UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 6, 2014 at 3:00 p.m.

1.	**11-43701-E-13** **JE-2**	**LEAH MEJIA** **Steele Lanphier**	**MOTION TO APPROVE LOAN MODIFICATION** **4-8-14 [39]**

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 tentative decision is to deny the Motion to Approve the Loan Modification without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an order authorizing him to negotiate a loan modification with Wells Fargo Bank, N.A. In his motion, Debtor states the following possible impacts on the plan:

1. The treatment of the pre-petition mortgage delinquency owed to Wells Fargo Bank, N.A.;

2. The Debtor's monthly payment to the Chapter 13 Trustee;

3. The treatment of allowed unsecured claims;

4. The overall length of the Chapter 13 plan;

5. The amount of fees paid to the Debtor's attorney by the Chapter 13 Trustee

However, this appears to be a generic pleading, showing no knowledge of the specific loan modification. Rather, Debtor states several possible impacts of the plan. Without the actual loan modification attached, the court is unable to determine what the terms actually are and how they will in fact impact the plan.

Trustee's Opposition

In his opposition, the Chapter 13 Trustee does not oppose the substance of the motion but alleges that Debtor's declaration is incomplete. According to the Trustee, the second page of the declaration is missing.

The Trustee also claims that Debtor's declaration is defective. Debtor's verification of the Declaration fails to provide any qualification on stating that the information is true and correct pursuant to 28 U.S.C. § 1746. Rather, the Debtor states that the information is "true and correct to the best of my knowledge and belief."

The Trustee also opposes to the Motion on the basis that correct party is not named in the Motion. Debtor's Motion alleges that Wells Fargo Bank, N.A. holds a security interest in the subject real property and that Debtor wants to modify the deed of trust with Wells Fargo Bank, N.A. Wells Fargo Bank, N.A. filed a proof of claim identifying itself as the creditor. However, the Adjustable Rate Mortgage Note and Deed of Trust attached to the claim identify the creditor as World Savings Bank, FSB. Also attached to the claim is a Certificate of Merger evidencing the merger of Wachovia Mortgage Corporation with Wells Fargo Bank, N.A. No evidence is provided showing that the deed of trust has been transferred from World Savings Bank, FSB to Wachovia Mortgage Corporation or Wells Fargo Bank, N.A.

Lastly, the Trustee alleges that the service of procedure is defective. According to the Trustee, Debtor has filed a copy of the loan modification as Exhibit A. But Debtor's Proof of Service does not indicate the document was served with the Motion, Notice and Declaration. The Trustee is uncertain whether all creditors have received a copy of the loan modification.

Defective Service of Process

Moreover, service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The respondent creditor in this case, Wells Fargo Bank, N.A. is 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 certificate of service for this motion, Dckt. No. 43, does not indicate that service was sent to respondent creditor by certified mail.

The court notes that pleadings were also sent to an address for Wells Fargo Bank, N.A. in Diamond Bar, California. The court does not recognize this as an address for Wells Fargo Bank, N.A. as listed by either the Federal Deposit Insurance Corporation website or the California Secretary of State website.

No Credit Agreement

While Debtor has filed her declaration explaining the terms of the alleged contract, there does not appear to be the actual contract for the loan modification, rather a letter from Wells Fargo Bank, N.A. describing terms of the offer. This is not sufficient for the court to determine if the loan agreement is proper.

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

IT IS ORDERED that the Motion to Approve Loan Modification is denied without prejudice.

2. **13-35604-E-13** **RENE/MARIA RESTUA** **CONTINUED MOTION TO CONFIRM PLAN**
SLH-1 **Seth L. Hanson** **2-6-14 [21]**

CONT. FROM 3-25-14

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtor cannot afford to make the payments or comply with the plan, as Debtors' plan relies on pending motions to avoid liens. As the court denied these motions, the plan cannot be confirmed.

The Trustee also opposes the motion on the basis that the Debtor has not filed a motion to value the secured claim of Portfolio Recovery Associates. This is also sufficient to deny confirmation.

The amended 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.

3.	**13-36004-E-13** **DMA-5**	**ALLEN/LORI DOSTY** **David M. Alden**	**MOTION TO APPROVE LOAN MODIFICATION** **4-5-14 [91]**

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 5, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Nationstar Mortgage LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $1,574.32 to $1,369.82. The principle amount owed on the loan will decrease from $212,055.42 to $205,128.52. The yearly interest rate will remain 4.625% over the next 30 years.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 Debtors are authorized to amend the terms of their loan with Nationstar Mortgage LLC, which is secured by the real property commonly known as 8343 Triad Circle, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 94, in support of the Motion.

4.	**13-29907-E-13** **SS-3**	**SYAMPHAI LIEMTHONGSAMOUT** **Scott D. Shumaker**	**MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTOR'S ATTORNEY** **4-3-14 [62]**

Final Ruling: Counsel having filed a "Withdrawal of Motion" for the pending Motion for Compensation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Compensation, and good cause appearing, **the court dismisses without prejudice Counsel's Motion for Compensation.**

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 Motion for Compensation having been filed by the Debtor's Counsel, Counsel having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion for Compensation is dismissed without prejudice.

5. 11-27109-E-13 BILLY WASSNER
CAH-1 Aaron C. Koening

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
4-7-14 [61]

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, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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).

The court's tentative decision is to deny the Motion to Value Collateral without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has filed the present motion to "value the collateral of The Bank of New York Mellon Trust Company, N.A., successor to JPMorgan Chase Bank, N.A., as indenture trustee for GMAC Home Equity Loan Trust 2006-HE2. Relief is requested pursuant to 11 U.S.C. § 506(a) and (d). The Motion seeks a determination that the value of the Bank of New York Mellon Trust Company, N.A., Trustee, secured claim is $0.00.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5641 Helen Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $145,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The property is encumbered by a first deed of trust which secures a a loan with a balance of approximately $191,290.13. The amount of this claim exceeds the value of the Helen Way Property.

The Motion asserts that Bank of New York Mellon Trust Company, N.A., Trustee, is currently the creditor asserting the claim secured by the second deed of trust against the Helen Way Property. In 2011 the Debtor filed a motion and obtained an order from the court determining that the secured claim, for which the second deed of trust on the Helen Way Property was the collateral, had a value of $0.00. Order, Dckt. 27. That order determined the value of the secured claim on GMAC Mortgage, LLC. Order, *Id.*; Civil Minutes, Dckt. 26.

GMAC Mortgage, LLC filed a limited opposition to the motion to value its secured claim. Opposition, Dckt. 21. GMAC Mortgage, LLC confirmed that it was the creditor asserting the claim, and requested that the court be clear with respect to the "avoidance" of its lien be contingent on the Debtor completing his Chapter 13 Plan. The court declined to make further conditions on the 11 U.S.C. § 506(a) secured claim valuation or to create *ad hoc* Chapter 13 Plan terms. The court valued the secured claim then asserted by GMAC Mortgage, LLC to have a value of $0.00 pursuant to 11 U.S.C. § 506(a). The order so valuing the secured claim was filed by the court on June 1, 2011.

