UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 19, 2015 at 3:00 p.m.

---

1. 09-44001-E-13 BARRY/LISA STOELTING — MOTION TO INCUR DEBT
SJS-3 Scott Johnson — 4-28-15 [189]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2013 Cadillac ATS, which the total purchase price is $27,925.30, with monthly payments of $536.37.

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

The Debtor does not address the reasonableness of incurring debt to purchase a luxury vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 1997 Ford Expedition. The Debtor merely states in the Motion that the vehicle is in poor condition and the cost to repair would exceed the value of the car.

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge – 17.03%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a luxury car and attempt to borrow money at a 17.03% interest rate.

Furthermore, the Declaration of the Debtors is not signed. The signature date is left blank and appears to have been filed by the Debtors' attorney prior to the Debtors signing the declaration. The court is hard pressed to think of a reason why or how Debtors' counsel would submit an unsigned declaration to support the Motion which seeks to have the court authorize the purchase of a luxury vehicle at a relatively high interest rate.

Most troubling, however, is the fact that Debtor completed the purchase of the vehicle on April 2, 2015, without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith. A review of the attached sales agreement shows that it was printed on April 2, 2015. The sales agreement is signed by Debtor Lisa Stoelting. The court is left questioning if the Debtors have incurred debt without court authorization in this instance, whether the Debtors have incurred other debts during the life of the plan without court authorization.

COMPLETION OF PLAN

This bankruptcy case was filed on November 2, 2009. The Chapter 13 Trustee Final Report was filed on March 16 ,2015. Dckt. 179. The Chapter 13 Trustee reports that the case (Plan) was completed on January 30, 2015. The Notice of Deadline For Objecting to the Final Report set the deadline for 33 days from March 16, 2015. That time has passed and no objections have been filed. On March 27, 2015, the Debtors filed their Certificates of post-petition debtor education. Dckts. 183, 184. The Debtors' final certifications

have not been filed.

Notwithstanding have just completed a Chapter 13 Plan and being on the verge of discharging $403,409.37 in unsecured claims (Trustee's Final Report ¶ 10, Dckt. 179), Debtors apparently have jumped at the chance to incur debt at 17.03% interest to purchase a late model Cadillac. The amount financed is $23,925.30, but after having to pay the 17.03% interest, the total contract payments will be $42,618.64 (including Debtors' $4,000 down payment). The payments will stretch over six years, with the car being almost ten years old when it is finally paid off.

The financial reasonableness is even worse when one considers the value of the vehicle. Debtor has provided a portion of the Kelly Blue Book Report for the vehicle. While including the pages of the Report describing the vehicle, Debtor left off the page showing the fair purchase price from a dealer. The court went to the Kelly Blue Book Website, used the $48,420 miles (which is double what Kelly Blue Book states would be the average mileage for this car, and discovered that Kelly Blue Book reports the Fair Purchase Price to buy this vehicle in the Sacramento area from a dealer is $20,834.00. The Installment Sale Contract (Exhibit A, Dckt. 192) states that the "cash price" being paid for the vehicle is $24,600.00. It appears that in addition to 17.03% interest, Debtor is paying a $3,000.00 (15%) premium to purchase the vehicle. The court estimates that when the financing is computed using the Kelly Blue Book Report fair purchase price, the effective interest rate under the Installment Sale Contract is 23%.

The court accepts the present Motion as one in which the Debtors "assumed" that since they completed the plan payments they could enter into whatever financing contract they desired. Technically, because the case is not yet closed, they cannot. However, the court's "authorization" is more technical then substantive under these facts, as the Debtors could merely re-execute the contract after the case is closed.

The Debtors wanting to incur this debt, and having completed their plan payments, the court will not impose its angst over this unreasonably expensive credit and authorize them to enter into the financing – since that is what they want and it does not have an impact on any plan in this case or payments to the creditors holding the debt to be discharged.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, Debtor having completed the Chapter 13 Plan, the time for filing objection to the Chapter 13 Trustee's Final Report having expired, no objections having been filed, Debtor desiring to obtain credit as part of their fresh start after completing a five year Chapter 13 Plan, Debtor's counsel having certified that grounds exist for granting such authorization, and review of the pleadings,

evidence, arguments of counsel,

IT IS ORDERED that the Motion is granted and Lisa Stoelting is authorized to obtain post-plan completion credit on the terms stated in the Retail Installment Contract filed as Exhibit A, Dckt. 192, in support of the Motion.

2. 12-35602-E-13 CLH-5 RONALD/KRISTINE COMER Cindy Lee Hill

MOTION TO SELL FREE AND CLEAR OF LIENS 4-16-15 [80]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 3435 Stoney Road, Rocklin, California

The proposed purchaser of the Property is Derek and Raechel Schepens ("Buyers") and the terms of the sale are:

1. Purchase price is $391,000.00

2. $4,000.00 deposit has been paid in escrow

3. The Buyers shall obtain a conventional loan for $305,000.00

4. The sale proceeds will pay real property taxes, satisfy the encumbrances of the first deed of trust held by Wells Fargo Bank, satisfy the real estate commission of Coldwell Banker and Keller Williams, satisfy closing costs.

5. The remaining balance would be held by Trustee until further order.

The Movant notes that the Property also has a second deed of trust held by US Bank. However, the court granted an order valuing the secured claim of US Bank at $0.00. The Movant further notes that the Property is also encumbered by property taxes.

The Movant states that they "will be unable to convey marketable title unless this court permits the sale free and clear of all claims, liens, and interest pursuant to 11 U.S.C. § 363." Dckt. 80, pg. 2, paragraph 11.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 24, 2015. Dckt. 88. The Trustee opposes on the ground that he is uncertain if the sale free and clear of loans is appropriate based on the current deed of trust of US Bank, N.A. The Trustee states that although the secured claim was valued at $0.00, in the event the case is dismissed or converted, US Bank NA will retain their secured claim filed as $67,303.59 until discharge. In the event of dismisal or conversion, US Bank NA's lien may be reinstated. The Trustee states he is unsure if sale free and clear is possible.

WELLS FARGO BANK, N.A.'S CONDITIONAL NON-OPPOSITION

Wells Fargo Bank, N.A. filed a conditional non-opposition on April 30, 2015. Dckt. 90. Wells Fargo Bank, N.A. states that they do not oppose the Motion if the following provision is added:

1. The non-opposition is contingent upon its secured claim being paid off in full pursuant to a payoff quote, or in accordance with any approval as authorized by Wells Fargo Bank, N.A.

DISCUSSION

The Motion appears to seek to sell Property free and clear of the liens. However, the Motion fails to state with particularity any grounds upon which the request for a "free and clear sale" is proper. Rather, it merely states, "Debtors will be unable to convey marketable title unless this court permits the sale free and clear of all claims, liens, and interests pursuant to 11 U.S.C. § 363." That is true of any person trying to sell property which is

encumbered by a lien.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1).

However, in this Motion, the Movant has not argued any of the grounds under 11 U.S.C. § 363(f). The Movant merely states in passing that they are seeking to sell the Property free and clear of all liens. This is not sufficient under Fed. R. Bankr. P. 9013 nor can the court grant such a release without legal justification – justification that the Movant has failed to provide. Additionally, given the uncertainty of whether a sale free and clear is permissible when a lien on property has been valued at $0.00, the failure of the Movant to plead with specificity further supports the court denying the request under 11 U.S.C. § 363(f). Therefore, the request to sell the Property free and clear of all liens under what the court presumes the Movant is attempting to do under 11 U.S.C. § 363(f) is denied.

However, this does not prevent the court from authorizing the sale pursuant to 11 U.S.C. § 363(b). FN.1.

