



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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on  
March 27, 2015 is confirmed, and counsel for  
the Debtors shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the  
proposed order to the Chapter 13 Trustee for  
approval as to form, and if so approved, the  
Chapter 13 Trustee will submit the proposed  
order to the court.

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

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

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

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

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 22, 2015. 28 days' notice is required. By the court's calculation, 27 days notice is required. That requirement was not met.

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

<p><b>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 13.</b></p>
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This Motion to Dismiss the Chapter 13 bankruptcy case of Evangeline Athan Marakas ("Debtor") has been filed by Jean-Pierre Rushing d.b.a. Interest Judgment Recovery("Movant"), the sole creditor and party-in-interest. Movant asserts that the case should be dismissed or converted based on the following grounds.

- A. The Chapter 13 bankruptcy was filed only to prevent the sale of a 1967 Chevrolet Corvette.
- B. Debtor failed to respond to Movant's suggested revisions for the First Amended Chapter 13 Plan.
- C. Debtor has unreasonably delayed in filing an initial, and amended,

plan.

#### RESPONSE STATED BY TRUSTEE

The Chapter 13 Trustee urges the court to grant the Motion, asserting that

- A. The Trustee previously set forth concerns about this case, first in a motion to dismiss filed 1/15/2015-before the first meeting of creditors-which argued that the plan filed was unreasonably delay, [dckt. 18], and then in an objection to confirmation, [dckt. 32]. The Trustee's objection to confirmation was sustained on 3/11/2015 [dckt. 48], and no amended plan was filed until 5/1/2015, [dckt. 65]-**after this motion to convert was filed.**
- B. This is Debtor's second case (the prior case was 13-22384), and the Debtor appears to have engaged in unreasonable delay.

#### RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b) (1).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). As the Trustee highlights, Debtor has unreasonably delayed in filing initial and amended Chapter 13 plans.

The motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

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

**IT IS ORDERED** that the Motion to Convert is granted,  
and the case is converted to a under Chapter 7 of Title 11,  
United States Code.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. Thirty-five days' notice is required.

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

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

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

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

1. Debtor provides no explanation for the increase in Debtor's 401K loan balance and monthly payment. Thus, Debtor will not be able to make the plan payment if this continues to increase. Debtor's original Schedule I (dckt. 1) filed February 20, 2013 indicated Debtor had a 401K loan with a balance remaining of \$6,000 and a monthly payroll deduction of \$93.53. Debtor's Supplemental Schedule I (dckt. 53) now reflects a loan balance in excess of \$16,000.00 with a monthly payroll deduction of \$369.57. The Trustee is unable to locate within the docket that the Debtor filed a motion to borrow \$10,000 of additional funds or a court order giving Debtor permission to do so.
2. Debtor's modified plan schedules CarMax Auto Finance regarding a 2004 Nissan 350Z as a Class 2 claim based on value of collateral

reduced from \$12,280 to \$12,200. Trustee is unable to locate within the docket that Debtor has filed a motion to value this vehicle.

#### DEBTOR'S SUPPLEMENTAL DECLARATION

The court continued the hearing on the Motion from April 14, 2015 to allow the parties to file supplemental pleadings before May 12, 2015 given that the Trustee and Debtor's counsel believe that the Debtor can demonstrate to the Trustee and court that unique circumstances exists and confirmation of the plan is possible.

On April 27, 2015, the Debtor filed a Declaration of Shirley Nelson, [dckt. 62], which attempts to address the Trustee's objection as to the 401K loan.

#### TRUSTEE'S SUPPLEMENTAL OBJECTION

The Trustee filed a supplemental objection to the Motion on May 6, 2015 stating that the Declaration of Shirley Nelson fails to satisfy the Trustee's original objections as to either point and maintaining his objection to confirmation. In pertinent part, the Trustee highlights the following concerns:

1. Debtor has categorized how the money drawn from Debtor's 401K account was used, but has not provided a detailed accounting of how more than half of the funds were spent. There are contradictions between the Debtor's declaration, supplemental schedules, and plan regarding the 401K funds.
2. Debtor has not addressed the trustee's objection regarding the classification of Carmax Auto Finance in the proposed modified plan as Class 2B where no motion to value has been filed.

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

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

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

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

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

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4. [13-24823](#)-C-13 GARRETT/ASHLEY WARREN  
PGM-6 Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS'  
ATTORNEY  
4-20-15 [[100](#)]

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 20, 2015. 28 days' notice is required. That requirement was met.

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

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

Peter G. Macaluso, the Attorney for Debtors, ("Applicant") for Garrett and Ashley Warren ("Clients"), makes an Additional, Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November, 2013 through April, 2015. Applicant requests fees in the amount of \$2,475.00.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

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

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees**

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

The application reflects that the Applicant has spent; 9.25 hours in obtaining confirmation, and 18.65 hours post-confirmation, 10.40 hours of which was anticipated and 8.25 hours that were unanticipated. Post confirmation work included several motions to modify plan due to applications to dismiss case, motions to approve loan modification, and subsequent correspondence and meetings with clients to maintain the case.

The total hours actually spent which was actual, reasonable, necessary, and unanticipated was 8.25 hours for which the applicant seeks \$2,475.00 (\$300/hour).

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,475.00
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pursuant to this Application as fees pursuant to 11 U.S.C. § 331 in this case.

The Chapter 13 Trustee filed a statement of nonopposition on April 24, 2015.

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

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

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

**IT IS ORDERED** that Peter G. Macaluso is allowed the fees in the amount of \$2,475.00 as a professional of the Estate.

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5. [11-32430](#)-C-13 ROOSEVELT/RAULETTE  
BLG-10 MCCLINTON  
Chad Johnson

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF BANKRUPTCY LAW  
GROUP FOR PAULDEEP BAINS,  
DEBTORS' ATTORNEY(S)  
4-21-15 [[146](#)]

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 28 days' notice is required. That requirement was met.