Identity of Creditor Asserting the Secured Claim

The current Motion to Value asserts that an amended Transfer of Claim was filed on May 16, 2013. That Notice identifies Ocwen Loan Servicing, LLC as the loan servicer and Bank of New York Mellon Trust Company, National Association, fka The Bank of New York Trust Company, N.A. sucessor to JPMorgan Chase Bank, N.A., as Indenture Trustee for GMACM Home Equity Loan Trust 2006-HE2. Amended Transfer of Claim, Dckt. 49.

The Motion further asserts that counsel for Debtor has contacted Ocwen Loan Servicing, LLC (telephonically) on two occasions to ascertain the correct identity of the creditor asserting the claim secured by the second deed of trust. It is alleged that Ocwen Loan Servicing, LLC has identified the creditor as "GMACM Home Equity Loan Trust." The Debtor asserts that it cannot locate or identify an entity known as "GMACM Home Equity Loan Trust."

This reference to "GMACM Home Equity Loan Trust" appears to be a "simplification" of the identification of Bank of New York Mellon Trust Company, N.A., as the Trustee of such trust. The Comptroller of the Currency lists "The Bank of New York Mellon Trust Company, National Association, as a national bank located in Los Angeles, California. FN.1.

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http://www.occ.treas.gov/topics/licensing/national-bank-lists/national-by-name-pdf.pdf.

The FDIC lists "The Bank of New York Mellon Trust Company, National Association as a federally insured financial institution. FN.2. The address listed by the FDIC for this entity is 400 South Hope Street Los Angeles, CA 90071. The Debtor used this address when serving the pleadings by certified mail on Bank of New York Mellon Trust Company, National Association.

FN.2. http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=23472.

Restatement of Prior Order

The Motion does not seek a determination of the secured claim value, but has been filed as a "precaution" to insure that the order previously obtained when GMAC Mortgage, LLC was the creditor is effective against any successors to that claim. While the court appreciates the thoroughness of counsel for the Debtor, seeking serial orders against possible successors in interest of the claim is not the correct response.

The court has entered a final order determining that the secured claim for which the collateral is the second deed of trust recorded against the real property commonly known as 5641 Helen Way, Sacramento, California has a value of $0, with the balance of the claim to be provided for as an unsecured claim under a plan in this bankruptcy case. There is no dispute that the creditor was GMAC Mortgage, LLC when the order was entered.

There is no contention that The Bank of New York Mellon Trust Company, N.A., successor to JPMorgan Chase Bank, N.A., as indenture trustee for GMAC Home Equity Loan Trust 2006-HE2, disputes that it is bound by the order determining the value of the secured claim or confirmed Chapter 13 Plan in this case with respect to that secured claim. FN.3.

FN.3. Because creditors, as part of reasonable, good faith business transactions transfer claims, the court is not going to create what may be a never ending marry-go-round of § 506(a) litigation every time a claim is transferred. If there is a dispute about whether the plan currently binds this creditor, then that can be addressed in connection with the existing confirmed plan. If discovery needs to be conducted, Debtor may utilize the provisions of Fed. R. Bank. P. 2004.

The Motion is denied without prejudice as moot, this court having previously determined the value of this secured claim. FN.4.

FN.4. Debtor filed the declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l). The court does not do so, through little reason appears to exist for experienced bankruptcy attorneys in this District failing to comply with these basic, well known pleading rules.

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 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 Value the secured claim of The Bank of New York Mellon Trust Company, N.A., successor to JPMorgan Chase Bank, N.A., as indenture trustee for GMAC Home Equity Loan Trust 2006-HE2 is denied without prejudice. The court has previously entered an order (Dckt. 28) determining that the value of the secured claim for which the collateral is the second deed of trust recorded against the real property commonly known as 5641 Helen Way, Sacramento, California has a value of $0, with the balance of the claim to be provided for as an unsecured claim under a plan in this bankruptcy case. GMAC Mortgage, LLC appeared in this case with respect to that motion, admitting on the record that it was then the creditor with that claim. Limited Opposition, Dckt. 21.

6.	**13-24415-E-13** **CAH-3**	**ANTONIO/MARIA HERNANDEZ** **C. Anthony Hughes**	**OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 10 AND/OR OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE** **3-21-14 [60]**

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2014. By the court's calculation, 46 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 Objection to Proof of Claim number 10 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety. No appearance at the May 6, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 10 on the court's official claims registry, asserts $33,423.79 claim. The Debtor objects to the Proof of Claim on the basis that the property was foreclosed as of the date the debtors filed for this bankruptcy petition.

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).

On April 21, 2014, Creditor Bank of America, N.A. filed a Notice of Withdrawal of Claim No. 10. Creditor also filed a withdrawal of the Notice of Mortgage Payment Change. Dckt .66. This was filed after the Objection to Proof of Claim was filed. The court finds that Creditor acknowledges that it no longer has a valid claim against the Debtor.

Therefore, the Objection to the Proof of Claim is sustained and the claim is disallowed 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 Bank of America, N.A. filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 10 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

7. 10-39217-E-13 CK-5 **STEPHEN/ELIZABETH DICKSON Catherine King** **MOTION TO APPROVE LOAN MODIFICATION 4-4-14 [99]**

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 tentative decision is to deny the Motion to Approve Loan Modification without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Wells Fargo Home Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification. The trial payments are in the amount of $1,386.16 to be paid directly by Debtors on February 1, 2014, March 1, 2014 and April 1, 2014. All payments have been made. Wells Fargo Home Mortgage is in the process of determining the final modified payment. Debtors believe that the payment will be the current $1,386.16, or not more than his original note payment of $1,463.00.

Trustee's Opposition

The Chapter 13 Trustee opposes to the Motion on the ground that the final loan modification agreement has not been filed. According to the Trustee, Exhibit A filed by Debtors is merely for a trial loan payment period.

DISCUSSION

Unidentifiable Creditor

A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment. . . ."

Federal Rules of Bankruptcy Procedure Rule 3001(e)(2) provides, "If a claim . . . has been transferred . . . after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee." Fed. R. Bankr. Proc. Rule 3001(e)(2).

Debtors allege in their Motion that Wells Fargo Home Mortgage is the holder of the deed of trust securing the loan. Wells Fargo Bank, N.A. filed the Proof of Claim on August 17, 2010. The Adjustable Rate Mortgage Note and Deed of Trust were entered into by and between Debtors and World Savings Bank, FSB. Wells Fargo Bank Home Mortgage filed nothing evidencing that the claim has been transferred from World Savings Bank, FSB to it.

Absent evidence of transfer of claim, the court cannot decide who is the real creditor pursuant to 11 U.S.C. §§ 101(1)(A) & 105(1)(A), Fed. R. Bankr. Proc. Rule 3001(e)(2). This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

Additionally, it appears the actual Loan Modification Agreement has not been presented to the court as is required by Federal Rule of Bankruptcy Procedure 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 shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 Approve Loan Modification is denied without prejudice.

8. 11-24420-E-13 FRANK SCHRODEK AND JOANNE MOTION TO SELL
PGM-3 DE LA TORRE 4-8-14 [74]
Peter G. Macaluso

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 28 days' notice was provided.