FN.1. The court notes that the Movant cites to 11 U.S.C. § 363(c) as an additional ground for approving the sale. However, 11 U.S.C. § 363(c) deals with the sale or lease of property of the estate in the ordinary course of business for business debtors. Here, the Movant has not shown that they are business debtors nor that the sale of the Property is within the ordinary course of business.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Movant valued the Property at $190,000.00 on Schedule A. The proposed sale price is over double that valuation, providing for the satisfaction of Wells Fargo Bank, N.A.'s first deed of trust and benefit to the estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Ronald and Kristine Comer, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Ronald and Kristine Comer, the Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Derek and Raechel Schepens or nominee ("Buyer"), the Property commonly known as 3435 Stoney Road, Rocklin, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $391,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 82, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

3. 10-36206-E-13 LEONARD/TRUDY MIX — MOTION TO MODIFY PLAN
SDB-3 Scott de Bie — 4-13-15 [52]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 13, 2015 is confirmed. 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.

4. 14-29407-E-13 VINCENT GONZALES
GG-2 Gerald Glazer

CONTINUED MOTION TO DETERMINE THAT CASE MAY PROCEED PURSUANT TO FRBP SECTION 1016
1-20-15 [45]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 is denied.

Desiree Gonzales, personal representative of the Debtor, filed the instant Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 on January 20, 2015. Dckt. 45.

Ms. Gonzales states that on November 20, 2014, Judge Timothy Fall of the Yolo County Superior Court ordered that Ms. Gonzales is appointed special

administrator to be the representative of the decedent and his estate in the bankruptcy proceedings.

On December 21, 2014, the court ordered that the Debtor's personal representative, Ms. Gonzales, is successor in interest for this matter pursuant to Fed. R. Civ. P. 25 and Fed. R. Bankr. P. 7025. Dckt. 35.

Ms. Gonzales states that some of Debtor's children are residing at Debtor's residence and were doing so prior to Debtor's death. Yahnee Gonzales has been residing at the residence and is making the mortgage payment and helping with the upkeep. Ms. Gonzales is contributing $125.00 per month to make the plan payment. Schedule I and J have been amended to reflect the current financial status of the estate. Dckt. 48, Exhibit A.

Ms. Gonzales argues that due to the homestead exemption passing to Debtor's daughter, and the death benefits from retirement plans being exempt, the current pending plan is an efficient way to administer Debtor's estate. Debtor's estate has income to fund the plan and Debtor's daughter and administrator of his estate is willing to pay the monthly plan payments.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on February 17, 2015. Dckt. 53. The Trustee states that:

1. Four out of six scheduled unsecured creditors have filed claims,

2. The secured claimant to be paid directly has filed a claim showing no arrears;

3. The state court appears aware of the proceedings;

4. The plan payments are of modest amount ($125.00 per month); and

5. The representative of the Debtor could provide for an automatic deduction for the plan payment.

DEBTOR'S REPLY

The Debtor filed a reply on February 24, 2015. Dckt. 56. The Debtor's representative states that she is willing to provide for an automatic deduction of the plan payment. Debtor's representative reiterates that the homestead exemption passes down to Debtor's daughter. Furthermore, the Debtor's representative argues that the case can be prosecuted in good faith because the plan payments can me met and the estate is generating enough income to meet all of its expenses as well as the plan payments.

The current plan is an efficient way to administer Debtor's estate and creditors are treated appropriately, fairly, and quickly, as they would be in probate.

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 19,

2015 to allow the Debtor the opportunity to supplement the record. Dckt. 62.

To date, the Debtor has not filed anything in connection with the instant Motion. However, the court notes that the Debtor has filed an amended Plan and Motion to Confirm also set for hearing at 3:00 p.m. on May 19, 2015. Dckt. 65 and 66.

DISCUSSION

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

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

Movant has provided the court with no points and authorities or any legal argument as to why the Motion should be granted. In the Motion Movant did cite to several cases and to a California Code of Civil Procedure section for the proposition that a homestead exemption passes to the Debtor's (unidentified daughter). Movant argues that the Debtor's daughter intends to fund the Chapter 13 Plan.

Review of Rule 1016

The court begins with the plain language on the Rule, which provides that "if further administration is possible and is in the best interests of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bankr. P. 1016. For the court to allow the case to proceed, it must determine that it is possible to do so in the best interests of the parties – all of the parties, not merely heirs of the Debtor. (One would question whether the heirs of the Debtor are even "parties" to this consideration.)

This bankruptcy case was filed on September 19, 2015. The Debtor passed away on September 25, 2014, six days later. Motion, Dckt. 31. No plan was confirmed, no plan payment ever made, or any proceeding conducted in this bankruptcy court. The Petition was not signed by the Debtor, but signed by Debra Gonzales pursuant to a power of attorney.

On Schedules A and D it is stated that the Debtor owns one piece of real property, with a value of $225,0009.00, which secures a debt in the amount of $82,361.00. Dckt. 1 at 9, 14. No significant assets are listed on Schedule B. Dckt. 1 at 10-12. Debtor lists creditors having $70,435.00 of general

unsecured claims. Dckt. 1 at 16-18. Debtor had pension and retirement income which totaled $3,177.60 a month which was to be used to fund a plan.

Collier on Bankruptcy discusses the issue of continuing the administration of a Chapter 13 case following the death of a debtor when there is no confirmed plan as follows:

> "Nevertheless, since chapter 13 is viewed as a voluntary proceeding, in many cases, unless a plan was confirmed prior to the debtor's death, the case will be dismissed even if the debtor's estate has sufficient income to fund a plan. Indeed, at least one court has held that if the originally proposed plan cannot be confirmed after a debtor's death, the case must be dismissed because no one but the debtor may propose a plan under section 1321. [FN.3.] The same court held that the case could not be converted to chapter 7 because, under section 109, a probate estate is not eligible to be a debtor in a chapter 7 case. [FN.4.] Courts have also held that conversion, which would prevent creditors from reaching assets they could otherwise pursue, would not be in the interest of creditors and therefore would not satisfy the dictates of Rule 1016. [FN.5.] However, if a debtor has proposed a confirmable plan and that plan is still feasible after the death of the debtor, the court may allow the case to continue for the benefit of the debtor's estate. [FN.6.]
> ---
> FN.3
> Footnote 3. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999)
> .
>
> FN.4. [N/A]
>
> FN.5.
> Footnote 5. In re Hancock, 2009 Bankr. LEXIS 2174 (Bankr. N.D. Okla. Aug. 10, 2009); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).
>
> FN.6.
> Footnote 6. *In re Perkins*, 381 B.R. 530 (Bankr. S.D. Ill. 2007) (denying trustee's motion to dismiss and rejecting argument that Rule 1016 is inconsistent with the statute); *In re Stewart*, 52 C.B.C.2d 1197 (Bankr. D. Or. 2004) (completion of plan was in interest of creditors and debtor's heirs).
> ---

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1016.4.

In this case, the Bankruptcy Estate no longer has the income source, Social Security and retirement payments, with which to fund a Chapter 13 Plan. Instead, the Debtor's daughter will fund the Chapter 13 Plan. But for the largess (or non-bankruptcy financial interests) of the daughter there would be no funding for this Chapter 13 case.

The court does not stop its consideration of whether this bankruptcy case should continue, not withstanding the Debtor having died six days after it was filed, merely because the retirement funding source has also expired. It could

well be that another bona fide income basis, consistent with the Bankruptcy Code could exist. Schedule B does not list any insurance polices and none are disclosed by Movant in which the estate has any interest.

Movant cites the court to California Code of Civil Procedure § 704.995 in support of the statement, "Also pursuant to CCP Section 704.995, notwithstanding the bankruptcy and the continuation fo the exemptions in bankruptcy, the declare homestead passes to debtor's daughter Yahnee." Motion, Dckt. 45, pg. 3:13-15. On Schedule C, a declared homestead exemption was listed in the amount of $175,000.00. Dckt. 1 at 13.

