules I and J to address changes to their income and expenses when those numbers are settled, and property taxes will be addressed in the amendment.

DISCUSSION

The court notes that on April 20, 2015, the court entered an order granting Debtors' motion to value collateral of U.S. Bank, N.A., Dckt. 32, resolving Trustee's first objection. However, Trustee points out that the plan may not be in Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over the median income and propose plan payments of \$1,445 for 60 months with no less a 0% dividend to unsecured creditors. The court shares Trustee's concerns, and agrees that there appears to be a discrepancy as to Debtors' disposable income, to which Debtors did not provide an explanation

in their response to Trustee's 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.

Tentative Ruling. The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on March 30, 2015. Based on the court's calculation, thirty-six (36) days' notice was provided. Thirty (30) days' notice is required. (Local Bankr. R. 3007-1(b)(2)) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Claim of Green Tree Servicing is sustained.

Enrique Salvador Serrato and Michelle Francine Serrato, Chapter 13 Debtors ("Objector") requests that the court disallow the claim of "Calvary SPV I, LLC" ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$10,484.79. Objector asserts that the claim is attempting to collect on a debt more than four years from the date that the last payment was made under the contract and after the statute of limitations period established by California Code of Civil Procedure § 337. Under 11 U.S.C. § 502(b)(1), this claim should thus be disallowed.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting

substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

CHAPTER 13 TRUSTEE

Chapter 13 Trustee has filed a statement of non-opposition to the instant objection to claim.

DISCUSSION

Claim No. 8 was filed on July 18, 2014 by Calvary SPV I, LLC asserting an unsecured claim of \$10,484.79 for "Credit Card."

The claim is supported by documents evidencing a statement of account and an Assignment of debt from Wells Fargo Bank, N.A. to Calvary SPV I, LLC, dated January 14, 2011.

Chapter 13 Debtors have provided declarations in support of this objection to claim, wherein Debtor Enrique Serrato provides under penalty of perjury that he has not made a payment or engaged in a transaction with regard to the Wells Fargo Account at issue since 2009, nor has he made a statement or signed any document that might be construed as an acknowledgment of the validity of the debt.

Based on the evidence before the court, the court finds the Creditor's claim past the four-year limitation provided by CCCP § 337, and disallows the claim in its entirety.

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 Claim of Calvary SPV I,
LLC, Creditor filed in this case by Chapter 13
Debtor having been presented to the court, and
upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the objection to Proof
of Claim Number 8 of Calvary SPV I, LLC is
sustained and the claim is disallowed in its
entirety.

Also #21

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 April 8, 2015. 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 -----
-----.

The court's decision is to sustain the Objection.

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

1. Debtor is \$399.34 delinquent in plan payments, and the next scheduled payment of \$399.34 is due on April 25, 2015. Debtor has paid \$0.00 into the plan to date. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. § 1325(a)(6).
2. Trustee states that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343.
3. Debtor's Chapter 13 Plan does not provide a dividend to unsecured creditors.
4. Debtor has failed to provide either a tax transcript or a federal

income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e) (2) (A); Fed. R. Bankr. P. 4002(b) (3).

5. Debtor has not provided Trustee with Debtor's Employer Payment Advices received 60 days prior to filing under 11 U.S.C. § 521(a) (1) (B) (iv).
6. Debtor does not appear to be able to make payments required under 11 U.S.C. § 1325(a) (6). Debtor's monthly projected disposable income on Schedule J reflects a negative \$104.52 and Debtor is proposing payments of \$399.34.
7. Debtor's Plan may not comply with applicable provisions of the Bankruptcy Code, 11 U.S.C. § 1325(a) (1). Debtor's Plan proposes to pay 10% interest to Class 1 Mortgage arrears to SLS Mortgage. The provision for the interest rate is blank, therefore according to § 3.13 of the Chapter 13 Plan 10% per year will accrue, however this creditor may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

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.

19. [15-21350](#)-C-13 DIANA EVANS
MDE-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
3-16-15 [[17](#)]

Final Ruling: Creditor, Deutsche Bank National Trust Company having filed a "Notice of Withdrawal" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court overrules 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.

A Objection to Confirmation of Plan filed by
Creditor Deutsche Bank National Trust Company,
Creditor Deutsche Bank National Trust Company
having filed an ex parte "Notice of Withdrawal"
pursuant to Federal Rules of Civil Procedure
41(a)(2) and Federal Rules of Bankruptcy
Procedure 9014 and 7014, and good cause
appearing,

IT IS ORDERED that the Objection to
Confirmation of Plan is overruled.