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

Proper service requires compliance with both the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. Under Federal Rule of Bankruptcy Procedure 6004(b) states that an objection to proposed sale, lease or use of property shall be filed and served not less than seven days prior to the date set for the proposed action or such other time period provided by the court. Additionally, Federal Rule of Bankruptcy Procedure 2002(a)(2) provides that at least 21-days' notice be given of any proposed use, sale or lease of property. Reading these two Rules together, the Rules Committee and Supreme Court envision providing at least 14 days for parties in interest to formulate, draft, file, and serve an opposition to the proposed use, sale, or lease of the property.

Though not routinely discussed, Federal Rule of Bankruptcy Procedure 9006(f) further provides that when notice is given by mail, an additional 3 days must be added to the notice period. The court does not express an opinion, at this time, whether this requires there to be 31-days' notice under Local Bankruptcy Rule 9014-1(f)(1) or 17-days' notice under Local Bankruptcy Rule 9014-1(f)(2). The court waives the requirement, if it exists, under the facts and circumstances of this Motion and service made by Movant.

Local Bankruptcy Rule 9014-1(f)(1)(A) requires that at least 28 days' notice of the hearing on a motion be provided. A written opposition must be filed at least 14 days prior to the hearing. When the timing is perfect and exactly 28-days' notice is given, the opposition must be filed 14 days after service of the motion. This corresponds to the 14-day period established by Federal Rule of Bankruptcy Procedure 6004(a) and (b), and 2002(a)(2).

When there has been improper notice under Local Bankruptcy Rule 9014-1(f)(1), some courts will convert the notice to one under Local Bankruptcy Rule 9014-1(f)(2), which requires only 14-days notice of the hearing and allows oral opposition to be presented. This court does not so apply the rules as it can lead to confusion or create the "opportunity" for a less than scrupulous party to try and chill opposition by giving inadequate notice and misrepresenting that written opposition must be filed. This is clearly not the situation for the present Movant, but the court does not believe in selectively applying the law or rules. This court does not so convert a defective Rule 9014-1(f)(1) notice into a 9014(f)(2) notice.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 tentative decision is to deny the Motion to Permit Debtor to Sell Property without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell their 2004 Peter Built truck. The sales price is $15,000.00 to a bonafide buyer who is not a party in interest.

Trustee's Opposition

The Chapter 13 Trustee opposes to the sell on the basis that Debtors have not provided any evidence of a contract for the sale, the terms of the sale, or the name of the buyer.

Moreover, Debtors propose to use the proceeds to pay off the amount owing to the creditor, approximately $7,482.07, and retain the remaining proceeds. However Debtors have not identified the payee.

Additionally, Trustee claims that Debtors have not offered any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00. Debtors also claim $232.00 as exempt. The Trustee is concerned that Debtor may be proposing to keep non-exempt proceeds in a plan that proposes no guaranteed dividend to unsecured creditors.

Debtor's Response

Debtor responds stating that there is no written contract and that there is a cash offer for $15,000.00 to which time is critical. The Debtor states he has now amended his exemption with more than $10,000.00 in open "wild card" exemptions that can be applied to the truck. Counsel states that he has been in contact with lien holder P-Fund, Inc., formerly Shelter Financial Services, Inc. to assure receipt of title.

DISCUSSION

While the Debtor has provided argument that there is no written contract, there has been no evidence presented regarding the terms of the sale, the purchaser (and whether they are insiders). In their rush to get an order from the court, the Debtors have neglected to provide evidence to support the motion. Merely having counsel argue that everything is ok and give the Debtors the money is not sufficient. Merely saying that time is critical does not grant the Debtors and counsel exemptions from the basic pleading and evidence requirements.

Though counsel argues that the Debtors "have" amended their exemptions to claim an exemption in the proceeds of the sale, that does not make it a fact. From the court's May 4, 2014 review of the docket, no such amendment appeared of record.

The court cannot and will not authorize a sale in which it is unaware of the terms and the parties.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 Permit Debtor to Sell Property is denied without prejudice.

9. 10-37127-E-13 **BARRY/COLLEEN PAGE** **MOTION TO MODIFY PLAN**
SS-5 **Scott D. Shumaker** **4-1-14 [89]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the approval of additional attorneys fees of $3,157.50 in Section 6.03 of the proposed plan. The court denied the Motion for Additional Compensation on April 29, 2014.

The Trustee also opposes the motion on the basis that he is uncertain of the plan payments proposed in section 6.01. The debtor states $24,608 has been paid through March 2014 (Month 46) and proposes payments of $100 for months 47 through 60, but the Trustee argues that March is actually Month 45.

Lastly, the Trustee states that he has disbursed $12,524.36 to unsecured Class 7 creditors under the confirmed plan which are not authorized by the proposed plan.

Debtor's Response

Counsel for Debtor responds, stating that he has withdrawn his request for additional fees and will be re-filing his request. Counsel also states that a clerical error resulted in identifying March as the 46th month of the plan rather than the 45th and requests that this be corrected in the order confirming.

However, Counsel does not address the authorization of past payments to unsecured Class 7. Furthermore, the court has denied Counsel's request for additional fees and has not heard a subsequent motion to date.

Furthermore, the plan relies on a pending Motion to Value Collateral of Sacramento Valley Mtg. Corp., which the court has denied without prejudice.

Based on the foregoing, 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 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.

10. 10-37127-E-13 SS-7 **BARRY/COLLEEN PAGE** **Scott D. Shumaker** **MOTION TO VALUE COLLATERAL OF SACRAMENTO VALLEY MTG. CORP. 4-1-14 [100]**

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 1, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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).

The court's tentative decision is to deny the Motion to Value Collateral without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1932 Tyndrum Way, Folsom, California. The Debtor seeks to value the property at a fair market value of $420,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid.

701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $438,719.00. Creditor Sacramento Valley Mortgage Corp.'s second deed of trust secures a loan with a balance of approximately $107.477.00.

Unidentifiable Creditor

A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term "claim" is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment . . . ."

The California Secretary of State's website lists Sacramento Valley Mortgage Corporation as "dissolved." It appears that Sacramento valley Mortgage Corporation's interest in the subject real property has been assigned to a third party. That party not being named in the Motion, the court cannot purport to adjudicate that party's rights.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colarable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence that Target National Bank still holds the judgment lien after the liquidation.

The court will not speculate and hope that Debtors have named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice. FN.1.

FN.1. The court notes that Proof of Claim No. 1 has been filed for Deutsche Bank National Trust Company, as Trustee. For a $114,237.25 claim secured by the Tyndrum Lane Property. The note attached to Proof of Claim No. 1 identifies Sacramento Valley Mortgage Corporation as the "Lender." It appears that this is the claim, and creditor (Green Tree Servicing, LLC having clearly identified the creditor on the Proof of Claim form).

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 to Value Collateral is denied without prejudice.

11. 09-38433-E-13 **GARY/SHERYL RAWLINSON** **MOTION TO MODIFY PLAN**
RLC-2 **Stephen M. Reynolds** **3-24-14 [101]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the proposed plan does not provide for the following creditors who were provided for in the plan confirmed December 20, 2009:

Class 2 Creditor: Carmax Auto Finance (which the Trustee states he has disbursed $19,464.55 to creditor)

Class 3 Creditors: BMW Financial Services (no claim filed); BMW Financial Services (no claim filed); Chase (no claim filed); Chase (Court Claim No. 11); Hilton Grand Vacation Club (no claim filed).