An uncertified copy of a Homestead Declaration has been filed as part of Movant's Response. Movant's counsel purports to testify under penalty of perjury that this is a true and correct copy of such document, but he does not provide any testimony as to why or how he has personal knowledge of this document as required by Federal Rules of Evidence 601 and 602. This document purports to have been signed and notarized in 1998. The document has not been authenticated by a witness or as permitted under Federal Rule of Evidence 902(4) [self-authenticating certified copies of public records].

If the Homestead Declaration is an accurate document of what has been filed with the Yolo County Recorder, then the Homestead Declaration was recorded on September 15, 1998, almost 17 years to the date prior to the filing of the instant bankruptcy case.

On Schedule J the Debtor lists no dependants. Dckt. 1 at 23. On Schedule I the Debtor does not list any income from anyone else residing at the property in which the home. Dckt. 1 at 23-24. Movant has filed what she states are amended schedules I and J. Dckt. 36. These clearly are not amended schedules I and J, correcting errors in the Debtor's income and expenses as of the commencement of this case. When the case was commenced Debtor did have the retirement income. Rather, these are attempted "supplemental" schedules I and J "showing post-petition chapter 13 income as of the following date: [date of changed income and expenses]. Official Form B 6I and 6J, Dckt. 36.

Movant now asserts in the Supplemental Schedule I that the Debtor's family will contribute $1,600.00 a month toward the expenses for their living at the home. One has to question whether such $1,600.00 income was being provided the Debtor before the commencement of this bankruptcy case. This $1,600.00 contribution is coincidentally exactly the amount to make the requirement monthly mortgage payment, Chapter 13 Trustee's expenses, and Debtor's Counsel's attorneys' fees to be paid through the plan. This still leaves nothing (a proposed 1% dividend in the unconfirmed Chapter 13 Plan, Dckt. 5) for distribution to creditors holding general unsecured claims.

The Motion states, but no evidence is provided by the court that "Yahnee Gonzales has been residing at 991 Farmham Avenue, Woodland, CA and is making the mortgage payment and helping with the upkeep of the property." Motion, Dckt. 45. No allegation is made, and no evidence is presented as to what is meant by "residing at," how long that has occurred, and how such relates to the proper application of California Code of Civil Procedure § 704.995.

Movant seeks to prosecute the Chapter 13 Plan proposed in this case on September 19, 2015. In it the Debtor proposed making monthly plan payments of $125.00 for a period of 36 months - which payments total $4,500.00. In addition

to the Chapter 13 Trustee's fees (which will be estimated at 8% of the monthly payment), the Debtor also proposes to pay his attorney $3,000.00 for prosecuting this Chapter 13 case. The only other creditors to be paid are the general unsecured claims, with a 1% dividend on an estimated $70,000.00 in claims – for an aggregate $700.00 dividend. With a net monthly plan payment of $115.00 (8% for Trustee's fees equals $10.00 a month), the 36 months of plan payments provides $4,140.00 to pay Counsel and the general unsecured claims. Based on this rough calculation, the following person will receive the respective percentages of the plan distributions:

Counsel for Debtor.....75%, totaling $3,000.00

Unsecured Claim Dividend.....25%, totaling $1,140 (1.6% dividend).

RULING

The court first notes that there is little if anything accomplished in this Chapter 13 case other than paying Debtor's counsel. There is no meaningful reorganization of the Debtor's finances (such as curing mortgage arrearage, paying non-dischargeable taxes, restructuring outrageous interest rates for person loans). Second, there appears to have been little thought to the Movant properly administering the property of the estate – the real property. Rather than dealing with this as property of the estate and recovering fair rental value from all of the family members, Movant seeks only to eek out enough to make the minimum payment necessary to pay Debtor's counsel - irrespective of the actual rental value for the various persons who want to live in the property.

The court is also troubled by having a bankruptcy proceeding, which was only days old when the bankruptcy case was filed for the Debtor (with Movant signing the documents pursuant to a power of attorney) supplanting the California Superior Court in administering this as a normal probate proceeding. There being no bankruptcy law reasons for proceeding as a Chapter 13 (other than obtaining a discharge for paying creditors nothing through the bankruptcy case), the intrusion on the state law and state judicial system is not proper. There is no good faith, bona fide reorganization or restructuring of the Debtor's finances. There is only a discharge and avoiding of probate.

Further, for this court to proceed, it will have to determine California Probate law issues concerning the application of California Code of Civil Procedure § 704.995 following the post-petition death of a debtor and a homestead exemption which appears to be claimed by someone who is not a debtor in this bankruptcy case.

On this last point, this case has the scent of persons behind the scenes attempting to use the Debtor as puppet to obtain the benefit of bankruptcy for the non-debtors, while they safely hide themselves and their finances from the court. To the extent that Movant's arguments are correct that under California law all of the assets are exempt, then the experienced California Superior Court judge conducting the probate proceedings will be able to much more expeditiously properly administer California law then this court and a 36 months Chapter 13 Plan or a Chapter 7 liquidation (if the Movant were to want to convert the case to one under Chapter 7).

Jurisdiction was granted to the district courts and bankruptcy courts to

the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

> (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

A bankruptcy judge's exercise of the federal judicial power is considered in light of core and non-core (related to) jurisdiction created by Congress and limited by the United States Constitution. *See Stern v. Marshall*, 564 U.S. ____ , 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

Even outside of bankruptcy the Supreme Court has recognized that there are areas of state law that federal courts should not unnecessary intrude upon. One of the principal areas of law in which the Supreme Court has directed that the lower courts carefully consider the exercise of federal court jurisdiction arises with respect to domestic relation (family law) matters. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004). "Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432-434, 80 L. Ed. 2d 421, 104 S. Ct. 1879 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts." *Id.* at 13.

The resolution of state probate law is of a similar nature to domestic relations and family law. Though Congress has properly (at least in the eyes of bankruptcy attorneys) given the federal court to determine almost any state law issue which has an impact on the bankruptcy case, there must be some federal bankruptcy purposes served, not merely a party's desire to have a court which is not experienced in the state law issues use bankruptcy as an alternative statutory scheme.

Here, but for a bankruptcy case having been filed for Debtor by Movant six days before his death, the California Superior Court would be handling this as

a routine probate (if all as alleged by Movant is accurate). The plan which Movant seeks to advance is based on California exemption and probate law concerning the Debtor's residence and the rights asserted by at least one of the Debtor's children. While this court has no reservation about being able to learn, understand, and properly apply state law, there is no reason for the intrusion on these uniquely state law issues by a federal court pursuant to 28 U.S.C. § 1334 when there is no reorganization or restructuring taking place under Chapter 13 of the Bankruptcy Code. Rather, it creates the appearance that the federal court is being use to circumvent the normal state court process solely for the purpose of preventing the state court from fulfilling its duties under the California Constitution. FN.1.

FN.1. This court has also addressed the good faith requirements for there being a substantive bankruptcy purpose for this court exercising jurisdiction in the context of "Chapter 20" cases. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

Significantly, the court has to consider whether the continued administration of the case in bankruptcy is "in the best interests of all parties." Fed. R. Bankr. P. 1016. While the Debtor could claim various exemptions in this bankruptcy case, such exemptions may not continue into probate. Movant assures the court that all of the assets are exempt and can continue to be claimed as exempt in any probate proceeding. If so, then it does not matter to Movant or the heirs whether they get the assets through the probate proceeding or this court. If there is no difference, one would think that getting the assets sooner through probate (usually a 180 day notice period) would be better than after approximately 1155 days through the completion of a Chapter 13 Plan that pays nothing to creditors. If the Movant's assurances are inaccurate, then clearly continuing to administer a Chapter 13 bankruptcy case in which there is no restructuring of the Debtor's finances for a debtor who died six days after the case was filed for him would not be in the best interests of the creditors.

Furthermore, the Debtor has failed to file any supplemental pleadings to explain how administration in the bankruptcy is better suited for the estate rather than probate.