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

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

Pauldeep Bains, the Attorney for Debtors, ("Applicant") for Roosevelt and Raulette McClinton, ("Clients"), makes an Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September, 2012 through April, 2015. Applicant requests fees in the amount of \$2,406.50 and costs in the amount of \$93.13, for an aggregate of \$2,499.63.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

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

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees and Costs**

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

Total Hours .9 hours (.9 hours were no-charged); Motion for Compensation BLG-6: Communicate with debtor re: hearing, attend hearing on Motion and preparation of attorney fee disclosure. Total Hours 2.1 hours (2.1 hours were no-charged); Motion to Modify BLG-7: Telephone and email communications with client, preparation of MTM, Review of Objection and preparation of response. Total Hours.6.1 hours (2.7 hours were no-charged and 3.4 were billed); Motion to Modify BLG-8: Telephone and email communications with client; preparation of MTM and attend hearing on Motion to Modify. Total Hours.4.7 hours (1.6 hours were no-charged and 3.1 were billed); Motion to Modify BLG-9: Telephone and email communications with client; preparation of MTM, Review of Opposition and preparation of response. Attend Motion to Modify Hearing. Total Hours 7.5 hours (4.1 hours were no-charged and 3.4 were billed); Motion for Compensation BLG-10: Preparation of Motion for Additional Attorney Fees Total Hours 2.5 hours. (2.5 hours were no-charged).

The total number of hours expended in this case for which applicant seeks compensation is 23.9 and break down as follows: Attorneys 12.1 hrs; Paralegals 10.3 hrs; Administrative Staff 1.4 hrs. The hourly rates at the client retained are as follows: Attorneys \$300/hr; Paralegals \$135/hr; Administrative Staff \$85/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,406.50
Costs	\$93.13

The Chapter 13 Trustee filed a statement of nonopposition on April 23, 2015.

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

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

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

**IT IS ORDERED** that Pauldeep Bains is allowed the fees in

the amount of \$2,406.50 and costs in the amount of \$93.13 as a professional of the Estate.

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick. On May 13, 2015, the Trustee "withdrew" his opposition to the Motion. Dckt. 108.

On May 12, 2015, Debtor filed a second Modified Plan. Dckt. 107. Also on May 12, 2015, Debtor filed a reply to the Trustee's Opposition and corresponding declarations. Dckts. 104-06. Debtor's reply, declarations, and second Modified Plan resolve the Trustee's concerns set forth in the Trustee's opposition to the first Modified Plan. Specifically, Debtor filed a declaration explaining the source of funds; stating the final lump-sum payment amount and requested date of final payment; clarifying no change in financial position since filing; affirming that she has filed her tax returns; and explaining why she seeks acceleration of the Plan.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on May 12, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court

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7. [11-33335](#)-C-13 KEVIN/CATHERINE MATLOCK  
BLG-6 Chad Johnson

MOTION FOR COMPENSATION BY THE  
BANKRUPTCY LAW GROUP, PC FOR  
PAULDEEP BAINS, DEBTORS'  
ATTORNEY(S)  
4-21-15 [[118](#)]

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 28 days' notice is required. That requirement was met.

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

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

Pauldeep Bains, the Attorney for Debtors, ("Applicant") for Roosevelt and Raulette McClinton, ("Clients"), makes an Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September, 2012 through April, 2015. Applicant requests fees in the amount of \$1,663.50 and costs in the amount of \$202.27.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues

being resolved successfully?

*Id.* at 959.

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

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees and Costs**

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

*Communication with Clients:* Calls and emails with debtors'. Total Hours .3 hours (.3 hours were no-charged);

*Case Administration:* Communicate with debtors regarding tax debt, review and respond to Trustee's Motion to Dismiss. Attend hearing on Motion to Dismiss. Total Hours 2.9 hours (2.9 hours were no-charged); *Motion to Modify BLG-4:* Due to debtors falling behind on ongoing property tax payments post-petition and Motion to Modify was prepared. Attend hearing on MTM, Hearing was denied. More information and documentation were needed Total Hours.6.5 hours (6.5 hours were no-charged); *Motion to Modify BLG-5:* Due to debtors falling behind on ongoing property tax payments post-petition and Motion to Modify was prepared. Total Hours.6.2 hours (.7 hours were no-charged and 5.5 were billed); *Motion for Compensation BLG-6:* Preparation of Motion for Additional Attorney Fees Total Hours 2.5 hours. (0.00 hours were no-charged).

The total number of hours expended in this case for which applicant seeks additional compensation is 17.9 and break down as follows: Attorneys 9.1 hrs; Paralegals 8.4 hrs; Administrative Staff .4 hrs. The hourly rates at the client retained are as follows: Attorneys \$300/hr; Paralegals \$135/hr; Administrative Staff \$85/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,663.50
Costs	\$202.27

The Chapter 13 Trustee filed a statement of nonopposition on April 21, 2015.

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

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

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

**IT IS ORDERED** that Pauldeep Bains is allowed the fees in the amount of \$1,663.50 and costs in the amount of \$202.27 as a professional of the Estate.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 20, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. It appears that the Debtor cannot make the payments required. Debtor admitted at the 341 meeting that she is no longer employed.
2. On March 20, 2015, the IRS filed claim # 2 indicating that the Debtor owes priority tax totaling \$7,561 based on no return filed for 2014. This creditor is not provided for in the plan as priority.
3. Debtor has failed to disclose her full legal name on the petition. Instead, Debtor listed middle initial S rather than reporting her full middle name of Susan.

4. Debtor fails to list er term life insurance policy on Schedule B.
5. The Trustee is uncertain of the balance owed on attorney fees due to conflicting documents (i.e. Plan, SoFA, and Schedules).
6. Debtor is below median income. It appears that Debtor has failed to report all income. Debtor provided the Trustee with copies of her 2013 Tax Returns, which reflect that Debtor received approximately \$3,876 in tax refunds. Debtor has not reported this as a source of income on Schedule I and has not provided that any portion of future tax refunds to be paid into the Plan.

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

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

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

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

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

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9. [15-21838](#)-C-13 JANET GONZALEZ  
DPC-1 Nikki Farris

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
4-15-15 [[18](#)]

Also #10

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 15, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. It appears that the Plan fails the Chapter 7 liquidation analysis. The Debtor's non-exempt equity totals \$28,049, and the Debtor proposes to pay unsecured creditors one percent dividend. The Debtor's non-exempt equity totals \$28,049 based on property described as the Debtor's real property located at 5 Piedmont Circle, Chico, CA.