The Trustee also states that the Debtor's proposed plan adds the following creditors who are not in the Debtor's schedules and for whom a claim has not been filed in this case:

Class 4 Creditors: Bank of America (paid in sale); Bank of America (paid in sale)

Class 5 Creditors: Board of Equalization (sales tax); Franchise Tax Board (income tax) and Internal Revenue Service (income tax)

Additionally, the Trustee is uncertain of Debtor's ability to make the payments under the plan. The Trustee states the Debtor is proposing a monthly plan payment of $1,750.00. The Debtor and former spouse, who has applied for a hardship discharge, filed amended Schedule I and J, indicating his monthly income is $8,770.10 and his monthly expenses are $9,844.21.

The Debtor's motion states he is remarried and his current spouse's income is used to pay a portion of the household expenses. However, no information is given about the current spouse's income or the expenses paid by her. The Trustee states there are many changes on Debtor's Schedule J from the previous but no explanations have been provided.

Lastly, the Trustee states that Debtor incorrectly states that $179,711.16 has been paid for the period of September 2009 to March 2014, but the correct about is $181,403.50.

DISCUSSION

The Trustee's objections are well taken, for which the court takes a careful review of the proposed Chapter 13 Plan. This case was filed on August 28, 2009. The sixtieth month of the plan in this case will be August 2014 (four months from now). For the months of April - August 2014 the Debtor will make monthly plan payments of $1,750.00.

Clearly the Debtors' situation has changed dramatically during the five years of this case. On a personal level, they have obtained a divorce and Mr. Rawlinson has remarried. Sheryl Brewer (formerly Sheryl Rawlinson), the co-Debtor, testifies that she is currently unemployed and anticipates it taking several months for her to find employment. Declaration, Dckt. 104.

In his declaration, Mr. Rawlinson testifies that he will fund the plan going forward, not expecting any contribution from Sheryl Brewer, confirming that Ms. Brewer lost her job of 21 years. Declaration, Dckt. 105.

The confirmed Chapter 13 Plan in this case required that the plan payments for the period from June 2010 through the end of the plan were to be $3,337.00 a month. Order, Dckt. 46. The Confirmed Plan provides for a dividend of not less than 25% for creditors holding general unsecured claims. Chapter 13 Plan, Dckt. 28.

In addressing the Trustee's objections, the Debtor has stated that the purported creditors and claims listed in Classes 4 and 5 of the proposed First Modified Chapter 13 Plan were listed in error and are not creditors in this case. Errata to First Modified Plan, Dckt. 113. The order confirming the plan will amend the proposed plan to delete these claims.

As for the Class 3 claims provided in the prior plan, five have been omitted. The court notes that BMW Financial Services has filed two proofs of claim in this case, Proof of Claim No. 17 (general unsecured claim for $13,878.85) and Proof of Claim No. 18 (general unsecured claim for $14,596.80). The claims are asserted to be based on two leases. Both Proofs of Claim include attachments showing the unsecured claim as having been computed after the vehicles were recovered, sold, and the proceeds applied to the lease obligations.

The secured claim of "Chase Home Finance" (whomever that may be), Proof of Claim No. 11, is provided for under the existing confirmed Chapter 13 Plan for Class 3 "Surrender" treatment. The court will not confirm a plan which would appear, on its face, to "reinstate" the automatic stay. Confirmation of the First Modified Plan shall include an amendment providing for the Chase Home Finance claim (Proof of Claim No. 11) as a Class 3 claim, with the amendment stated in the order confirming the plan.

The same is true for Hilton Grand Vacations Club, which has disappeared from the First Modified Plan. The plan terms are amended to provide for the claim, if any, of Hilton Grand Vacations Club as a Class 3 claim, with the amendment stated in the order confirming the plan.

Finally, the financial information provided by the Debtors about the ability to complete the last four months of the plan is spotty at best. The Declaration of Mr. Rawlinson states that an 82% dividend has actually been provided for creditors with general unsecured claims in this case, and that all priority and secured claims have been paid.

However, Amended Schedule I does not list Mr. Rawlinson's current wife's income, but only Sheryl Brewer's (his ex-wife) unemployment insurance income. Taken on its face, Mr. Rawlinson does not have sufficient income to afford the proposed payments of $1,750.00 a month, showing monthly net income of only $875.89 on Amended Schedule J. Dckt. 106 at 7-9

In the Motion it is alleged that Mr. Rawlinson's current wife has monthly income of "approximately one-third of Mr. Rawlinson's income. Motion, Dckt. 101. No evidence of this fact is present, merely the arguments of counsel. If this is deemed an admission, then Mr. Rawlinson's family unit has an additional $4,000.00 a month in income. It appears that through Amended Schedule J that Mr. Rawilson is attempting to deduct all of the household expenses from his income, leaving his current wife living "expense free," other than having to "kick in" $845.00 a month to fund the First Modified Plan.

Some of the monthly expenses which Mr. Rawilson seeks to pay solely from his income are:

A. Electricity and Natural Gas................$ 600.00

B. Food and Household Supplies................$ 900.00

C. Transportation.............................$ 367.00

D. Entertainment, Recreation..................$ 615.00

E. Vehicle Insurance..........................$ 133.00

F. Two Car Payments Totaling..................$ 690.95

G. Monthly Mortgage...........................$2,069.36

H. Home Maintenance...........................$ 700.00

Amended Schedule J, Dckt. 106 at 7-9.

From the evidence presented by Mr. Rawlinson, there are at least $6,075.31 in current month expenses his current wife should be sharing in. Assuming that her income is one-third of Mr. Rawlinson, it would not be unreasonable for her to contribute one-third of this amount, or $2,025.10.

With Mr. Rawlison's current spouse paying her reasonable share of expenses, his projected disposable income increases to $2,900.00 a month (the $875.89 net month income from Amended Schedule J + the reasonable contribution for expenses from Mr. Rawlison's current wife).

Mr. Rawlinson has hidden from the court his current wife's actual income and has failed to provide any testimony about that income. The court does not believe that his failure to provide such testimony is mere "inadvertence." Rather, the court infers that this high income debtor has done so to try and avoid paying his actual projected disposable income for the final five months of the Chapter 13 Plan.

Based on the evidence presented (there being no evidence of Mr. Rawlinson's current wife's income) the Modified Plan is not feasible. If the statement that the current wife's income is one-third of Mr. Rawlinson's, then the Debtors have significantly under-funded the plan.

In addition to the First Modified Plan not being feasible based on the evidence presented, the Debtors have demonstrated that the First Modified Plan has not been presented in good faith. Mr. Rawlinson wants the benefit of Sheryl Brewer having lost her job to decrease the monthly plan payment, but seeks to hide his actual family household income which has increased. Further, he attempts to divert money to pay his current wife's share of the household expenses, asking creditors to subsidize their lifestyle.

Mr. Rawlinson is a very fortunate individual, having $14,279.97 a month in gross income from wages and Social Security benefits. In addition, his household has additional income of one-third his earnings. This is significantly more than most Chapter 13 Debtors. However, he has demonstrated that he is not prosecuting this case in good faith, attempting to squeeze a few extra "bucks" from creditors. For the want of paying possibly an additional $6,000 to $7,000 in dividend to creditors holding general unsecured claims the Motion is denied. Quite possibly Mr. Rawlinson has so impuned his credibility that he cannot, 56 months into the case, modify the plan to provide for paying his truthful, accurate and honest projected disposable income into the case.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), the Motion is denied, 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 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 First Modified Chapter 13 Plan is not confirmed.