REQUEST TO DISMISS CASE

On May 11, 2015, the attorney for the "Debtor" filed a request that the case be dismissed. It state that the "Debtor" (who is deceased) requests that the case be dismissed. While that is a physical and legal impossibility, it does demonstrate that there is no bona fide, good faith attempt to restructure the financial obligations of the deceased Debtor in this case.

CONCLUSION

Therefore, the court denies the Motion and orders that the Chapter 13 case be dismissed. While one may argue that conversion to a Chapter 7 would allow an independent fiduciary to consider the issues, such a conversion would be of equal unnecessary intrusion on the normal state court probate process for no significant federal interest. From the proofs of claims filed to date, which total approximately $53,000.00, each of the creditors are sophisticated parties

who are able to properly represent any claim they may have in the state probate court. There is no need for a Chapter 7 trustee to administer property of the estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 filed by Debtor's representative 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, the court having determined that further administration is not possible and that continuation of this case is not in the best interests of creditors.

5. 14-29407-E-13 VINCENT GONZALES — MOTION TO CONFIRM PLAN
GG-3 Gerald Glazer — 4-7-15 [66]

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

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Vincent Gonzales ("Debtor"), the deceased debtor, through a person who is identified as his state court personal representative, filed the instant Motion to Confirm the Amended Plan on April 7, 2015. Dckt. 66.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 27, 2015. Dckt. 71. The Trustee objects on the following grounds:

1. The proposed plan payments are substantially higher than the previously proposed plan by $250.00. The declaration does not appear to prove that non-declarants Yahnee Gonzales and Desiree Gonzales's brother and sisters are able and willing to contribute the amounts needed to make the payment.

2. The Debtor has not explained why it is in the best interest of the parties to have the case proceed in the bankruptcy rather than in probate.

DISCUSSION

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

The Trustee's objections are well-taken. While the declaration does suggest that the plan payments may be able to be made by non-Debtors, the declaration does not sufficiently provide evidence that the non-declarants Yahnee and Desiree Gonzales' brothers and sisters are able to help fund the plan. It is the declarants stating that the non-declarants can contribute but without their testimony, it is mere speculation.

Furthermore, the Debtor still has not provide sufficient explanation or justification that the instant bankruptcy, rather than probate, is better suited. While there is mention that the creditor would receive the same treatment, there is still no argument or evidence that continuing the bankruptcy is, in fact, the better suited means over probate.

REQUEST TO DISMISS CASE

The court has determined that this case cannot continue to be administered and that continuation of this case is not in the best interests of creditors. On May 11, 2015, the attorney for the "Debtor" filed a request that the case be dismissed. It state that the "Debtor" (who is deceased) requests that the case be dismissed. While that is a physical and legal impossibility, it does demonstrate that there is no bona fide, good faith attempt to restructure the financial obligations of the deceased Debtor in this case.

CONCLUSION

Therefore, due to the failure to provide evidence that non-declarants can and are willing to help fund the plans and the Debtor failing to provide evidence that continuing with the bankruptcy is better suited over probate, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

6. 15-21707-E-13 JUDITH LAYUGAN **OBJECTION TO CONFIRMATION OF**
Richard Sturdevant **PLAN BY BOSCO CREDIT LLC**
4-23-15 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. By the court's calculation, 26 days' notice was provided. 14 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.

Bosco Credit LLC ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan is based on the Debtor avoiding the lien against the property and paying the Creditor's claim as wholly unsecured. The Creditor alleges that the actual value of the property is higher than that given by the Debtor. Furthermore, the Creditor requests that the valuation of the property be preserved from the effect of confirmation in light of the adversary proceeding.

The Creditor's objections are well-taken. The crux of the Creditor's objection is that the plan relies on the court valuing the Creditor's claim. However, no Motion to Value has been filed to date by the Debtor. Without the

court valuing the Creditor's secured claim, the plan is not feasible or viable because the Debtor cannot afford the plan without the court valuing Creditor's claim. See 11 U.S.C. § 1325(a)(6).

Therefore 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 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.

7. 15-21707-E-13 JUDITH LAYUGAN
DPC-1 Richard Sturdevant

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-15 [17]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2015. By the court's calculation, 29 days' notice was provided. 14 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.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's proposed plan relies on a Motion to Value the Secured Claim of Franklin Credit Management Corp. However, no Motion to Value has been filed and Debtor's plan does not have sufficient monies to pay the claim.

2. At the Meeting of Creditors, the Debtor indicated that the value of the real property commonly known as 4448 H St.,

Sacramento, California is based on comparable sales in her neighborhood, not her personal opinion. However, no list of comparable values have been provided.

3. The Debtor at the Meeting of Creditors stated that she is not certain of the amount of the first deed held by Ocwen Loan Servicing, Inc. The Debtor stated that she recently modified the loan and is not aware if the full balance on the note is listed or whether a portion of the loan is owed at the end of the plan.

4. The proposed plan fails to provide for Bank of America accounts #8832 and #9691 which are both secured by real property commonly known as 8864 La Riviera Drive, #D, Sacramento, California.

5. The plan calls for payment of $1,500.00 in attorney fees yet does not provide for a monthly dividend for such. The Disclosure of Compensation of Attorney for Debtors appears to not include some services required under Local Bankr. R. 2016-1(c) such as relief from stay actions.

The Trustee's objections are well-taken. First, the Debtor has not filed a Motion to Value the Secured Claim of Franklin Credit Management. A review of the proposed plan shows that it relies on the court valuing the creditor's secured claim at $0.00. Without this Motion, the plan is not feasible and the Debtor cannot make the payments under the plan as required by 11 U.S.C. § 1325(a)(6).

Second, the Debtor indicated at her 341 Meeting that the valuation of the real property known as 4448 H Street, Sacramento, California was not based on her own opinion but rather based on comparable sales that the Debtor has not provided. Without these baselines or evidence to support this valuation, the court and Trustee cannot determine if the proposed plan is a reflection of the Debtor's financial reality when one of the more substantial assets has not be valued with any evidence.

Third, the uncertainty of the claim amount of Ocwen Loan Servicing based on the Debtor's recent loan modification raises multiple concerns. The court notes that the Debtor has not sought the court's authorization to enter into a loan modification nor is there a pending Motion to Approve Loan Modification. Without court approval, the court is uncertain what authority the Debtor is operating under to enter into such modification. Additionally, the feasibility and viability of the proposed plan cannot be determined when a secured claim's value is uncertain. The court and Trustee are unable to determine if the proposed plan payments can sufficiently cover the full amount of the creditor's secured claim as required by 11 U.S.C. § 1325(a)(2) since it is provided for in the plan.

Fourth, 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.

Lastly, while not grounds to deny confirmation, the uncertainty of the Debtor's attorney fee arrangement also raises concerns over whether the proposed plan is a reflection of the Debtor's true finances. Further, the ambiguities in the agreement raises concerns over whether Debtor's counsel is providing for all necessary services to the Debtor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

8. 15-21707-E-13 JUDITH LAYUGAN
JCW-1 Richard Sturdevant

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
4-23-15 [23]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. By the court's calculation, 26 days' notice was provided. 14 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.

Bank of America, N.A., opposes confirmation of the Plan on the basis that the proposed plan does not provide for the arrearages owed to Creditor on either of the two liens owed to the Creditor by the Debtor. The Debtor's plan does not provide for payments to the Creditor and instead proposes to attempt to short sell the property.

The Creditor states that while it has no objection to the Debtor short selling the property, the Creditor does object if Debtor does not intend to continue making regular post-petition payments. The proposed plan does not propose a time period to obtain approval for a short sale or an alternative if a short sale does not happen.

The Creditor's objections are well-taken. The Creditor alleges 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.

Here, the Debtor's plan does not provide for the Creditor's claim and instead suggests a short sale of the property to satisfy the Creditor's claim. However, as the Creditor notes, the proposed plan does not provide any specifics on the time frame, the authorization, or the alternative to the short sale. The plan does not sufficiently provide for the treatment of the Creditor.