The Trustee filed a Notice of Withdrawal of Objection on May 14, 2015. Dckt. 35. On May 7, 2015, Debtor filed an amended plan and motion to confirm set for hearing on July 21, 2015. Dckts. 28 & 31.

## Discussion

The court construes the filing of an amended plan and motion to confirm as a "de facto dismissal of the prior plan." Accordingly, the court's decision is to sustain the Objection and to deny confirmation of the Plan.

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

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

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

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

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

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**Below is the court's ruling.**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 24, 2015. Fourteen days' notice is required.

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

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

Banc of California ("Creditor"), the holder of the senior lien on property commonly known as 5 Piedmont Circle, Chico, California, opposes confirmation of the Plan on the basis that:

1. The Plan fails to sufficiently provide for arrears owed to Creditor totaling \$39,866.05 as set forth in Creditor's proof of claim. The Plan undervalues the claim by about \$4,000.

Creditor filed a Notice of Withdrawal of Objection on May 14, 2015. Dckt. 37. On May 7, 2015, Debtor filed an amended plan and motion to confirm set for hearing on July 21, 2015. Dckts. 28 & 31.

#### Discussion

The court construes the filing of an amended plan and motion to confirm as a "de facto dismissal of the prior plan." Accordingly, the court's decision is to sustain the Objection and to deny confirmation of the Plan.

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

objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Banc of California 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.

\*\*\*\*

**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**Below is the court's ruling.**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 22, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on May 14, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

On May 15, 2015, the Trustee filed a Notice of Withdrawal of Objection. Dckt. 27. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan  
filed by the Chapter 13 Trustee having been  
presented to the court, and upon review of the

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on March 11, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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12. [15-21743](#)-C-13 DANIEL/LYNNETTE BAKER  
DPC-1 Douglas Jacobs

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 15, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax returns with attachments for the 2013 and 2014 tax years for which returns were required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. The Trustee has not received the last 60 days of pay advices for each Debtor. This case was filed on March 5, 2015. Debtor is required to submit pay advices or other evidence of

payments received within 60 days of filing be provided to the Trustee pursuant to 11 U.S.C. § 521(a)(1)(B)(iv) and this court's order, (dckt. 6).

3. The amount of the Debtor's income listed on Debtor's schedules and SoFAs conflict.

4. The first meeting of creditors held on April 9, 2015 was continued to May 14, 2015 to allow the Debtors time to file their 2014 tax returns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Trustee is uncertain of Debtors' ability to pay. Debtors have not filed current Schedules I or J.
2. Debtors propose to move creditor Keybank N.A. to Class 3 of the Plan. The creditor was included in Class 2C of the confirmed plan. Debtors' motion to value was granted on March 3, 2015. No motion to vacate the order valuing has been filed. Creditor has filed court claim # 3 for \$19,627.12, which is now included as an unsecured claim per the order valuing.
3. The Debtors' motion, (dckt. 40), is misleading. Debtors state that

they will "strip off" the second mortgage lienholder and will continue to make ongoing payments to the senior lienholder outside of the Plan. Later in the motion, Debtors stat that they will be moving the first and second lienholders to Class 3 surrender.

4. No additional provisions are attached to the Plan as indicated in Section 6.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' modified plan proposes to reclassify Agricredit Acceptance LLC from a Class 2 secured claim to a Class 4 secured claim to be paid outside. Under the confirmed plan, the Trustee has disbursed a total of \$6,716.52 to this creditor.
2. Debtors' plan payment no longer includes the submission of all tax funds. Debtors' plan payment under the confirmed plan includes any tax refunds received during the duration of the plan to be paid into the plan pursuant to the December 13, 2013 Stipulation, (dckt. 60). Under the confirmed plan, Debtors have paid to the Trustee a total of \$23,262.50 through month 24 (April where Debtors' petition was filed April 24, 2013), with the last payment of \$505.00 having

posted April 28, 2015. The total paid to date includes Debtor's 2014 Federal return of \$1,936, which posted April 27, 2015, and the Trustee has been in contact with Debtor's counsel for the State return. Section 6.01 of Debtors' modified plan now proposes a plan payment of \$20,821.50 total paid in to date, then \$505 per month for the remainder of the plan with no mention of future tax returns.

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

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

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

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

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

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Also #16

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 22, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. The Debtors' Plan fails the Chapter 7 liquidation analysis. The Debtors' non-exempt equity, which totals \$12,863.35, includes \$6,808.73 in real property equity, \$54.37 in bank account balances and \$6,000 in tax refunds, and the Debtors are proposing a 7.04% dividend to unsecured creditors paying out approximately \$4,350.88.
2. On Schedule A, Debtors list the property value as \$413,330 and deduct secured claims, exemption, priority claims, cost of sale, and estimated Chapter 7 Trustee fees. The Trustee is not certain that the Debtors' analysis of the liquidation value is appropriate and is concerned that there may be additional equity to consider non-exempt.

3. Form 22C shows \$380.31, on line 59, however, the Trustee's calculations reveal that line 59 should be \$602.52. The Trustee questions the following deductions:
- a. Line #29: Debtors deduct \$156.25 for education expenses; this deduction requires evidence of the expense be provided to the trustee, but none has been provided.
  - b. Line #30: Debtors deduct \$43.00 for additional food and clothing expense; under this deduction, debtors must provide evidence of why the additional allowance is reasonable and necessary, but have failed to do so.
  - c. Line #36: Debtor deducts for monthly plan payment but projects the payment at \$1,100 yielding an average monthly administrative expense of \$47.30, however Debtors' plan payment is actually \$495 for 13 months and then steps up to \$595 for the remainder of the 60 month plan. The average monthly plan payment is actually \$573.34; this yields an average monthly administrative expense of \$24.66.
  - d. Based on the review of the means test, it appears that line #59, Debtors' disposable income, should be \$602.20. Over the life of a 60 month plan, unsecured creditors would be entitled to receive \$36,132.
4. Debtors are above median income. On Schedule B#18, Debtors report anticipating \$6,000 in tax refunds for 2014. A review of their 2013 tax returns reveals that Debtors received \$10,104 in combined refunds. The Trustee suggest that Debtors be required to turn over future tax refunds as an additional payment into the plan.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 27, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditor Wells Fargo Bank, N.A. opposes confirmation of the Plan. FN 1. Creditor's claim is secured by a priority deed of trust against real property commonly known as 3622 Trefethen Way, Sacramento, California. The plan does not provide treatment for arrearages owed to Creditor, or provide for ongoing payment of Creditor's claim. Creditor asserts that total pre-petition arrears due are approximately \$5,026.20. FN 2. Therefore, Creditor asserts that their claim treatment in Class 4 of the Plan is incorrect, as Class 4 claims are "not in default" and Creditor contends that Debtors are delinquent in payments.