12. 09-38433-E-13 GARY/SHERYL RAWLINSON CONTINUED MOTION FOR HARDSHIP
RLC-1 Stephen M. Reynolds DISCHARGE
2-6-14 [93]

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 February 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's tentative decision is to deny the Motion for Hardship Discharge. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

MARCH 11, 2014 HEARING

At the hearing the court and parties addressed that the motion for hardship discharge should be addressed in connection with a motion to modify the plan given that there are two Debtors in this case (who are now divorced).

The court has denied the motion to confirm.

REVIEW OF MOTION

Debtor Shreyl Brewer, formerly Sheryl Rawlinson, ("Movant") seeks a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtor state that during this case she and co-debtor Gary Rawlinson separated and divorced, with Mr. Rawlinson remarrying. Movant states that she was laid off by her employer on

December 31, 2013 as part of a reduction in force. Movant states it is unclear when she will obtain new employment and will not be able to make the plan payments she was making before (half of the plan payment).

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.

The Trustee notes that February 2014 is month 54 of a 60 months plan, and the Debtors are current. The plan proposes to pay a 25% dividend to unsecured claims, with the Trustee disbursing just over 85% to the unsecured claims. No secured or priority claim balances remain to be paid.

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.

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. In any further Motion for hardship discharge Shreyl Brewer, formerly Sheryl Rawlinson, shall address whether the court can grant one debtor a hardship discharge in

this case, or if Ms. Brewer must first have this joint case split into two separate cases.

13. 14-22134-E-13 CHERYLE MCNEAL
TSB-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-10-14 [14]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

14. 10-53135-E-13 WALTER WINFREY
GG-1 Gerald B. Glazer

MOTION TO MODIFY PLAN 3-20-14 [38]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 20, 2014 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.

15.	**14-21637-E-13** **TSB-1**	**KATHERINE ALLEN** **C. Anthony Hughes**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-10-14 [21]**

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 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Tax Return Not Provided with the Trustee

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(i).

Tax Return Not Filed

Moreover, the Trustee alleges that Debtor admitted at the Meeting of Creditors that the federal income tax returns for 2007, 2008, 2009, 2010, 2011, and 2012 still have not been filed. Filing of the return is required. 11 U.S.C. § 1308.

Failure To Provide For A Secured Claim

Additionally, the Trustee alleges that Debtor's plan failed to provide for a secured claim. Internal Revenue Service filed a Proof of Claim asserting secured claim of $67,099.00. The Debtor's Schedule E estimates the amount of IRS's claim as $8,500.00 and alleges that Debtor disputes the amount owed to IRS. The Plan does not provide for treatment of this claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

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

However, these three possibilities are relevant only if the plan provides for the secured claim.

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

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

Cannot Make Plan Payments

The Trustee also claims that Debtor may not be able to make the plan payments. According to the Trustee, Class 1 of Debtor's plan lists Debtor's ongoing mortgage payment to Bank of America, N.A. at $166.00 per month. Debtor testified that this is an interest only payment and the mortgage will increase at some point in the future. Debtor also admitted that she did not know when the mortgage will increase. If the mortgage adjusts during the term of the plan, Debtor will not be able to afford the increased payment.

Plan Not Feasible

According to the Trustee, the plan will complete in 150 months due to the claim of IRS. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

Plan May Fail Liquidation

Lastly, the Trustee alleges that the plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). According to Debtor's Schedules B and C, Debtor's non-exempt assets total $13,133.40 and Debtor proposes to pay 1% to unsecured creditors, which amounts to approximately $114.00. Schedule E shows that Debtor has scheduled priority unsecured debt at $11,000.00. Total priority and general unsecured debt is scheduled at $11,114.00.

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 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.

16. 11-38142-E-13 KATHRYN DONOHUE MOTION TO MODIFY PLAN
WW-2 Mark A. Wolff 4-1-14 [66]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The court's decision is to grant the Motion to Confirm the Modified Plan. No appearance at the May 6, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtor is proposing plan payments of $30.00 for the remaining 28 months of the plan, no less than 0% to unsecured creditors. Section 2.07 of the proposed modified plan lists the monthly dividend for administrative expenses at $30.00. According to the Trustee's records, the balance owed to the attorney is $823.93, and the Trustee has a current fee of 5%.

Debtor responds, requesting the order confirming the plan be amended to state that the plan payments shall be $32.00 per month for the next 28 months.

The modified Plan, as amended by Debtor to state that they plan payments shall be $32.00 per month for the next 28 months, 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 April 1, 2014, as amended to state plan payments shall be $32.00 per month for the next 28 months, 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.

17.	**12-33143-E-13**	**VERLYNE SMITH**	**MOTION TO APPROVE LOAN**
	PLG-3	**Chelsa A. Ryan**	**MODIFICATION**
			4-3-14 [52]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $1,137.61 to $1,268.09. The interest remains the current 4.625%.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by 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 Debtor are authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 4769 A Parkway, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 55, in support of the Motion.

18.	**13-27044-E-13** **AJP-2**	**KEVIN/BREE SEARS** **Douglas B. Jacobs**	**MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS** **4-4-14 [90]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Dismiss. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Cory Admas ("Creditor") argues that the Debtor withdrew both their original and First Amended Plan. Debtor filed this petition on May 23, 2013. Creditor states that the motion to confirm their Second Amended Plan is pending, but that they believe the Debtors will be unable to confirm the plan for lack of feasibility. Therefore, Creditor believes that Debtors will not be able to confirm a Chapter 13 Plan and that further delay is unreasonable and prejudicial to creditors.

DEBTOR'S OPPOSITION

Debtors oppose the motion to dismiss on the basis that they are acting diligently to confirm a plan. Debtors state they have been working with the Chapter 13 Trustee to file amended plans to address his prior concerns. Debtors state they have made all payments due and that they should be given the opportunity to pursue this matter.

DISCUSSION

Creditor's motion is thin on grounds to dismiss this case. Creditor states that he "believes the Debtors will be unable to confirm the plan for lack of feasibility and/or lack of good faith" but fails to state what facts support that belief. Federal Rule of Bankruptcy Procedure 9013 requires that a motion state with particularity the grounds upon which the relief is based, as well as the relief itself. Furthermore, a review of the docket shows that Debtor filed an amended plan on April 28, 2014 set for hearing June 10, 2014.

The Debtors hang their hat on the contention that they are attempting to diligently prosecute this case. The court has reviewed the Motion to Confirm the Second Amended Chapter 13 Plan and supporting pleadings, as well as the Second Amended Chapter 13 Plan itself.

This bankruptcy case was filed on May 23, 2013. One year later the court is being presented with a Second Modified Plan. No plan has been confirmed in this case to date.