Therefore, 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 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.

9. 15-20810-E-13 MLA-3 — VASILIY/YELENA KUMANSKIY — Mitchell Abdallah — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. — 4-22-15 [42]

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, and Office of the United States Trustee on April 22, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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 ----------.

The Motion to Value secured claim of Bank of America, N.A., previously doing business as BAC Home Loan Servicing ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Vasiliy and Yelena Kumanskiy ("Debtor") to value the secured claim of Bank of America, N.A., previously doing business as BAC Home Loan Servicing ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6565 Thalia Way, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $295,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $332,218.00. Creditor's second deed of trust secures a claim with a balance of approximately $92,903.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Vasiliy and Yelena Kumanskiy ("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 Bank of America, N.A., previously doing business as BAC Home Loan Servicing secured by a second in priority deed of trust recorded against the real property commonly known as 6565 Thalia Way, Citrus Heights, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $295,000.00 and is encumbered by senior liens securing claims in the amount of $332,218.00, which exceed the value of the Property which is subject to Creditor's lien.

10. 14-32313-E-13 SALVADOR/ANGELINA LEON — MOTION TO CONFIRM PLAN
TOG-6 Thomas Gillis — 4-6-15 [57]

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

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Salvador and Angelina Leon ("Debtors") filed the instant Motion to Confirm the Amended Plan on April 6, 2015. Dckt. 57.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 29, 2015. Dckt. 69. The Trustee objects on the ground that the plan relies on a Motion to Value Collateral of Navy Federal Credit Union.

DISCUSSION

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

On May 5, 2015, the court granted the Debtor's Motion to Value Collateral of Navy Federal Credit Union, valuing the secured claim at $0.00. Therefore, the Trustee's objection is overruled.

Therefore, with all objections resolved and a review of the plan showing that it is a viable and feasible plan, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 6, 2015 is confirmed. 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.

11. 13-24415-E-13 CAH-5 ANTONIO/MARIA HERNANDEZ C Anthony Hughes MOTION TO APPROVE LOAN MODIFICATION 4-16-15 [120]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Antonio and Maria Hernandez ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $448.00 a month to $150.24 a month. The modification will: (1) reduce the principal balance from $46,269.82 to

$12,250.00; (2) set the interest rate at 2.000%; (3) set the repayment term to 278 months; and (4) include the taxed ans insurance in the lowered $150.23 monthly payments.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 17, 2015.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Antonio and Maria Hernandez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Antonio and Maria Hernandez ("Debtor") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 1312 Rencher Street, Clovis, New Mexico, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 123.

12. 15-21125-E-13 DPC-1 STEPHEN/MARIE THOMAS Eammon Foster

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-15 [17]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. By the court's calculation, 33 days' notice was provided. 14 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.

The court's decision is to continue the Objection to 3:00 p.m. on June 2, 2015.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The First meeting of Creditors was continued to May 14, 2015 because the Debtor did not recollect details regarding the Chapter 13 plan. The Debtor had not filed 2014 taxes at the time of the first scheduled Meeting of Creditors. The Debtor has since filed the taxes.

2. The plan may not pay unsecured creditors what they would receive in the event of a Chapter 7 liquidation. The Debtor's non-exempt equity totals $52,350.00 according to Schedule B and C. Debtor's plan proposes to pay the unsecured creditors no less than a 21% dividend where the plan estimates unsecured at $134,978.22 which would be a $28,345.22 dividend.

3. The Debtor's plan may not pay unsecured creditors the amount required under 11 U.S.C. § 1325(b). The Debtor Marie Thomas filed a Chapter 7 on August 29, 2014 which was dismissed after the United States Trustee filed a motion to dismiss under 11 U.S.C. § 707(b). Case No. 14-28836. The Means test form in that case had shown monthly disposable income of $1,418.76 but the Debtor had claimed several additional expenses, and the United States Trustee had opposed them and argued the Debtor could pay creditors $1,590.00 per month. The court granted the motion. Case No. 14-28836, Dckt. 37.

   The Trustee provides the following comparison in expenses from

those listed in the Debtor's prior Chapter 7 and the instant case:

Expense	Prior Schedule J	Current Schedule J
Medical and Dental	$150.00	$333.00
Charity	$10.00	$800.00

The Trustee states that there is no proof of expenses nor any explanation from the Debtors concerning the substantial increase in expenses.

The Trustee requests that the hearing on the instant Objection be continued to 3:00 p.m. on June 2, 2015 to allow the Debtor to appear at the continued Meeting of Creditors and to allow the Debtor to provide supplemental evidence to resolve the Trustee's objections.

In light of the Trustee's request and the pending Meeting of Creditors, the court continues the hearing to 3:00 p.m. on June 2, 2015.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to 3:00 p.m. on June 2, 2015.

13. 11-23426-E-13 STEPHEN/JANET TOLLNER MOTION TO MODIFY PLAN
TJW-1 Timothy Walsh 3-21-15 [71]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2015. By the court's calculation, 59 days' notice was provided. 35 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.

Stephen and Janet Tollner ("Debtors") filed the instant Motion to Confirm the Modified Plan on March 21, 2015. Dckt. 71.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 29, 2015. Dckt. 77. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors have not filed supplemental Schedules I or J in support of the proposed plan. The Debtors scheduled Chase Home Finance in Class 3 of the confirmed plan and proposed modified plan the surrender of property at 443 Rolling Oak Drive, Vacaville, California. However the Debtors have not reported a change of address. Additionally, Deutsche Bank National Trust filed Proof

of Claim No. 17 listing this property. Chase Home Finance was amending Proof of Claim No. 22 in light of a loan modification. However, the court has not authorized any loan modification and it appears that the Debtors still reside at the property.

2. The proposed monthly dividend for the Class 2 creditor is not sufficient. The Debtor is adding the secured part of Internal Revenue Service's claim as a Class 2 Claim. Proof of Claim 29. The claim is for $11,211.99 with 4% interest. The proposed monthly dividend is $210.00 per month. Only ten months remains in the Debtors' plan so the monthly payment is insufficient to pay the plan in full.

DISCUSSION

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

The Trustee's objections are well-taken. First, the Debtors have failed to provide any supplemental schedules or change in address in light of their alleged surrender of the property. The proposed plan does not appear to reflect the Debtors' financial reality in light of the Debtors appearing to still be residing in the property they are proposing to surrender as well as relying on a modification that the court has yet to approve. Without court approval or more recent schedules reflecting the current finances of the Debtors, the court cannot determine the feasibility nor viability of the plan.

Second, 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.

Here, the Debtors do provide for the secured claim of the Internal Revenue Service but the proposed plan does not sufficiently pay the full amount of the claim as required by 11 U.S.C. § 1325(a)(5)(B).

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 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.

14. 14-32528-E-13 SHELLEY HUSEN **MOTION TO CONFIRM PLAN**
JME-1 Steele Lanphier **4-6-15 [33]**

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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Shelley Husen ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 6, 2015. Dckt. 33.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 23, 2015. Dckt. 38. The Trustee objects on the ground that the Debtor's plan in § 2.06 fails to indicate if the Debtor will seek court approval for attorney fees by complying with Local Bankr. R. 2016-1(c) or file and serve a motion in accordance with 11 U.S.C. §§ 329 and 330. The proposed plan fails to provide a monthly dividend for attorney fees.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the proposed plan shows that the Debtor failed to indicate whether the attorney's fees will be sought through compliance with Local Bankr. R. 2016-1(c) or through separate motion in accordance with 11 U.S.C. §§ 329 and 330. Furthermore, the proposed plan does not provide for any dividend to administrative expenses in § 2.07 of the plan.