Creditor states that in order to provide for Creditor's arrears for the 60 month life of the plan, Debtors must pay approximately \$83.77 per month toward Creditor. Thus, Creditor objects to the plan on the following bases:

1. The plan does not provide treatment for Creditor's claim under 11 U.S.C. § 1325(a)(5). Therefore, Creditor asserts that because the Plan does not provide for payment of Creditor's claim, Creditor does not accept the Plan.

2. The plan is not feasible under 11 U.S.C. § 1325(a)(6). Based on Debtors' schedule J, Debtors do not have sufficient disposable income to make the Plan payment and pay the arrears due to Creditor.
3. The plan impermissibly modifies the rights of Creditor under 11 U.S.C. §§ 1325(a)(1) and 1322(b)(2).

Creditor points out that Debtor's Plan is inconsistent with Creditor's claim treatment in Class 4 of the Plan. Creditors object to although provided for in Class 4 of the Plan, Debtors state in the Additional Provisions that Creditor will have relief from the automatic stay "solely for the purpose of accepting post-filing mortgage payments in March 2015."

4. The plan does not cure the pre-petition arrears due to Creditor, as required under 11 U.S.C. §§ 1325(a)(1) and 1322(b)(3).

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FN.1. The court notes that Debtors identify Creditor as "Wells Fargo Mortgage" in their proposed plan. The Creditor actually appears to be "Wells Fargo Bank, N.A.," who the objecting party in the instant Objection.  
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## DISCUSSION

Creditor's objections are well taken. The court notes that a number of Creditor's objections are based on arrearages owed to them by Debtors and the resulting "misclassification" of Creditor's secured claim in Class 4 due to default payments, and infeasibility of plan due to such arrears owed. However, Creditor has provided no authenticated evidence by way of declaration or proof of claim to substantiate their claim that Debtors are in arrears in excess of \$5,000 upon which the court may rely. Therefore, any objections that Creditor has as to the feasibility or classification of their secured claim due to arrearages owed are overruled.

Notwithstanding any claimed arrearages owed, the court will sustain Creditor's objection on the grounds that the Plan impermissibly modifies the rights of Creditor under 11 U.S.C. §§ 1325(a)(1) and 1322(b)(2). Section 2.11 of the Plan provides that Class 4 claims are secured claims that are to be paid directly by the debtor, "all bankruptcy stays are modified to allow the holder of the Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." In the Additional Provisions of Debtors' Plan however, Debtors include an amendment limiting Creditor's rights in obtaining relief from stay granted for Class 4 treatment, stating that Creditor "shall have relief from the automatic stay . . . solely for the purpose of accepting post-filing mortgage payments in March 2015." The court will not affirm a plan that proposes a direct payment, but in the same breath attempts to limit a Creditor's right to pursue relief from stay to exercise rights against the collateral in the event of a future default.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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17. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO VALUE COLLATERAL OF  
PLC-7 IRMA CAMPOS DEUTSCHE BANK NATIONAL TRUST  
Peter Cianchetta COMPANY  
4-15-15 [[82](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 15, 2015. Twenty-eight days' notice is required. That requirement was met.

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

<p><b>The Motion to Value secured claim of Deutsche Bank National Trust Company, "Creditor," is set for evidentiary hearing on [DATE] at [TIME].</b></p>
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1045 Carrie Street, West Sacramento, California. The Debtors seeks to value the property at a fair market value of \$160,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$168,871. Deutsche Bank National Trust Company, as trustee for GSAMP Trust 2004-H2 Mortgage Pass-Through Certificates, Series 2004-HE2, holds a second deed of trust secured by loan with a balance of approximately \$41,383. Therefore, Movant asserts that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

## **CREDITOR'S OBJECTION**

Deutsche Bank National Trust Company, Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$185,000. Creditor argues that under 11 U.S.C. § 506(a), the value of a property is a factual issue and, in support of its asserted valuation, Creditor has submitted the appraisal report (Dckt. 94, Exhibit 1) and accompanying declaration (Dckt. 93) of a licensed real estate appraiser, Richard West. Creditor thus asserts that its valuation is more credible than the Debtors' and as such, the value of the subject property should be decided in favor of Creditor without evidentiary hearing.

## **DEBTORS' RESPONSE**

Debtors respond to Creditor's objection, asserting the validity as to their opinion of value as evidence before the court. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004). Debtors also object to Creditor's insistence on using a source such as Zillow to value their residence. Finally, Debtors provide the declaration of David Pereira (Dckt. 98), a licensed real estate broker, not a licensed appraiser, who asserts that the appraisal report of Creditor's appraisal by Richard West is flawed, and in fact the value of the residence is much closer to \$155,000.

## **DISCUSSION**

Movant-Debtor and Respondent-Debtor have differing valuations of the subject property, and that the court's disposition as to the instant motion hinges on the ultimate valuation of the property. Therefore, the court will set the contested matter as to the valuation of 1045 Carrie Street, West Sacramento, California, for evidentiary hearing.

The court notes that Debtor's evidence of value consists of the following testimony:

"4. We believe and assert that the reasonable, fair-market value of the ASSET is \$160,000.00."