The Second Amended Plan (Dckt. 111) requires Plan payments of $56,097.67 through May 2014, with the balance of payments to be $5,010.91 a month for the remainder of the 60 months plan. $4,056.40 a month of the payment will be used to make the currently monthly payment ($3,255.02) and arrearage payment ($801.38) to Bank of America, N.A. on the claim secured by the Debtors' residence. Another $151.93 will be used to pay the Butte County Tax Collector for delinquent. The Franchise Tax Board and the Internal Revenue Service will be paid $16,089.00 over the term of the Plan. There will be no less than a 0.0% dividend to creditors holding general unsecured claims. The Plan also provides that payments to BMW Financial will have been made through April 2014, which amounts are stated to have been $213.62 a month in the prior proposed plan. Dckt. 60. Under the Second Amended Plan, BMW Financial disappears from the Plan. (Proof of Claim No. 4 has been filed by BMW Financial Services NA, LLC in the amount of $11,320.67.)

The Motion to confirm the Second Amended Plan states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which confirmation is based:

A. The Debtors propose that the Chapter 13 Plan filed herewith be approved.

B. The originally filed plan has not been approved or confirmed.

C. A true and correct copy of the plan is filed herewith and made a part hereof.

Motion, Dckt. 107. The above fails to state with particularity grounds upon which the court may confirm a Chapter 13 plan pursuant to 11 U.S.C. §§ 1322 and 1325.

Kevin Spears, the Debtor, files his declaration stating the following as evidence in support of confirmation:

A. When the first Chapter 13 plan was proposed, "I acted hastily, trying to get a chapter 13 plan on file to save my house."

B. "I had just recently left the private practice of criminal law and taken a job as a public defender for Butte County."

C. The first budget he provided the court "did not accurately reflect my income and expenses." He attributes this to his former private practice not providing a stable income. [Mr. Spears does not testify as to why fluctuating income of an attorney precluded him from truthfully stating his expenses.]

D. The Butte County Public Defender allows the Debtor to take private pay cases on the side to supplement the Debtor's income. Based on the last several months of income from such cases, the Debtor projects that he can estimate what he anticipates making in the future.

E. Debtor believes that the budget he filed on October 21, 2013 accurately reflects the Debtors' current income and expenses.

F. The Debtors have elected to surrender their BMW [though no provision is made for that in the Second Amended Chapter 13 Plan].

Declaration, Dckt. 109.

Douglas Jacobs, attorney for the Debtors, has filed his declaration is support of confirmation. Dckt. 110. Mr. Jacobs has chosen to file a pleading purporting to testify to the following:

A. He is an attorney licensed to practice law.

B. If called to testify, he could and would testify as set for in the Declaration. [The court notes that if counsel were providing a declaration, he would be testifying under penalty of perjury, not merely stating what he would testify to if he did so testify).

C. When the case was filed the Debtors' income varied greatly due to the nature of Mr. Sears work. [This Declaration does not state how Mr. Jacobs has personal knowledge of the Debtors income and expenses.]

D. That the Debtors have chosen to surrender their BMW.

Declaration, Dckt. 110. Counsel provides the court with no basis for having any personal knowledge of what he purports he would testify to, but merely it appears he is parroting what his client is telling him. Personal knowledge is required for competent, non-expert witness testimony. Fed. R. Evid. 602.

In considering the present Motion and the defense, the pending "Motion to Confirm," the court has weak cases on both sides. Movant asserts a $30,000.00 claim against Kevin Sears for the improper handing of monies which were to be placed in the Debtor's client trust account.

From reviewing the opposition to the Motion to Dismiss, the court concludes that this case is not being actively prosecuted in good faith. Rather, it appears that the Debtors have not come to grips with the reality of being a debtor. The plan being proposed consists mainly of the Debtors maintaining their current lifestyle and not paying creditors (other than $4,056.40 to live in their current home and $269.00 to pay their non-discharageable delinquent taxes). The inability to accurate state income and expenses is not credible, as a person's average expenses do not fluctuate with income. Rather, this testimony indicates that the Debtors made up the expense number to fit the plan they so desired to prevent the foreclosure on their home.

The pleading titled "Motion" to confirm the Second Amended Plan is so deficient that it cannot be granted. It appears to have been a last minute pleading to try and further delay the dismissal of this case.

The Amended Schedules I and J filed by the Debtors, Dckt. 63, are persuasive that they are actively prosecuting this case in good faith. Debtors state that they have $13,327 in monthly gross income. $11,527.00 is from Mr. Sears law practice. On Amended Schedule J the Debtors list $7,934.50 in monthly expenses. This includes $2,163.50 in "business expenses." No detailed list of these expenses is attached to Amended Schedule J. The expenses on Schedule J include $399.00 a month for income taxes, plus Schedule I showing $111.00 a month withheld for taxes and Social Security payments for Bree Lynn Sears from her $1,800.00 a month in income.

No showing has been presented that $399.00 a month in income taxes is sufficient for Mr. Sears income and self-employment taxes.

In denying confirmation of the prior proposed plan, the court extensively addressed the deficiencies in the financial information provided by the Debtors. Civil Minutes, Dckt. 95. Though provided with that detailed analysis, the only evidence of income and expenses provided by the Debtors is reliance on Amended Schedules I and J, and Mr. Sears' statement that he now believes the information to be accurate.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this Chapter 13 case. The Debtors are not actively prosecuting the case, causing creditors prejudice. Though filing pleadings titled "motion" and "declaration," Debtors fail to file and prosecute pleadings which can move forward. Often times it takes a dismissal of a bankruptcy case for a debtor to understand and appreciate that the prosecution of a Chapter 13 case requires real effort.

Though granting the Motion, the victory for the Movant may be little more than a pyrrhic. It would not surprise the court for the Debtors to file a new bankruptcy case. It may well be that after having this case dismissed, they may realistically and rationally look at the evidence they can provide and prosecute a second case. Movant has pending an adversary proceeding to have his claim for $30,000.00 determined to be nondischargeable. In a new case, he would have to file a new adversary proceeding.

The Motion is granted and the case is dismissed. Pursuant to the standing procedures in this District, another case filed by the Debtors will be assigned to the judge who had the prior case - therefore any new case will also be assigned to Department E.
provided.

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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the Chapter 13 case is dismissed.

19. 13-27044-E-13 KEVIN/BREE SEARS **MOTION TO COMPEL**
AJP-3 **Douglas B. Jacobs** **4-21-14 [100]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 21, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Compel 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Compel as moot. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Cory Adams ("Creditor") seeks an order compelling Debtor Kevin Spears to answer interrogatories submitted but for which Debtor failed to answer. Creditor argues that on or before February 5, 2014, he served on the Debtor 17 Interrogatories. Creditor states that Interrogatories No. 7, No. 9 and No. 11 requested the Debtor indicate amounts paid during calendar years 2011, 2012 and 2013 for health insurance. The Interrogatory also inquired whether such amounts were paid as a self-employed person. Creditor states he sought this information for the reason that the Debtor's IRS Form 1040 income tax returns for 2011 and 2012 each took a sizable deduction for "Self-Employed Health Insurance."

The initial response by the Debtor to these Interrogatories was "This expense was not tracked." Creditor then sent a letter to the Debtor's counsel on March 31, 2014, requesting responses to these Interrogatories. Debtor then responded to the letter indicating that there are no records available and that the Debtor is now seeking documentation from the company. Creditor argues that this answer is incomplete and seeks a complete answer to these interrogatories in the form of cancelled checks, credit card statements or other evidences of payment of insurance premiums or at least statements or information about self-employed health insurance.