The Debtor's Statement of Financial Affairs states that she paid, pre-petition, $2,000.00 to Debtor's attorney. Dckt. 1. Additionally, the Debtor's Disclosure of Compensation of Attorney for Debtor states that the Debtor's attorney is charging $4,000.00 for legal services, with $2,000.00 paid prior to filing and $2,000.00 remaining to be due. Dckt. 1. Looking at the Debtor's previously confirmed plan, the plan provided for attorney's fees through Local Bankr. R. 2016-1(c) and for a dividend of $150.00. Dckt. 7.

It appears that this may have been a mere scrivener's error on behalf of the Debtor. However, the Debtor has not filed any response to the Trustee's objection. Without clarification, the court nor Trustee can determine what the Debtor's intentions are concerning the remaining attorney's fee balance nor whether the plan is feasible if they were meant to be included. Therefore, the plan cannot be confirmed

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

15. 15-21729-E-13 JIM SINGH
DPC-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-22-15 [25]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2015. By the court's calculation, 27 days' notice was provided. 14 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.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's plan fails the Chapter 7 liquidation analysis. The Debtor's non-exempt equity totals $9,001.00 in a 2008 Mercedes Benz. The Debtor is proposing a 66% dividend to unsecured creditors, equaling approximately $8,091.00. The Trustee states that there may be more non-exempt interest in Debtor's real property known as 3104 Explorer Drive, Sacramento, California. The Debtor lists the value of the property to be $190,000.00

and secured liens of $66,268.00, leaving $132,732.00 in exposed equity. The Debtor states that he owns a one-half interest in the property with the other half held by his non-filing spouse. Debtor claims an exemption of $132,732.00 pursuant to California Code of Civil Procedure § 704.730(a)(3). However, at the Meeting of Creditors, the Debtor stated that he and his non-filing spouse are not of age to be eligible for the claimed exemption.

2. The proposed plan fails to provide for the secured claim of Golden One Credit Union who holds a lien against the 2008 Mercedes Benz.

3. The Debtor may not be able to make the plan payments since the plan does not provide for the secured claim for Golden One Credit Union nor an expense on Schedule J for any monthly payments. At the 341 Meeting, the Debtor informed the Trustee that he has two to three years remaining on the loan and the payment being approximately $350.00 per month.

The Trustee's objections are well-taken. First, it appears that the Debtor may have non-exempt equity in both the Mercedes Benz and the real property. The Debtor fails to claim an exemption on the vehicle while the claimed exemption on the real property appears to be improper. The Trustee has filed an Objection to Debtor's Exemptions which is set for hearing on June 2, 2015. Dckt. 21. With the potential of such non-exempt equity, the Debtor fails the Chapter 7 liquidation analysis of 11 U.S.C. § 1325(a)(4). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

Second, 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 Golden One Credit Union secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Lastly, the Trustee's third objection raises concerns over whether the Debtor's plan and schedules reflect his actual financial reality. While the Debtor does not have to provide for the secured claim of Golden One Credit Union, the absent of the monthly payment on the Debtor's Schedule J raises concerns that the finances states in the Debtor's schedule is not accurate. Without an accurate picture of the Debtor's finances, the court nor the Trustee can evaluate the viability or feasibility of the proposed plan.

Therefore, the objection is sustained and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. 15-22829-E-13 DANIEL/MALIA PALU
SJS-1 Scott Johnson

MOTION TO VALUE COLLATERAL OF CAPITAL ONE, N.A.
4-28-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Capital One, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $3,913.00.

The Motion filed by Daniel and Malia Palu ("Debtor") to value the secured claim of Capital One, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Nissan Altima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,913.00 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 lien on the Vehicle's title secures a purchase-money loan incurred in September 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,937.00. FN.1. 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 $3,913.00. *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.

FN.1. The court notes that, while the Debtors state in their Declaration that the lien was incurred in September 2010, the Motion itself does not state when the lien was incurred nor that it is, in fact, more than 910 days prior to filing the instant case. The Debtors and Debtors' counsel in the future should insure that they "state with particularity" in the Motion the grounds for the relief sough, as required by Fed. R. Bankr. P. 9013.

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 Daniel and Malia Palu ("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 Capital One, N.A. ("Creditor") secured by an asset described as 2007 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $3,913.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $3,913.00 and is encumbered by liens securing claims which exceed the value of the asset.

17. 10-30532-E-13 PAUL/ANGELA ACCOMAZZO MOTION TO SELL
SDB-5 Scott de Bie 4-29-15 [63]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2015. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

However, in light of this Motion being one to correct a minor error in the prior motion by which an order authorizing the sale of this Property was issued, the court *sua sponte* shortens the notice period to 20 days.

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

The Motion to Sell Property is granted.

Paul and Angela Accomazzo ("Movant") filed the instant Motion to Sell Property on April 29, 2015. Dckt. 63. The Movants state in the Motion that the court had previously authorized the sale of the Property on March 24, 2015. Dckt. 60. However, the Movants state that the original motion misstated the

purchase price as $340,000.00 instead of the actual $349,000.00. Therefore, the Movants have filed the instant Motion to correct that error.

The Bankruptcy Code permits the Movants to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 219 Walnut Street, Woodland, California

The proposed purchaser of the Property is Joel Del Rio and Maria Salmeron and the terms of the sale are:

1. Purchase price is $349,000.00

2. All creditors with liens and security interests encumbering the Property not voluntarily released will be paid in full simultaneously with the transfer of title to the Buyer or held by the escrow holder until agreement by the parties or further court order.

3. The all costs of sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds.

4. Sale price is all in cash

5. Debtors' confirmed plan calls for payment of $23,000.00 from the net proceeds of this sale to the Trustee in furtherance of the plan.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on March 9, 2015.

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

MOTION TO CORRECT ERROR IN PRIOR MOTION

In substance, the present motion seeks to correct an error in a prior motion approving the sale of the property and order thereon. The prior motion incorrectly stated the sales price to be $340,000.00. The confirmed plan provides for $23,000.00 of the net proceeds from the sale to be paid into the Chapter 13 Plan.

CONCLUSION

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The terms of the proposed sale provide for fair market value of the Property and provides for the proceeds to be used towards the plan. Therefore, based on the foregoing, the Motion is granted.

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

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

The Motion to Sell Property filed by Paul and Angela Accomazzo, 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 Paul and Angela Accomazzo, Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Joel Del Rio and Maria Salmeron or nominee ("Buyer"), the Property commonly known as 219 Walnut Street, Woodland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $349,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 66, and as further provided in this Order.

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

3. The Chapter 13 Debtors be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

18. 11-27933-E-13 JIMMY LOVE **MOTION TO MODIFY PLAN**
DEF-7 David Foyil **3-4-15 [108]**

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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2015. By the court's calculation, 76 days' notice was provided. 35 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 grant the Motion to Confirm the Modified Plan.

Jimmy Love ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 4, 2015. Dckt. 108.

On April 24, 2015, the Debtor filed a supplemental declaration. Dckt. 119. The Debtor states that his income was calculated by reviewing his profit and loss statements. As such, he states that his income is $3,858.62 per month and expenses are $3,027.52, leaving $831.10 in disposable income. Dckt. 120. Debtor also states that the Schedule J attached as an exhibit does not include a mortgage payment because the first deed of trust was listed as a Class 1 Creditor. The proposed plan lists the first deed of trust as a Class 4 Creditor now.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on May 5, 2015. Dckt. 124. The Trustee objects on the ground that the

Debtor has not accurately authorized all mortgage payments made by the Trustee under the confirmed plan in § 6.04 of the plan. The Trustee has paid to date a total of $67,019.62 in Class 1 ongoing mortgage payments and $12,923.07 in pre-petition arrears. A total of $2,913.59 in pre-petition mortgage arrears remains to be paid pending confirmation of the plan for a total of $15,836.66. The proposed plan does not authorize any of these prior payments.