Declaration, Dckt. 84. David A. Pereira, who is not an appraiser, offers his Declaration in response to Creditor's expert. Declaration, Dckt. 98. Mr. Pereira states that he has been licensed as a real estate broker since 1980 and is authorized by California Business and Professions Code § 11302 to give opinions of value. This provision is a definitional section of the California Codes and does not "grant the right to give opinions of value" to persons. Mr. Pereira offers his "legal opinion" (as he is also a licensed attorney) that by virtue of the following definition of appraisal *for purposes of California law* he can testify as an expert witness in federal court.

"(b) 'Appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term 'appraisal' does not include an opinion given by

a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related."

Cal. Bus. & Prof. § 11302(b). Mr. Pereira does not state what his "business" is and why that brings him before the court in this Contested Matter. While Mr. Pereira states that his "opinion" is not an appraisal, he does not state how or why this state code section authorizes him to give an "opinion" in a federal judicial proceeding.

What Mr. Pereira ignores is the Federal Rules of Evidence and who may qualify as an expert. Fed. R. Evid. 702-705. The Federal Rules of Evidence provide for a broad definition of an "expert," providing:

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case."

Fed. R. Evid. 702. In his declaration Mr. Pereira appears to state that his "knowledge, skill, experience, training, or education" are his "qualifications" as an expert consist of:

- A. He was an "owner of a mortgage and servicing company for 25 years;"
- B. He was a "contract disputes manager for former Indymac Bank;"
- C. He has "reviewed thousands of appraisals retrospectively and usually when a problem has arisen;" and
- D. He has "reviewed files in litigation."

Declaration, p. 2:9-13; Dckt. 98. What he does not testify to is (1) any experience in determining the value of properties, rather than retrospectively attacking them; (2) experience in valuing real properties as opposed to litigating; or (3) any other situations in which he has provided opinions of value. In substance, he argues that since he has read appraisals, he is qualified to provide opinions of value.

What Mr. Pereira calls an "opinion" of value appears to really constitute an attorneys cross-examination in the zealous representation of his or her client.

The court makes this observation to avoid a situation where Debtor, Debtor's counsel, and Mr. Pereira mistakenly believe that because the matter is set for evidentiary hearing the "court must have found Mr. Pereira's declaration to be an accurate statement of value." It may be that Mr. Pereira has argued deficiencies that effect the credibility of Creditor's appraiser and his appraisal. That will be determined through the evidentiary hearing.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) to value the claim of Deutsche Bank National Trust Company, secured by a second deed of trust recorded against the real property commonly known as 1045 Carrie Street, West Sacramento, California, is set for evidentiary hearing on [DATE] at [TIME].

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Counsel and Office of the United States Trustee on April 9, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. This requirement was met.

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

**The Motion for Leave to File First Amended Complaint is granted.**

Plaintiff Brandy Black ("Plaintiff") seeks leave to file a First Amended Complaint. On May 23, 2014, Plaintiff filed this Adversary Proceeding claiming, among other things, non-dischargeability under the provisions of 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6). Dckt. 1. On August 7, 2014, this court granted Plaintiff Brandy Black relief from the automatic stay to pursue her action that was then pending in the Superior Court of California for the County of Sacramento. Dckt. 13. Plaintiff provides that in the Superior Court, Plaintiff and Defendant reached a settlement agreement for \$25,000. The Superior Court entered its judgment on February 20, 2015.

Plaintiff here seeks to amend her complaint to reflect the agreed upon compromise of \$25,000, and for the court to determine the non-dischargeability of that amount under the aforementioned bankruptcy provisions. Plaintiff also amends to strike a prayer for punitive damages from her complaint. Plaintiff asserts that the amendment should be permitted as it is timely and not prejudicial to Defendant.

**DEFENDANT'S OPPOSITION**

Defendant asserts that it is procedurally unnecessary for Plaintiff to

amend her complaint because the litigation has been settled, and as such, amendment of the complaint at this juncture would be futile. Instead, Defendant insists that Plaintiff should instead submit the Superior Court judgment to the bankruptcy court for review so that the court may further order or issue a dispositive ruling. Defendant points to the court's order granting Plaintiff relief from the automatic stay in order to pursue her state court action, in which the court stated that "Creditor Brandy Black may pursue her action that is pending in the Superior Court of California of and for the County of Sacramento, which actions shall be reviewed upon conclusion by this Court." Dckt. 13. Defendant states that Plaintiff should set the settlement and resolution for a noticed hearing.

Defendant points to the four-factor test provided in *Forman v. Davis*, 371 U.S. 178 (1962), to determine whether granting Plaintiff's leave to amend is appropriate:

1. Whether there has been undue delay, bad faith or dilatory motive on the part of the movant. Here, Defendant states that Plaintiff's failure to set a noticed hearing on the results of the state court action resulting settlement is in direct contravention of a court order. Additionally, Plaintiff's failure to amend her claim, which was originally submitted in the amount of \$500,00, is disproportionately high to the settled amount of \$25,000 and prejudicial to other unsecured creditors.
2. Whether there has been repeated failure to cure deficiencies by amendments previously allowed. Here, Defendant states that this factor is not at issue as this is the first amended complaint.
3. Whether there is undue prejudice to the opposing party by virtue of allowance of the amendment. Here, Defendant states that he is prejudiced as his entire disposable income is pledged to his Chapter 13 Plan, and he is unable to afford the costs of litigation. Moreover, Defendant states that the case has been settled, and thus Plaintiff should not be granted leave to amend.
4. Whether amendment would be futile. Here, Defendant states that California court have concluded that for policy reasons, settlements under CCP § 998 are final settlements of all litigation between parties, and because settlement was here reached, the filing of this amended complaint is futile.

Finally, Defendant again reasserts that settlements reached under CCP § 998 are meant to resolve all litigation between settling parties.

#### **MOVANT'S RESPONSE**

Plaintiff responds to Defendant's opposition, stating that she believes Defendant to misunderstand the meaning of Plaintiff's motion for leave to file a first amended complaint. Plaintiff clarifies that she is merely amending her complaint to accurately reflect the \$25,000 judgment that was entered in her favor. Therefore, Defendant's contention that the proposed amendment is a "springboard for additional relief" is misplaced.