Additionally, Creditor states that Interrogatory No. 15 seeks either copies of Federal and California income tax returns for calendar year 2013 or the Debtor's calculation of his income tax liability for such calendar years. Creditor states the Debtor's response to Interrogatories No. 15 were initially: "2013 Tax not yet filed." Creditor then sent a letter explaining his belief that the Debtor should be able to provide a calculation of anticipated income tax liability and the Debtor responded simply "Not available."

DISCUSSION

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). Fed. R. Civ. P. 26(a)(1).

Federal Rule of Civil Procedure 37(a)(1), requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Federal Rule of Civil Procedure 37 Civil Rule 37(c) sanctions the failure to supplement discovery responses.

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in Shuffle Master v. Progressive Games, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

> [T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

If the party on whom the interrogatories were served responds by serving objections to some or all of the interrogatories, or serves answers that the interrogating party considers evasive or incomplete, and if the propounding party has tried unsuccessfully to negotiate a resolution of the dispute, a motion for an order compelling answers may be appropriate. 7-37 *Moore's Federal Practice*, § 37.02 (Matthew Bender 3d ed.)

Here, the court has ordered this Chapter 13 case dismissed. Dismissal renders the present motion moot, and it is denied without prejudice.

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 Compel filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel is denied without prejudice as moot, the court having dismissed this Chapter 13 case.

20. 14-20045-E-13 TUBAYA/DEBORAH CARTER — MOTION TO VALUE COLLATERAL OF COUNTRYWIDE HOME LOANS, INC.
PGM-4 — Peter G. Macaluso — 4-3-14 [60]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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).

The court's tentative decision is to deny the Motion to Value Collateral without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Countrywide Home Loans, Inc. However, Bank of America, N.A. filed the Proof of Claim No. 7 on January 24, 2014. (The court notes that the servicing company, Green Tree Servicing, LLC, has clearly listed Bank of America, N.A. as the creditor on the Proof of Claim form.) Thus, the correct creditor does no appear to be named in the motion. FN.1.

FN.1. Given that it is "common knowledge" among the debtor and creditor legal communities that Countrywide Home Loans, Inc. is "long gone" as an entity, its assets having been bought up by Bank of America, N.A. (as well as the Bank having incurred substantial liabilities), the court is at a loss as to how a defunct entity would be named as the creditor to have its claim valued.

The Motion is even more confusing in that it states that Green Tree Servicing, LLC has a second deed of trust. As clearly stated on Proof of Claim No. 7, Bank of America, N.A. is the creditor. There is little more that a loan servicer and that servicer's counsel can do for debtor attorneys than clearly identify the creditor on the proof of claim.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

The present Motion is troubling for another reason. First, even though some attorneys and judges make reference to a secured claim determination made pursuant to 11 U.S.C. § 506(a) as a "motion to value collateral," that valuation is not the ruling from the motion. Rather, a specific creditor's secured claim is valued. In the present Motion the Debtors first state that Countrywide Home Loans, Inc. is the entity for whom the collateral is to be valued. Then the Motion states that Green Tree Servicing, LLC has the claim secured by a second deed of trust. The relief then sought is that the "Motion be granted," no relief stated with specificity (as required by Fed. R. Bankr. P. 9013). Possibly if the Debtor had taken time to specifically ask for the relief requested - "determine the secured claim of [name of creditor] to be $0.00," more than a perfunctory reading of Proof of Claim No. 7 may have been undertaken by counsel or his staff.

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 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. 13-33957-E-13 MARY AMACKER MOTION TO CONFIRM PLAN
ASM-1 Amy L. Spencer 3-21-14 [40]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

Final Ruling: 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. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 21, 2014 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.

22. 14-21158-E-13 ANDRE WILLIAMS Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 4-14-14 [39]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case ($70.00 due on April 8, 2014). The court docket reflects that on April 29, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

23. 14-20159-E-13 ROSIE MOORE — MOTION TO CONFIRM PLAN
RHM-2 Robert Hale McConnell — 3-19-14 [47]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

Final Ruling: 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. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 19, 2014 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.

24. **13-35366-E-13** **ALFRED/CAROLYN SHULTS** **MOTION TO CONFIRM PLAN**
CAH-3 **C. Anthony Hughes** **3-25-14 [32]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

Final Ruling: 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 Trustee and a creditor having filed an opposition, 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Amended Plan. No appearance at the May 6, 2014 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that the plan relies on a pending motion to Value Collateral. The court having granted the motion, the Trustee's objection is overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 25, 2014 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.

25. 14-21567-E-13 DEAN DOMACH — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 — C. Anthony Hughes — 4-10-14 [22]

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 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors Schedule F lists a debt to Golden 1 Credit Union for a loan of $42,976.00. The schedule describes the debt as a loan secured by real property at 1007 Azure Court, Roseville, California and indicates that Debtors mother co-signed this loan. This loan is not provided for in Debtors plan. Trustee states that the Debtor testified at the First Meeting of Creditors held on April 3, 2014 that he makes the payment on this loan to his mother, and the monthly payment is $621.60 per month. Debtors Schedule J does not list this payment and Debtor cannot afford the plan payments.

Additionally, the Trustee states the Debtors plan fails to provide for the debt of Golden 1 Credit Union on a secured loan. Debtor lists this debt on Schedule F as, "Debtor took out a secured loan and Debtor's mother cosigned loan which is secured to mother's primary residence located at 1007 Azure Court, Roseville, CA 95678. Debtor will retain and continue payments". The debt should be listed on Schedule D as secured and provided for in Class 2 of the plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.

Debtors Schedule D lists a 2014 Harley Davidson Street Glide with a purchase date of January 2014. Debtor testified that he traded in a 2011 Harley Davidson at the time he purchased the 2014 vehicle. The transfer is not disclosed on the Statement of Financial Affairs.

DEBTOR’S RESPONSE

Debtor filed a response, stating he has amended the Statement of Financial Affairs to reflect the transfer.

Debtor also states he took out a loan through the Golden One Credit Union and had it secured to his mother’s home. The debtor does not hold title to or have any legal interest in the home. The debtor will not be making any further payments to Golden 1 and has filed a declaration stating that any future payments will be made by his mother.

TRUSTEE’S RESPONSE

Trustee responds stating that while Debtor provides that his mother will make future payments on this debt, Debtor fails to provide a declaration from his mother, indicating she has the ability and is willing to make the loan payment. The Trustee states that based on the Debtor’s declaration, the current Schedule I and J and the testimony at the First Meeting of Creditors, the Trustee is not certain the Debtor is credible.

DISCUSSION

The court finds that the Trustee’s concern has merit. No evidence has been presented that Debtor’s mother, who will be making the loan payments on the debt, has the ability or is willing to make the loan payment. Without this evidence, the court cannot confirm this 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 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.

26. 13-23469-E-13 RONALD/JILL SHAFER MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 3-20-14 [61]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

Final Ruling: 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 Trustee and a creditor having filed an opposition, 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to continue the Motion to Confirm the Amended Plan to 3:00 p.m. on June 3, 2014. No appearance at the May 6, 2014 hearing is required.

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

TRUSTEE'S OBJECTION

The Chapter 13 Trustee opposes the motion on the basis that the Debtor has failed to file a Motion to Value the secured claim of WestAmerica Bank.