Tentative Ruling: Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditor, and Office of the United States Trustee on March 24, 2014. 28 days' notice is required. This requirement was met.

The Motion for Hardship Discharge 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 court's decision is to deny the Motion for Hardship Discharge without prejudice.

Debtors David Lynn Venable and Nancy Lorraine Venable seek a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtors, at the time of filing this motion, in the fifteenth (15) month of their sixty (60) month plan. Debtors state that the failure to complete the plan are due to circumstances for which they should not be justly held accountable, that the value of the property distributed is not less than if the debtor had been liquidated under chapter 7, and modification is not practicable, pursuant to 11 U.S.C. § 1328(b)(1).

Debtors provide that joint debtor retired in the normal course of business, but was diagnosed with breast cancer shortly thereafter, and now joint debtor makes 50% of what she previously as an employed individual. That reduction along with the cancer diagnosis has made Debtor unable to contribute what was intended for the Plan.

Debtors provide that modification of the plan is not practicable because joint debtor's income has greatly been reduced. The Debtors were already living under a very difficult income structure with very little room to make any decreases.

TRUSTEE'S OPPOSITION

The Trustee objects to the Debtor's request for hardship discharge on the basis that Debtor may have failed to provide sufficient information to explain why a modification of the plan is not practicable. Trustee states that Debtor has failed to provide a current list of income and expenses and Movant's declaration indicates she is receiving unemployment income. Debtor does not provide any income information from Mr. Rawlinson or a list of expenses for both Debtors.

First, Trustee discusses failure and circumstances under 11 U.S.C. § 1328(b)(1). The Trustee notes that April 2015 is month 15 of a 60 months plan, and the Debtors are delinquent \$1,147 under the terms of the confirmed plan. The plan proposes to pay a 100% dividend to unsecured claims, with the Trustee disbursing less than 1% for a total of \$60.03 to only two of the nine secured creditors who filed a timely claim. Although Debtors state that secured

creditors have been paid in full, Dckt. 62, Trustee provides that secured creditors have not been paid in full. The remaining amount owed to Santander Consumer USA for a 2005 Trailblazer is \$262.53 in principal, plus interest and Trustee compensation. Trustee also disputes that Debtors are earning in retirement half of the normal income. However, the current income appears to be more than 50% of the stated income at the time the case was filed.

Second, Trustee discusses liquidation value under 11 U.S.C. § 1325(b)(2). Trustee provides that Debtors have not explained to the Court the amount that unsecured creditors would receive in the even of a Chapter 7 liquidation, which will prevent the Court from finding this factor satisfied unless the Court can otherwise verify the amount. While Trustee believes no non-exempt equity would be available to unsecured creditors in a chapter 7 liquidation, a distribution to unsecured creditors may have occurred in a chapter 7 depending on the state and federal returns the Debtors filed for 2013.

Finally, Trustee discusses possible modification under 11 U.S.C. § 1325(b)(3). Trustee opposes the motion because Debtors have not provided sufficient information in their declaration in efforts to explain why a modification is not practicable. Debtors received a discharge in a prior chapter 7 case filed November 2009 (Case No. 09-45640).

DEBTOR'S RESPONSE

Debtors respond to the Trustee's opposition. First, Debtors reply that the reason their income post retirement is lower than projected is because Debtors were forced to stop all w2 employment income due to the extent of Debtor Nancy Venable's cancer. The delinquency of \$1,147 cannot be cured, however it could be modified. Second, Debtors provide that it is disingenuous of Trustee to point out that unsecured creditors could receive a distribution in a chapter 7 liquidation, and their refunds actually totaled \$569, and thus the refunds have no bearing on this hardship request. Finally, Debtors assert that the factual circumstances described in the motion and declaration should be sufficient for this court, and that Trustee should clarify and narrow the scope of what they would like to know or ask.

DISCUSSION

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

The court agrees that Movant has not provided sufficient evidence regarding 11 U.S.C. § 1328(b)(3): modification of the plan is not possible under 11 U.S.C. § 1329. Debtors have not provided current income and expense statements or an analysis of how modifying the plan is not possible at this time, merely stating that modification is "not practicable because joint debtor's income has greatly been reduced." Dckt. 60.

Based on the foregoing, the motion is denied without prejudice.