Trustee states that he has no objection to this being corrected in the order confirming.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objection on May 8, 2015. Dckt. 127. The Debtor admits that the amounts set forth in the additional provisions is incorrect. The Debtor consents to the order confirming correcting this mistake with the following alternative provision:

> In months 1 through 48, Bank of America, N.A. (BAC Home Loans Servicing, LLP) 14609 Shake Ridge Road, Sutter Creek, CA 95685 shall be a Class 1 Creditor. In months 49 through 60 Bank of America, N.A. shall be a Class 4 Creditor. The total Class 1 ongoing mortgage payments to said creditor is $12,923.07. A total of $2,913.59 in pre-petition mortgage arrears remains to be paid pending confirmation of this plan for a total of $15,836.66.

DISCUSSION

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

The Trustee's objection is well-taken. It appears that the additional provisions does not accurately authorize the payments to Bank of America, N.A. However, this appears to be a mere scrivener's error. The proposed amendment by the Debtor appears to cure this oversight. Therefore, the order confirming can correct this error.

Therefore, following the amendment correcting the mortgage payments authorized in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the amendment correcting the

mortgage payments authorized to be paid by the Trustee in connection with Bank of America, N.A.'s claim, 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.

19. 15-21739-E-13 MILDRED/DAVID PRIEGO — **OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE**
APN-1 Sally Gonzales — **4-14-15 [22]**

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2015. By the court's calculation, 27 days' notice was provided. 14 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.

Capital One Auto Finance ("Creditor") opposes confirmation of the Plan on

the basis that:

1. The Creditor objects to the $28,000.00 valuation of its collateral, a 2015 Honda Pilot.

2. The Creditor objects to the Debtors' classification of its secured claim as one subject to 11 U.S.C. § 506(a) when the Creditor holds a purchase money security interest that was incurred less than 910 days prior to filing.

3. The Creditor also rejects that the Debtor has failed to provide pre-confirmation adequate protection payments.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Objection on April 22, 2015. Dckt. 26. The Trustee states that under the proposed plan, there is sufficient proceeds to pay both auto claims in full without any cram-down or modification of the loans and still complete timely.

DISCUSSION

The Creditor's objections are well-taken. The proposed plan appears to value the Creditor's claim without providing the full amount of the secured claim as well as the proposed plan does states that the Creditor's interest is not a purchase money security interest. A review of Creditor's Proof of Claim No. 6, the Debtors entered into a Retail Installment Sale Contract with the Creditor for the 2015 Honda Pilot on September 8, 2014, which is less than 910 days. As such, pursuant to the hanging paragraph of 11 U.S.C. § 1325(a), the Debtor cannot value the secured claim under 11 U.S.C. § 506(a).

Capital One has filed its proof of claim in the amount of $29,292.59. Proof of Claim No. 6. This is $1,292.59 higher than the amount state in the Chapter 13 Plan. It is the amount stated in the Proof of Claim, not the Plan, which is the amount to be paid, absent there being an order of the court determining the amount of the claim. Plan, Section 2A, ¶ 2.04.

While the Trustee states that the plan payments would be able to cover the full payments for both the Creditor's claim as well as the additional vehicle payment in Class 2 in full, the proposed plan incorrectly states the nature of the claim and proposes to reduce it to $28,000.00. Plan Class 2B.2. Claim.

The Plan provides for a reduction in the claim which has not been ordered by the court. This renders the plan unconfirmable. Plan ¶ 2.09(c).

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 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.

20. 15-22139-E-13 NANCY/DANIEL BALAGUY — CONTINUED MOTION TO EXTEND AUTOMATIC STAY
RS-1 Richard Sturdevant — 3-31-15 [11]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Nancy and Daniel Balaguy ("Debtor") seeks to have the provisions of the

automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. FN.1. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28542) was dismissed on March 2, 2015, after Debtor failed to confirm an amended plan within 75 days of the date of the entry of the order on the Trustee's Objection to Confirmation. *See* Order, Bankr. E.D. Cal. No. 14-28542, Dckt. 52, March 2, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

FN.1. The court is baffled by the Debtors' attorney's inclusion of a heading entitled "Memorandum of Points & Authorities" in his motion and placing citations, quotations, and legal arguments in the Motion. Local Bankruptcy Rule 9004-1(a) and the Revised Guidelines for Preparation of Documents ¶ (3)(a), which require that the motion, points and authorities, each declaration, and the exhibits be filed as separate electronic documents. However, the court, for purposes of this Motion only, waives this defect. Counsel should not count on such waivers being granted in the future.

APRIL 14, 2015 HEARING

At the hearing, the court granted the Motion on an interim basis through May 30, 2015. Dckt. . The court set a final hearing on the Motion for 3:00 p.m. on May 19, 2015, ordering any opposition to be filed and served on or before May 1, 2015 and replies by May 8, 2015.

SCHOOLS FINANCIAL CREDIT UNION'S OPPOSITION

Schools Financial Credit Union ("Creditor") filed an opposition to the instant Motion on May 1, 2015. Dckt. 33.

The Creditor argues that the information in the Motion is incomplete and misleading. The Creditor states that the information regarding the prior case is incomplete, citing the missing documents in the previous case, the improper service to the Internal Revenue Service, and the failure to get a plan confirmed due to the improper service.

The Creditor alleges that the statement by the Debtor in the instant Motion that there is no debt that would not be dischargeable in a chapter 7 is inaccurate because the Debtor lists priority debts, domestic support obligations, and student loans.

The Creditor further argues that the proposed plan in the instant case is inaccurate in that it misstates the amounts owed to certain creditors as well as the proposed plan does not match the Motion to Confirm.

The Creditor notes that the Debtors have not remedied the service defects that occurred in the prior case, pointing to the difference in the mailing matrix in the instant case with the Debtors' prior case. The Creditor highlights certain creditors who were accounted for in the prior case are not listed in the instant case.

The Creditor next argues that the Debtors have not accurately filled out schedules, Statement of Financial Affairs, and Form 22. The Creditor highlights

the differences between the instant case and the prior case and the information provided.

Lastly, the Creditor argues that the Debtors have failed to establish that circumstances have changed nor that they are likely to be able to confirm a plan. The Creditor argues that the failure to properly serve creditors, to provide for all claims, and for failing to provide accurate financial information.

In conclusion, the Creditor argues that the errors in the instant Motion, coupled with the inconsistencies and lack of accurate information in other documents is a showing of bad faith.

DEBTORS' RESPONSE

The Debtors filed a response on May 8, 2015. Dckt. 51.

Debtors argue that the Chapter 13 plan was filed in good faith. The Debtors state that they filed a skeletal petition on March 18, 2015 and the remainder of schedules and plan on April 2, 2105. The Debtors note that amendments will be necessary to both the schedules and plan to reflect more accurate information. The Debtors argue that the need for amendments is not in and of itself evidence of bad faith.

The Debtors argue that the Creditor has not rebutted the Debtors' good faith assertion. In the previous case, the Debtors assert that they made every required plan payment, filed all required documents, and made all amendments to schedules as requested by the Trustee. The reason for the denial in the previous case was procedural and not substantive.

The Debtors state that they will need to amend the instant plan to provide for the Creditor's claim and to adequately notice all parties.

The Debtors reiterate that the instant case was filed to allow the Debtors to retain possession of their vehicles in order to have transportation to and from work.

DISCUSSION

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtors' counsel was unable to get a plan confirmed as required by the court's prior order within 75 days of its issuance because the Debtors' counsel failed to properly serve the Internal Revenue Service as required by the local rules. The Debtors state that the instant case was filed in good faith because they are attempting to reorganize their debts and to save their home as well as their vehicles.

The Creditor's objections appear to be focused on more of the typographical and procedural defects rather than to the merits and substantive issues. While the court recognizes that true and accurate schedules and plans are necessary and that proper service to parties is a cornerstone for proper bankruptcy administration, the points raised by the Creditor do not raise any concerns that reflect that the instant case was not filed in good faith.