The Trustee also argues that the Plan is not the Debtor's best effort. The Debtor is over the median income and proposes plan payments of $248.00 for 12 months, then $477.00 for 48 months of the 60 month plan, with a 3% dividend to unsecured creditors, which totals $3,704.65. The Creditor's Objection to Confirmation was heard and sustained on October 22, 2013 and the Court's decision stated that the plan was under funded by $229.00 per month. Dckt. 53. The Debtor filed the present amended Plan on March 20, 2014, approximately 5 months after the order was entered by the Court. The Plan calls for payments of $248.00 for 12 months (April 14, 2013 through March 25, 2014), then $477.00 for 48 months (beginning April 25, 2014). The Debtor's Plan increases the plan payments by $229.00 as per the Court's order, however it fails to increase the plan payments until April25, 2014 and the Court's order was entered on October 22, 2013. The Debtor has failed to indicate what happened to funds that have not been paid into the plan, since the order was entered.

WESTAMERICA BANK'S OBJECTION

WestAmerica Bank ("Creditor") objects to the plan on the basis that the plan is not feasible, as Debtors have not shows that their income from Burger City Corporation will continue even though the corporation is being sued for non-payment and facing a seizure of its assets.

Creditor also argues that the plan does not provide for the allowed amount of their secured claim and that Debtors have not moved to value their secured claim.

Lastly, Creditor argues that the amended plan has not been filed in good faith. Creditor states the Debtors' Amended Plan proposes to pay Westamerica $212.00 per month on its secured claim, with interest at 4% per annum; however, in order to pay the Bank the allowed amount of its $40,000 secured claim over 60 months, without any interest, the payments must be at least $666.67 per month. Creditor states that the Amended Plan proposes to pay $3,121.00 per month on the Debtors' home loan, which represents 49% of the Debtors' monthly take home pay. Creditor argues that the court should also consider that the seriously overencumbered residence is a significant burden to the Estate, and seriously interferes with the Debtors' ability to pay their creditors.

DEBTORS' RESPONSE

Debtors respond, stating they have now filed a Motion to Value the secured claim of WestAmerica Bank, which is set for June 3, 2014. Debtors state that, as shown in their originally filed Schedules I and J, they had $248.00 per month available in net disposable income to fund their Chapter 13 plan. Debtors state that their budget is not extravagant, and included modest charitable contributions as well as school expenses for their minor daughter. Debtors state that when the Court issued its ruling in October 2013, the debtors had to adjust their budget to afford the higher plan payment. As their budget was not excessive to begin with, they had to consciously decide what expenses would be cut in order to make the higher plan payment. This was a process that took several months to implement, and included eliminating their charitable contributions, reducing the amounts spent on their minor daughter's school activities, reducing recreational expense, for a family of three, to $100.00 per month, and reducing their home maintenance. They have accomplished their budget paring, but it did take some time. Debtors contend that, if the Court requires them to make up the five months' of the increased payment, or $1,145.00, they will provide for that amount in the later months of their plan, when they are more able, financially, to do so.

Debtor argues that there is no certainty, whatsoever, that Westamerica Bank will prevail in its lawsuit against Burger City, Inc. and that the debtors have had steady, stable income from Burger City, Inc, since 1997. Debtors state that they have decades of experience in the restaurant industry and even in the unlikely event Westamerica Bank does prevail in its lawsuit against Burger City, Inc., debtors are confident in their abilities to procure comparable positions in the restaurant business.

DISCUSSION

The court continues the hearing to June 3, 2014, to be heard in conjunction with the Motion to Value Collateral of WestAmerica Bank.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to 3:00 p.m. on June 3, 2014.

27.	**11-36470-E-13** **WW-3**	**WASIF/IRUM ASGHAR** **Mark A. Wolff**	**CONTINUED OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 29 AND/OR MOTION TO CONDITIONALLY DETERMINE THE VALUE OF THE CLAIM PENDING RESOLUTION OF THE APPEAL 7-15-13 [73]**

CONT. FROM 3-4-14

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the court's calculation, 57 days' notice was provided. 44 days' notice is required.

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

No Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 tentative decision is to xxxxxxx the Objection to Proof of Claim number 29 of the State Board of Equalization. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 29 on the court's official claims registry, asserts $37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773.

The Debtor objects to the Proof of Claim on the basis that he was not the responsible party as he was involved in an accident and was not involved in the operation of the business during that period. Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

CREDITOR'S OPPOSITION

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount of $1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of $37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

DISCUSSION

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).

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

CONTINUANCE

At the September 10, 2013 hearing on the Objection to Claim, the court continued the hearing so that the Objection could be heard after the State Board of Equalization’s review of Debtor’s appeal. Dckt. No. 85. The court further stated that if the review had not been completed in a timely manner, this court would have to determine the issue as a necessary proceeding for the administration of federal law.

At the March 4, 2014 hearing, the parties reported that an offer for settlement in being reviewed by the State Board of Equalization and requested an additional 60 day continuance. The court continued the hearing.

A review of the case docket shows that nothing has been filed by either the Debtors or the Board, to show whether the determination on the appeal has been made.

28.	**14-22175-E-13 TSB-1**	**HUGO GUTIERREZ AND ANGELA ROGEL LARA Scott A. CoBen**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-10-14 [14]**

Final Ruling: The Chapter 13 Trustee having filed a “Withdrawal” for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation.**

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.
>
> An Objection to Confirmation having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation is dismissed without prejudice.

29. 13-33583-E-13 SUE MARIANO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
NLE-2 Charnel J. James — 3-28-14 [90]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Debtor's Claim of Exemptions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

30. 11-46286-E-13 MARSHALL/GALE MORAN — MOTION TO SELL
SLH-6 Seth L. Hanson — 3-31-14 [86]

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, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 tentative decision is to grant the Motion to Permit Debtor to Sell Property. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 2124 Butterfield Lane, Lincoln, California. The sales price is $301,000.00 and the named buyer is Aldea Homes, Inc. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 89.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

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 sell property 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 Marshall Raymond and Gale Elaine Moran, the Chapter 13 Debtors ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b)to Aldea Homes, Inc. ("Buyer"), the residential real property commonly known as 2124 Butterfield Lane, Lincoln, California("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for $301,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 89.

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

3. The Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Debtors be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Debtors' broker Leslie Fisher, RE/MAX Gold.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors 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.

31. 10-34099-E-13 JULIAN/VERONICA CERVANTES CONTINUED MOTION TO DISMISS IRS-1 John M. O'Donnell CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7 11-19-13 [93]

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 56 days' notice was provided. 28 days' notice is required. That requirement was met.

No appearance at the May 6, 2014 hearing is required.

Final Ruling: The United States of America (Internal Revenue Service) ("Movant") having filed a Notice of Withdrawal on May 2, 2014, Dckt. 109, for the Motion to Dismiss Chapter 13 case, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* request to dismiss the Motion without prejudice, the parties, Movant having the right to request dismissal of the Motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by The Debtors, the *ex parte* request is granted, the Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 United States of America (Internal Revenue Service) ("Movant") having been presented to the court, the court concluding that Movant has requested that the Motion be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 109, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Chapter 13 case is dismissed without prejudice and the bankruptcy case shall proceed before this court.