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

holding that:

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

The Motion for Hardship Discharge 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 is denied without prejudice.

21. [15-21555](#)-C-13 ANDREW/LORENNNA HOWELL
DPC-1 Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-8-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 8, 2015. 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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$105 for 60 months with a 0% dividend to unsecured creditors. Debtor provides for the 2002 Toyota Avalon in Class 2 in the Plan, however Debtor lists an expense of \$150 on Schedule J for 2002 Toyota Avalon, therefore Debtor has an additional \$150 per month to commit to the plan.

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

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

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

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

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

Tentative Ruling: The 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 April 8, 2015. 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 -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor does not appear to be able to make plan payments under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors that the business income listed on Schedule I of \$264 is the gross income and Debtor has failed to list business expenses on Schedule J. Debtor has not filed an attachment to Schedule I showing the gross business income, expenses, and net income.

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

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

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

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

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

Tentative Ruling: The Motion to Incur Debt 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, all creditors, and Office of the United States Trustee on April 21, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to purchase a 2013 Chevrolet Impala, which the total purchase price is \$16,995 at a 5.74% interest rate, with monthly payments of \$375.80 for 72 months. Debtors state that they are paying the secured debt for a Chevrolet Suburban, however that vehicle has had major mechanical issues. Debtors wish to register the vehicle as non-operational, while continuing to pay it off in their chapter 13 plan, and then donate it after the closing of their case as a tax write-off.

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 court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to 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 granted and Daniel Le Wayne Norton and Grace Henrieta Norton, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 68.

24. [14-31068](#)-C-13 JEFFERSON/PRISCILLA GRACE
HDR-3 BAGALAY
Harry Roth

MOTION TO CONFIRM PLAN
3-20-15 [[49](#)]

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 March 20, 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.

Chapter 13 Trustee objects to the motion to confirm plan on the basis that section 2.15 of Debtors' Amended Plan indicates that unsecured creditors are to be paid no less than 1%. Debtors' motion also provides that unsecured creditors are to be paid not less than 1%. Dckt. 49. Debtors' declaration states that unsecured creditors are to be paid not less than 3.12%. Declaration, Dckt. 51. Chapter 13 Trustee requests that Debtor clarify the correct percentage to be paid to unsecured creditors in the order confirming plan.

DEBTOR'S RESPONSE

Debtors respond to the Trustee, clarifying that unsecured creditors are to be paid not less than 1%, not 3.12%.

DISCUSSION

Debtors have resolved Trustee's only objection to confirmation of the plan, and have agreed to cure the defect in the order confirming plan. 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 20, 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.

Thru #29

Final Ruling: No appearance at the May 5, 2015 hearing is required.

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

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

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

The Motion to Value secured claim of San Francisco Fire Credit Union, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2718 Adriatic Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$260,000 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 \$345,682.18. San Francisco Fire Credit Union's second deed of trust secures a loan with a balance of approximately \$40,155. 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 San Francisco Fire Credit Union secured by a second deed of trust recorded against the real property commonly known as 2718 Adriatic Way, Sacramento, 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 \$260,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 8, 2015. 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 -----
-----.

The court's decision is to overrule the Objection.

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

1. Debtor's plan relies on a pending motion to value the collateral of San Francisco Fire Credit Union, without which Debtor cannot make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).
2. Debtor has not provided a domestic support obligation checklist. Debtor has a domestic support obligation of \$460 on Schedule J, however Debtor has not provided a checklist to Trustee.

DEBTOR'S RESPONSE

Debtor responds to Trustee's objection, stating that Debtor has provided the requisite class 1 checklist and resent them by email on April 10, 2015, and that the pending motion to value is set for hearing to be heard concurrently with this objection to confirmation.

DISCUSSION

The court has granted the Debtor's Motion to Value the Collateral of San Francisco Fire Credit Union, thus resolving the Trustee's first objection. Second, Debtor states that on April 10, 2015, Debtor provided the domestic support obligation checklist to Trustee, resolving Trustee's second objection. Having satisfied the Trustee's objections, the court has determined that the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 26, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 9, 2015. 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 -----
-----.

The court's decision is to sustain the Objection.

Creditor, San Francisco Fire Credit Union opposes confirmation of the Plan. Creditor claims to hold a first priority Deed of Trust against real property commonly known as 2718 Adriatic Way, Sacramento, California. Creditor object that Debtor's plan is not confirmable because the Plan does not provide for Creditor arrearage claim in full and thus fails to meet the feasibility requirement.