#### **PLAINTIFF'S REPLY**

Plaintiff served its Response to Defendant's Opposition on July 30, 2014. Plaintiff insists that its repeated filings of bankruptcy cases were not done

in bad faith. Furthermore, Plaintiff withdraws its Fifth Cause of Action related to the Real Estate Settlement Procedures Act. As to the remaining causes of action for negligence, breach of contract and conversion, Plaintiff distinguishes this case from *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910 (9th Cir. 1996) and alleges that Defendant committed torts prior to the filing of the bankruptcy, not by the filing of the claim alone.

Plaintiff states that Defendant is not prejudiced because the amended complaint accurately reflects a non-dischargeable debt of \$25,000 and strikes punitive damages from the complaint--an amendment in his favor. Moreover, Plaintiff asserts that amending her complaint to reflect an accurate judgment is not an effort to relitigate her substantive claims. Finally, Plaintiff points out that a CCP § 998 settlement finality has no bearing on dischargeability of a debt in bankruptcy, and that this determination must be made now by the bankruptcy court.

## **LEGAL AUTHORITY**

Federal Rule of Civil Procedure 15(a) allows a party to amend its pleading once "as a matter of course", and requires that leave to amend "shall be freely given when justice so requires".

Federal policy favors determinations on their merits, therefore, the role of pleadings is limited and leave to amend pleadings should only be denied if the opposing party can demonstrate undue prejudice or bad faith on part of the moving party. *In re Kemmer*, 265 B.R. 224, 230 (Bankr. E.D. Cal. 2001). The purpose of Rule 15 is to facilitate decisions on the merits, rather than the form of pleadings or other technicalities. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

In deciding whether to grant a motion to for leave to amend, a bankruptcy court considers the following factors: (1) undue delay, (2) bad faith, (3) futility of amendment, (4) prejudice to the opposing party, and (5) whether Plaintiff has previously filed an amendment. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). Futility by itself is sufficient to justify the denial of a motion to amend. *Nunes v. Ashcroft*, 348 F.3d 815, 818 (9th Cir. 2003).

The proper test to be applied when determining whether a proposed amendment is legally sufficient, is the same as the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6). *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

## **DISCUSSION**

Plaintiff filed a First Amended Complaint that is essentially identical in substance to her original Complaint, and includes only a change to reflect the state court judgment, including the \$25,000 money judgment, and to eliminate a prayer for punitive damages. See Amended Complaint, Dckt. 23.

To be clear, the purpose of this bankruptcy court adversary proceeding is not to relitigate substantive claims brought by Plaintiff against Defendant, nor is it to issue or fix a federal money damages amount. Instead, this adversary proceeding is for the sole purpose of determining whether Judgment-Creditor Plaintiff's \$25,000 state court judgment debt, Dckt. 28, Exhibit D, is non-dischargeable under the provisions of 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).

The Motion to File the Proposed First Amended Complaint is granted.

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

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

The Motion for Leave to File First Amended Complaint filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Leave to File First Amended Complaint is granted.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 15, 2015. Fourteen days' notice is required. This requirement was met.

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

1. Debtors may not be able to make plan payments under 11 U.S.C. § 1325(a)(6). Debtors' three prior chapter 13 cases have been dismissed due to delinquency. See Case No. 08-34201 (dismissed for failure to make plan payments); Case No. 09-30651 (dismissed for failure to cure a default); Case No. 12-29185 (dismissed for failure to make plan payments).
2. Debtors' schedule E lists the Franchise Tax Board and the Internal Revenue Service as to the 2014 Personal Income Tax with an unknown amount listed. At the First Meeting of Creditors, it was not clear to the Trustee if the plan payments are sufficient to fund the plan.

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

objection is sustained and the Plan is not confirmed.

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

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

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

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

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**Final Ruling: No appearance at the May 19, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 63 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (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(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 5 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety.**

Anthony Charles Day, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Jefferson Capital Systems, LLC ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$4,195.52. Objector asserts that the debt at issue was incurred in 1995, at which time a breach occurred between the original creditor, Sears, and Debtor when Debtor defaulted on their agreement and defaulted on payments. Debtor asserts that Creditor, a collection agency, subsequently purchased said debt. Debtor states that Creditor's claim should be disallowed because pursuant to California Code of Civil Procedure 337, the statute of limitations for commencing an action for breach of contract is four years. Because the breach here occurred in 1995, Creditor asserts that the Creditor's claim should not be allowed.

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).

The court agrees that under California Code of Civil Procedure 337, the four-year statute of limitations has expired, and the claim should be disallowed.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Jefferson Capital Systems, LLC, Creditor filed in this case by Anthony Charles Day, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 5 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2015. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to deny the Motion to Confirm the Plan.</b>
--

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

1. The plan does not provide all of the Debtors' projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b).

Trustee states that he is not certain that the deduction on Schedule I for "required repayments of retirement fund loans" of \$327.58 is reasonably necessary for the maintenance and support of the debtor or a dependants. Debtors have not disclosed the amount of the loan and when it will be repaid. The plan payments do not increase after the retirement loan is repaid, and Debtor has not furnished evidence to show why the repayment of this loan is reasonably necessary. Plan payments may need to increase after the loan is repaid.

2. The plan does not appear to be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$353 for 60 months with a 0% dividend to creditors.
  - a. Debtors filed an amended Schedule J on March 16, 2015 and increased expenses only after discovering a discrepancy as to

mortgage payments owed to Ocwen Loan Servicing. Debtors listed mortgage payments on Schedule J as \$1,598, and as \$1,224 in Class 4 of the plan. Debtor admitted at the First Meeting of Creditors that the correct payment is \$1,224, not \$1,598. Debtor filed an amended Schedule J on March 16, 2015, without explanation, increasing their food, transportation, and entertainment expenses by \$374. Although these expenses appear reasonable, Debtors have not provided a reason for the increase.

- b. Debtors' 2014 tax return shows Debtors received \$6,280, and Debtors have proposed the following additional provisions-in § 6.1 "Debtors will adjust their withholding to eliminate excessive tax refunds or will make said refunds available to Trustee for the benefit of Debtor's creditors." Debtors have not provided any evidence that they have adjusted their withholding, and it is not clear to Trustee which option they have chosen.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's opposition, providing that:

1. Trustee has no information that the \$327 repayment to Debtors' retirement will be paid off in the plan. Debtors provide, however, that they will provide this information to Trustee.
2. Trustee's speculation that the increase in expenses is invidious is not supported by evidence. Debtors' sworn declaration is evidence. Debtors' counsel is willing to discuss this increase with Trustee.
3. Trustee's speculation as to the tax refunds not yet received is not evidence or grounds for dismissing a petition. Debtors can report whatever if any tax refund they might get with Trustee at that time.

#### **DISCUSSION**

The court finds Debtors' response does not provide a satisfactory explanation as to any of Trustee's concerns, and in fact appears to merely reiterate Trustee's objections without resolving the discrepancies identified.

On Amended Schedule J, Debtor now states that actual expenses since the 2014 filing have been higher than previously stated under penalty of perjury. On Amended Schedule J Debtor has failed to identify the expenses which are alleged to have been previously stated under penalty of perjury in error. These "corrections" are not minor, but include:

Item	Original Expense	Amended Expense	Difference
Food and Housekeeping Supplies	\$600	\$900	\$300
Transportation	\$600	\$650	\$50
Entertainment	\$155	\$179	\$24
		Total	\$374

While the entertainment change is relatively minor, the other two changes to an already significant expense appear to be merely "plug in numbers" to exhaust whatever projected disposable income could exist for a dividend to creditors holding general unsecured claims. This "amendment" matches exactly the monies which were overstated for the mortgage expense. Such "exact matches" do not appear to be mere coincidence, but intentional misstatements of the expenses. Debtor's response of, "well since we caught us, we'll talk about it" to the Trustee further fails to manifest a good faith prosecution of the bankruptcy case.

The court further notes that the proposed plan includes a \$400 a month expense to support Debtor's mom. In the Declaration, Debtor fails to address the need for such support, mom's income, and why having \$400 a month of otherwise disposable income to fund a plan being used to pay this non-immediate family member's expense is reasonable.

Additionally, Debtor seems to ignore that the projected disposable income is actually more than \$6,000 a month higher, as shown by the tax refund for 2014. It appears that Debtor is having over withholding of taxes being made to manufacture lower appear income, and then diverting the money around the Chapter 13 Plan by getting the disposable income back through the tax refund.

The court is left with doubts as to whether the plan is in the best efforts of the Debtors, and whether Debtors' projected disposable income for the applicable commitment period has been provided for in the plan. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 13, 2015. Fourteen days' notice is required. This requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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Creditor, PNC Bank, N.A. opposes confirmation of the Plan on the basis that Debtor's plan seeks to impermissibly modify the rights of Creditor, and "reclassify it as an unsecured claim." Creditor's claim of \$36,397.28 is secured only by a security interest in real property that is Debtor's primary residence, real property commonly known as 13629 Throne Lane, Grass Valley, California, and is thus not in compliance with 11 U.S.C. § 1322.

Creditor asserts that the real property residence has a value of at least \$190,000 based on a recent valuation of the premises. While so alleging, Creditor fails to provide any admissible evidence for this contention. Creditor contends that the proposed Plan seeks to modify Creditor's rights, and that because Creditor's lien is not subject to modification, the Plan is underfunded.

#### DISCUSSION

The Original and Amended Chapter 13 Plans, Dckts. 13 and 17, fail to make any provision for this claim. Failure to provide for a claim is not the same as "reclassifying it as an unsecured claim." No Class 2 treatment for this claim is provided for, which is where such 11 U.S.C. § 506(a) valuation and secured claim treatment is properly set forth.

While Creditor's stated objection that the claim is being reclassified is not valid, the proposed amended plan fails to provide for the claim, which is grounds for denying confirmation.

Creditor asserts a claim of \$36,397.28 in this case. The Debtor's Schedule D, estimates the amount of the creditor's claim as \$36,397.28 and indicates it is secured by a second trust deed on the Debtor's residence. The Plan fails to provide any treatment whatsoever for Creditor's claim.

The Creditor alleges that the plan is in "direct contravention" of 11 U.S.C. § 1322. The court agrees that lack of treatment of Creditor's claim suggests that the Plan is not feasible, See 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the creditor's matured obligation, which is secured by the Debtor's residence.

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.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor PNC Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2015. Thirty-five days' notice is required. That requirement was met.

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

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

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

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

1. Debtors have not adequately explained the changes in expenses as depicted in Debtors' Amended Schedule J file March 27, 2015, Dckt. 20.
  - a. Debtors have reduced their food, clothing medical, and transportation expenses by a total of \$658 without explanation.
  - b. Debtors have increased their car payment expense from \$0 to \$480.81. However, the confirmed nor the proposed plan include a vehicle in Class 4, and a review of the docket does not reflect that a Motion to Incur Debt for purchase has ever

been filed.

2. The additional provisions of the proposed modified plan indicates that pursuant to the order confirming, Debtors are required to pay a total of \$45,120 to Trustee. Trustee calculates the total under the confirmed plan is \$45,900. Under Debtors' proposed modified plan, Trustee calculates that the amount paid will be \$45,255. The additional provisions also state, "The trustee shall begin disbursing monthly dividends on administrative expenses pursuant to Section 2.07 proposes a monthly dividend for administrative expenses of \$195.25 where it is \$38 under the confirmed plan. Where the hearing on the proposed modified plan is not scheduled to be heard until May 19, 2015, Trustee would be unable to comply with this provision.