Creditor asserts that Debtor's loan is in default in total arrearages of \$52,700.98. In order to provide for Creditor's arrearage claim in full, Debtor will need to increase the monthly arrearage divided from \$416.66 to approximately \$878.35, rendering the plan not feasible under 11 U.S.C. §§ 1322(b)(5) & 1325(a)(6).

DEBTOR'S OPPOSITION

Debtor responds to Creditor's objection to the plan. First, Debtor states that under 11 U.S.C. § 1322(b)(5), Debtor's plan provides for the terms of a loan modification which includes a \$25,000 lump-sum, and on-going payments of \$1,853.30 per month until paid in full by December 1, 2052. Debtor states that Creditor objects without any competent evidence in efforts to either mislead the court or without any actual knowledge as to the status of the account. Second, Debtor provides that under 11 U.S.C. § 1325(a)(6), Creditor has objected without any evidence that Debtor cannot make plan payments.

DISCUSSION

To start, the court notes that Creditor San Francisco Credit Union holds two deeds of trust on the subject property, 2718 Adriatic Way, Sacramento, California. According to Debtor's schedule D, the first, priority deed of trust held by Creditor is in the amount of \$345,682.18. The second deed of trust held by Creditor is in the amount of \$40,155. The court has granted Debtor's Motion to Value Creditor's second deed of trust, and the claim of Creditor secured by a second deed of trust is determined to be a secured claim in the amount of \$0.00. The first deed of trust remains secured and unaffected. Creditor has not yet filed a proof of claim in this case.

First, Debtor appears to object first to the operability of Creditor's Note and second to the declaration submitted by Baochau Nguyen, Bankruptcy Supervisor at Cenlar FSB, the servicing agent for Creditor. The court finds no issue as to either of these issues. To the first point, the Creditor has submitted the original note dated January 12, 2005, entered into between San Francisco Fire Credit Union and Debtor Christopher Dean--Debtor provides no basis as to why he believes the Note to be inoperable, merely that it is. There does not appear to be a deficiency as to the Note. To the second point, the Nguyen Declaration provides, under penalty of perjury, that Cenlar FSB is the agent of Creditor, and as loan servicer, Baochau Nguyen may be in the best position to testify as to the business records of the administration of the loan at issue.

Second, the court will address the feasibility of the plan. The objecting Creditor, who although has not provided an Proof of Claim, but has submitted the Nguyen Declaration as evidence before the court, asserts that pre-petition arrearages total \$52,700.98. However, Creditor asserts that Debtor's plan only provides for \$25,000 in pre-petition arrearages in Class 1 of the Plan, and to account for the full amount would render the Plan not feasible under 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(5).

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- (1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
- (2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of

- (3) the Plan, 11 U.S.C. § 1325(a)(5)(B), or
surrender the collateral for the claim to the secured
creditor, 11 U.S.C. § 1325(a)(5)(C).

Here, Debtor does not provide clarification or explanation as to why, in Class 1 of his plan, he provides only for \$25,000 in pre-petition default (in payments of \$416.66 per month) instead of the full amount of arrearages asserted by Movant-Creditor, which Creditor explains would more than double those monthly payments to \$878.35. And in fact, while Debtor's responsive motion touches on many issues, it does not address the question of pre-petitions arrears at all.

The court agrees that in providing to cure arrears in \$25,000 instead of the amount of \$52,700.98, Creditor has sufficiently raised doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to 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 Creditor San Francisco Fire Credit Union having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to 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, and Office of the United States Trustee on April 20, 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 -----
-----.

The court's decision is to grant the Motion to Dismiss.

The Chapter 13 Trustee seeks dismissal of Debtor's case based Debtor's and Debtor's spouse's history of filing bankruptcy. Trustee provides that Debtor has filed a total of five bankruptcy cases, including the instant bankruptcy case, since October 25, 2010. Debtor's non-filing spouse has filed a total of three bankruptcy cases since October 12, 2011. Thus, Debtor is not eligible to be a chapter 13 debtor.

Cause exists to dismiss this case. 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.

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 27, 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 grant the Motion to Confirm the Modified Plan.

PREVIOUSLY

This matter was originally before the court on April 14, 2015. At that time, the court continued the hearing to 2:00 p.m. on May 5, 2015 to permit the Debtor and Trustee to negotiate additional plan amendments.