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

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

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

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

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

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24. [14-29983](#)-C-13 EVANGELINA MEDINA  
TJW-2 Timothy Walsh  
CASE DISMISSED 04/01/2015

MOTION TO CONFIRM PLAN  
3-21-15 [[50](#)]

\*\*\*\*

**Final Ruling:** No appearance at the May 19, 2015 hearing is required.  
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**The case having previously been dismissed, the Motion is denied as moot. The Chapter 13 case was dismissed on April 1, 2015, Dckt. 61.**

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 Plan filed by Debtor,  
having been presented to the court, the case  
having been previously dismissed, and upon review  
of the pleadings, evidence, arguments of counsel,  
and good cause appearing,

**IT IS ORDERED** that the Motion is denied as  
moot, the case having been dismissed.

\*\*\*\*

**Final Ruling:** No appearance at the May 19, 2015 hearing is required.

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The Movant having filed a "Withdrawal of Motion" for the pending Motion to Sell, 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 to Sell, and good cause appearing, **the court dismisses without prejudice the Motion to Sell.**

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 to Sell having been filed by the Movant, the Movant 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 to Sell is dismissed without prejudice.

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 1, 2015. Fourteen days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of OneWest Bank, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8805 Alder Grove Place, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$225,000.00 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 \$250,977.83. OneWest Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$15,970.74. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In*

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of OneWest Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8805 Alder Grove Place, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$225,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 1, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of Springleaf Financial Services, Inc., "Creditor," is granted.</b>
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The Motion filed by Amanda C. Shriner ("Debtor") to value the secured claim of Springleaf Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Chevy Tahoe LT 2WD, which is cross-collateralized in the same document granting a security interest in a 2002 Honda Accord 2D V6 Coupe (collectively "Vehicles"). The Debtor seeks to value the 2006 Chevy Tahoe at a replacement value of \$7,000 as of the petition filing date, and the 2006 Honda Accord at a replacement value of \$3,000 as of the petition filing date. The Vehicles have a combined aggregate value of \$10,000. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a loan incurred in November of

2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,700. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$10,000. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial Services, Inc. ("Creditor") secured by assets described a 2006 Chevy Tahoe LT 2WD and a 2002 Honda Accord 2D V6 Coupe ("Vehicles") is determined to be a secured claim in the amount of \$10,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicles is \$10,000 and is encumbered by liens securing claims which exceed the value of the asset.

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**Final Ruling:** No appearance at the May 19, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

<b>The Motion to Confirm the Amended Plan is granted.</b>
---

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtor's Chapter 13 Plan filed on  
March 31, 2015 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the  
proposed order to the Chapter 13 Trustee for

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

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**Final Ruling:** No appearance at the May 19, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 17, 2015. Twenty-eight days' notice is required. This requirement was met.

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

<b>The Motion to Value secured claim of California Housing Finance Agency, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4314 Rosecrest Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$216,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$305,111.63. California Housing Finance Agency's second deed of trust secures a loan with a balance of \$18,000. California Housing Finance Agency's third deed of trust secures a loan with a balance of approximately \$16,000. Debtor believes that the present balance owed to California Housing Finance Agency on the two liens combined is \$34,000. Therefore, the respondent creditor's claim secured by two junior deeds of trust are completely under-collateralized. The creditor's secured claims are determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claims of California Housing Finance Agency secured by a second deed of trust and a third deed of trust recorded against the real property commonly known as 4314 Rosecrest Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$216,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

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

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

<b>The court's decision is to deny the Motion to Confirm the Plan.</b>
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**CHAPTER 13 RESPONSE**

Chapter 13 Trustee has filed a statement of no opposition to confirmation of the proposed plan.

**CREDITOR OPPOSITION**

Creditor James Shrimp opposes confirmation of the proposed plan. Creditor provides that he holds a first deed of trust on Debtor's real property, which loan is serviced by Unified Mortgage Services, Inc. Creditor's claim is provided for in Class 1 of the proposed plan. Creditor is owed \$9,131.48 in pre-petition arrears on the loan, with monthly payments owed of \$465.72. While Creditor asserts that the amounts provided for in the plan are feasible, Creditor states that the plan is not feasible based on Debtor's proposed budget and not proposed in good faith.

First, Debtor's Schedule I shows a monthly income of \$1,555. Debtor's propose plan payments are \$723.62 per month, however Debtor's Schedule J shows only \$723 is available. Debtor is thus short \$0.62 per month.

Second, Debtor is proposing to pay 47% of his total income into the plan, leaving him with \$832 for monthly living expenses. Creditor asserts that this

is unrealistic. (But creditor appears to ignore that the plan payment includes the current monthly mortgage payment, a significant percentage of any consumer's monthly expenses.)

## DISCUSSION

The Debtor's Schedule J, submitted as an exhibit in a "Proposed Future Budget," Dckt. 45, Exhibit A, lists a \$723.00 monthly net income, while the Plan provides for a \$723.62 monthly payment. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

Creditor James Shrimp also raises the Debtor's allocation of monies to his expenses, and that setting aside \$832 for monthly living expenses is unrealistic. The court here reviews Debtor's expenses in the original schedules, Dckt. 1, and the "Proposed Future Budget" schedules, Dckt. 45, Exhibit 1.

Item	Original Expense	Updated Expense	Difference
Real Estate Taxes	\$75	\$75	\$0
Property, Homeowner's, or Renter's Insurance	\$50	\$50	\$0
Electricity, Heat, Natural Gas	\$75	\$75	\$0
Water, Sewer, Garbage Collection	\$130	\$127	\$3
Telephone, Cell Phone, Internet, Cable	\$50	\$50	\$0
Food and Housekeeping	\$350	\$350	\$0
Clothing, Laundry, and Dry Cleaning	\$15	\$5	\$10
Transportation	\$125	\$125	\$0
		Total	\$13

What is concerning to the court is not an unexplained reduction in expenses—in fact, the reduction in expenses is quite minimal and un concerning upon first glance. However, upon further inspection into Debtor's expenses, the court finds there to be a question of economic feasibility. Debtor allocates only \$5.00 per month to clothing, laundry, and dry cleaning, no expenses for home maintenance, and no money for entertainment. Absent an explanation from the Debtor as to how he proposes to maintain such minimal expenses throughout the life of the proposed Plan, the court does not believe the Debtor's projection is feasible or in good faith. This is reason to deny confirmation. See 11 U.S.C. §§ 1325(a)(3) and (a)(6).

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

confirmed.

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

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

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

**IT IS ORDERED** that the Motion is denied, and Debtor's Chapter 13 Plan filed on March 31, 2015 is not confirmed.

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