SUMMARY OF MOTION

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) Debtor's plan proposes to reduce the commitment period from 60 months to 40 months. Debtor's From B22C, however, indicates that Debtor is over the median income threshold therefore requiring a plan term of five years. Debtor's motion states that the reason for the reduction in plan

term is a result of the adjustable rate mortgage and changes to the ongoing mortgage payment. While Debtor states that he is unable to refinance his residence with Bank of America while he is in a Chapter 13, Debtor has provided no evidence of any attempts to refinance or obtain a loan modification.

(2) Debtor states in item 8 of his declaration that Exhibits A and B were filed to show current income and expense (Schedules I and J), but the Trustee cannot locate the exhibits in the court docket.

(3) Debtor states in his declaration (dckt. 56) that he has no domestic support obligation. However, in a different declaration (dckt. 42), Debtor states that he is required to pay \$1,300 per month in domestic support payments, which began November, 2012.

DEBTOR'S RESPONSE

In reply to the Trustee's opposition, Debtor states that:

(1) Debtor filed supplemental Schedules I and J with his reply.

(2) Debtor is attempting to reduce the length of his Chapter 13 Plan so that he can put himself in a position to deal with the large increase in his ongoing mortgage payments, which will occur in July 2015. Through his modified plan, Debtor is paying creditors the same amount they would receive under his previously confirmed Chapter 13 Plan--just sooner.

(3) Debtor is no longer obligated to make domestic support payments. See Decl. of Shaun Suy. (Dckt. 63).

The court agrees that the Debtor's plan must adhere to a five year payment schedule because Debtor is over the median income threshold and no sufficient grounds have been provided for the court shortening that period. Accordingly, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

STATUS REPORT UPDATE

On April 29, 2015, Debtor filed a status report informing the court that Debtor and Trustee have agreed to resolve the Trustee's objection. Parties have agreed that Debtor will pay an additional \$150 to the Chapter 13 Trustee for distribution to general unsecured creditors. Payment of the additional \$150.00 will be May 25, 2015. As such, Debtor's plan will be amended in the order confirming plan to reflect the additional payments.

The Trustee's objections having been resolved, 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 granted and the proposed Chapter 13 Plan filed on February 27, 2015 is confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 March 20, 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.

Chapter 13 Trustee opposes confirmation of the plan on the following basis:

1. Debtor's plan may not be the Debtor's best efforts under 11 U.S.C. § 1325(b). First, Debtor is above the median income according to the Statement of Current Monthly Income, and according to Debtor's testimony for the First Meeting of Creditors where he stated that his spouse is employed full time earning \$15.00 per hour. Second, the plan does not provide that all Debtor's projected disposable income for the applicable commitment period is to be paid into the plan.
2. Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's Schedule A lists two rental properties in Wisconsin. Debtor testified at the First Meeting of Creditors that the mortgage payment on the property at 32701 US HWY 14, Lone Rock, Wisconsin does not include expenses for property taxes, insurance and garbage service--expenses not listed separate in the Debtor's budget.

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 May 5, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 18, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Springleaf Financial Services, Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5916 Beaumere Way, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$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 \$331,391.42. Springleaf Financial Services, Inc.'s second deed of trust secures a loan with a balance of approximately \$17,723.83. 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 Springleaf Financial Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 5916 Beaumere Way, Carmichael, 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 \$200,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the May 5, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 20, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Aaron's Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtors are the owners of a 22 cubic foot French-door refrigerator ("Refrigerator"). The Debtor seeks to value the property at a fair market value of \$777.22 as of the petition filing date.¹ As the owner, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtors entered into a lease purchase agreement for the Refrigerator with Creditor, Aaron's, Inc. in March of 2013, on which a balance remains of \$1,201.98. Therefore, the respondent creditor's claim is under-collateralized. The creditor's secured claim is determined to be in the amount of \$777.22. *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.

¹ Debtors further provides that Respondent-Creditor filed a proof of claim in Debtors' previous bankruptcy case (Case No. 14-21761), which was dismissed on October 20, 2014, wherein Creditor provides the fair market value of the Refrigerator appliance that Debtors now assert. Exbt. 1, Dkt. 42.

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 Aaron's, Inc. secured by an asset described as a 22 cubic foot French-door refrigerator is determined to be a secured claim in the amount of \$777.22, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the said Refrigerator is \$777.22 and is encumbered by liens securing claims which exceed the value of the asset.

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 March 18, 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.

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

1. Debtors' Plan relies on pending motions to value the collateral of Springleaf Financial Services, Inc. and Aaron's, Inc.
2. Debtors' Plan payments of \$2,476.12 for 5 months and \$2,522.28 for 55 months are insufficient to fund the Class 1 on-going mortgage and arrears payments, Class 2 monthly dividends and the attorney fee distribution totaling approximately \$2,948.62. Debtors may be able to resolve this matter if the administration expense of \$546.83 listed in Section 2.07 of the plan was reduced to \$135.00 per month.
3. Debtors have incorrectly titled the Section 6 additional provisions of the plan. Additionally, page 8 of the plan should be stricken as the Motion to Value Springleaf is set for hearing concurrently with this hearing.

DISCUSSION

The court has granted Debtors' Motion to Value the Collateral of Springleaf Financial Services, Inc., and Motion to Value the Collateral of Aaron's, Inc., resolving Trustee's first objection. However, Trustee's second and third objections remain outstanding. 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 17, 2015. While generally twenty-one days' notice is required, (Fed. R. Bankr. P. 2002(a)(2), 21 day notice), for good cause, the court granted an order shortening time, requiring fewer than fourteen days' notice. Here, Debtor has provided 18 days' notice.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Debtor ("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 follows:

A. 10147 Equestrian Drive, Elk Grove, California.

The proposed purchaser of the Property is Abdulrahman Farhat and the terms of the sale are for the purchase price of \$517,000. The property is encumbered by a first deed of trust held by CitiMortgage, Inc., with liens totaling \$432,051. The total liens will be paid in full once escrow closes. All creditors with liens and secured interests encumbering the property will be paid in full before or simultaneously with the transfer of title or

The additional provisions of Debtor's plan propose to use the remaining proceeds from the sale to pay off the unsecured creditors in the plan 100%.

Chapter 13 Trustee has filed a statement of no opposition to the motion to sell.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

IT IS ORDERED that the Terry Peyton, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Abdulrahaman Farhat or nominee ("Buyer"), the Property commonly known as 10147 Equestrian Drive, Elk Grove, California ("Property"), on the following terms:

- * * * *

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 March 11, 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 Plan without prejudice.

PREVIOUSLY

The instant motion was originally set for hearing on April 28, 2015 at 2:00 p.m. The court continued the matter to May 5, 2015 at 2:00 p.m. to be heard concurrently with a Motion to Sell. The court also notes this Motion to Confirm depends upon the Motion to Sell Property.

CHAPTER 13 OPPOSITION

The Chapter 13 Trustee objects to confirmation on the basis that:

1. The debtor is \$750 delinquent in plan payments to date with the next scheduled payment of \$250 due on April 25, 2015. The Debtor has made only one payment to date.
2. The debtor lists Citimortgage in Class 1 as the debtor has scheduled arrears in the amount of \$27,332.31. The Additional Provisions of the plan provide that the debtor is in the process of selling his real property, commonly known as 10147 Equestrian Dr., Elk Grove, California, by month nine and anticipates to pay 100% to all

creditors, listed in his plan, through the sale. The debtor proposes that "on-going mortgage payments to Class 1 Creditor Citimortgage Inc. will be paid by the Chapter 13 Trustee in months 10-60 in the amount of \$2,071 per month. This substantial delay in ongoing payments appears to violate 11 U.S.C. §§ 1322(b)(2) and 1322(b)(5) by not maintaining payments and thus prevent confirmation under 11 U.S.C. § 1325(a)(1). Further, the debtor has failed to file a motion for the court to approve the sale of the property and failed to give the Trustee or the court sufficient details to allow for oversight of the sale process.

3. According to the Trustee's calculations, the plan will be complete in 98 months if the sale of real property does not happen. The plan proposes to pay \$250 for nine months; \$2,700 for three months; then \$2,980 for 48 months with a 100% dividend to unsecured creditors. The total paid into the plan \$153,390.
4. The debtor is under the median income. The debtor's monthly projected disposable income listed on Schedule J reflects \$2,734. The debtor has failed to indicate how the plan payments will increase to \$2,980 in month 13 and why the debtor is not paying all disposable income in the plan for months one through nine.

DISCUSSION

The court also notes this Motion to Confirm depends upon the Motion to Sell Property, which the court has granted. This resolves the Trustee's second and third objections. However, Trustee's first objection, delinquent plan payments, and Trustee's fourth objection, that Debtor is under the median income, remain outstanding. 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.