The court agrees that the instant case does require substantial amendments in order to accurately provide for all claims and to accurately reflect the Debtors' finances, but this does not translate to a showing of bad faith.

More significantly, the depth and scope of the Creditor's objections are not properly determined in the current Contested Matter. They will plan out the confirmation process, as well as motions to dismiss (possibly with prejudice) if Debtor does not truthfully and accurate disclose all information and does not prosecute this case in good faith.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties unless terminated by operation of law or further order of this court.

21. 14-32440-E-13 TINA BAUGHMAN **MOTION TO CONFIRM PLAN**
BLG-1 Bruce Dwiggins **3-24-15 [24]**

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

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

22. 11-29541-E-13 JESUS/NADINE CAMACHO MOTION TO MODIFY PLAN
SDB-2 Scott de Bie 4-13-15 [67]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2015. By the court's calculation, 36 days' notice was provided. 35 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.

Jesus and Nadine Camacho ("Debtors") filed the instant Motion to Confirm the Modified Plan on April 13, 2015. Dckt. 67.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on May 5, 2015. Dckt. 74. The Trustee objects on the ground that the Debtors may be delinquent under the plan. The plan has two payment terms which conflict with what has actually been paid. The Debtors have paid the Trustee $30,023.00 to date. The plan states that the Debtors have paid that amount into the plan through March 2015 and that beginning April 2015, the Debtors shall pay $350.00 per month for the remaining months. However, the Trustee states that he has not received a payment in April and therefore the Debtors are delinquent by $350.00 under the proposed plan.

DISCUSSION

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

The Trustee's objection is well-taken. Under the proposed plan, the Debtors were to begin making plan payments of $350.00 starting April 2015. To date, the Trustee has not received the $350.00 for the month of April. The Debtors' delinquency is evidence of their inability to comply with the terms of the plan as required by 11 U.S.C. § 1325(a)(6). Without any evidence that the delinquency has been cured, the plan cannot be confirmed.

Debtor's Response

On May 12, 2015 (Dckt. 77), Debtor's counsel states that a $350.00 payment was made on May 11, 2015. (No evidence of such payment has been provided to the court.) At the hearing, the Chapter 13 Trustee xxxxxxxxx.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 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.

23. 15-21449-E-13 DPC-1 BALBIR/SAWARNJIT SEKHON Jeremy Heebner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-16-15 [37]

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. By the court's calculation, 33 days' notice was provided. 14 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.

David P. Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The First Meeting of Creditors pursuant to 11 U.S.C. § 341 was continued from April 9, 2015 to May 14, 2015 because the Debtor did not recollect details regarding the Chapter 13 plan, so the Trustee's investigation into the financial affairs of the Debtor is not yet complete. Based on the status of the investigation, the Trustee argues that the Debtor may not be able to make the plan payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

2. The Debtor discloses on the petition a recent case, case no. 13-32417, a Chapter 11 case. Debtor's Chapter 11 was voluntarily dismissed on March 18, 2014. Dckt. 135. In the motion to dismiss, the Debtor states that the purpose for the motion was because the Debtors would be able to afford to make most of the payments outside of bankruptcy and that there was no longer a reason to keep the chapter 11 pending. The Trustee states that the Debtor has not explained why the instant case is now necessary based on the Debtor's prior representation.

3. Debtors' plan relies in part on the Motion to Value Collateral of Tri Counties Bank being successful, which was continued to May 19, 2015 at 3:00 p.m. the same day as this objection. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full, the Plan provides for the claim as Class 2(C) to be valued at #0.00, and therefore should be denied confirmation.

   That Motion has been dismissed

4. Schedule I shows income of $840.00 from "Disbursement from sale of hotel" (Dckt. 1, pg. 27, line 8h). The Debtor has not scheduled this as an asset on Schedule B so whether they are likely to receive this income to pay what the plan requires: $425.00 per month for 60 months should be questioned.

5. Schedule I shows income of $2,000.00 from "Support from son", the son is not named in Schedule I as to who is providing the support. The Statement of Financial Affairs lists income only from Social Security and sale of the hotel for the last two years and the year to date, so whether the Debtor has received, is receiving, or will receive this should be questioned.

6. The Trustee objects that unsecured creditors may receive more in a Chapter 7 than they would receive under the plan. The Debtor lists on Schedule B as an asset worth $1.00 an asset described only as, "Potential claim against creditors." The Trustee cannot determine whether this value is reasonable as the asset is not described with any specific details. The Debtor has not listed as an asset the proceeds from the sale of the hotel, which the Debtor appears to rely on these proceeds in the amount of $840.00 for 60 months during the plan, so the proceeds are apparently valued at least at $50,400.00, although once the asset is listed the value may become clearer.

7. The Trustee cannot determined if the attorneys fees to be paid are $2,800.00 or $2,400.00 based on the plan and the Rights and Responsibilities.

8. Debtors' plan may not be filed in good faith under 11 U.S.C. § 1325(a)(7). The Debtors have not explained why the prior case was dismissed, a sale appears to an insider, and why the proceeds of the sale were not disclosed. The Trustee asserts these are issues in the present case where the Debtors' income depends on these proceeds.

9. Debtors' are delinquent in plan payments in the amount of $425.00.

DISCUSSION

The Trustee's objections are well-taken.

The crux of all of the Trustee's objections revolve around the failure of the Debtors to fully disclose their finances and why the instant case is proper in light of the Debtors' previous Chapter 11 case. The Debtors' income in the instant case relies on the contribution of their son as well as from the sale of the hotel, both of which have not been fully disclosed to the court nor Trustee. The Debtors have not provided any declarations or records of sale to show what the terms of the sale of the hotel were and whether the sale was even proper. The sale of the hotel was to an insider, the Debtors' son. Additionally, the Debtors provide conflicting information on the amounts paid to the Debtors' counsel in both the instant case and the prior Chapter 11.

Furthermore, there are undisclosed assets, namely the "potential claim against creditors," which provides no information to the court or Trustee over the potential value of the claim. Without this information, it is impossible to determine if the Debtors, in fact, pass the liquidation analysis of 11 U.S.C. § 1325(a)(4).

The lack of information is only further exasperated by the fact that the Debtors are delinquent under the plan. This is evidence of the Debtors' inability to comply with the terms of the plan as required by 11 U.S.C. § 1325(a)(6).

The Debtors appear to believe that the mere filing of a bankruptcy case provides them leverage without the need to comply with the requirements and obligations of a Chapter 13. The Debtors appear, based on their failure to disclose assets and to inform the court of the finances, to be believe that the rules do not apply to them – this is incorrect.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

24. 15-21449-E-13 BALBIR/SAWARNJIT SEKHON MRL-1

CONTINUED MOTION TO VALUE COLLATERAL OF TRI COUNTIES BANK 3-9-15 [10]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March, 10 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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.

The Motion to Value secured claim of Tri Counties Bank ("Creditor") has previously been dismissed without prejudice by the parties pursuant to their Stipulation filed on April 20, 2015 (Dckt. 42).

The Motion to Value filed by Balbir Singh Sekhon and Sawarnjit Kaur Sekhon ("Debtors") to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4017 Calliope Court, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $400,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is

> less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 19, 2015. Dckt. 24. The court further ordered that opposition to the Motion shall be filed and served on or before April 17, 2014, and a Reply, if any, filed and served on or before April 24, 2015.

CREDITOR OPPOSITION

The Creditor filed an opposition to the instant Motion on April 7, 2015. Dckt. 31. The Creditor objects to the Motion on the grounds that the Debtors are improperly attempting to value its secured claim and that they improperly value the Property.

NOTICE OF WITHDRAWAL

The Debtors filed a Notice of Withdrawal on April 20, 2015. Dckt. 42. The Debtors state that the Creditor agrees to the withdrawal of the Motion. The Notice of Withdrawal is signed by counsel for both the Creditor and Debtors.

DISCUSSION

The Debtors and Creditor having filed a "Withdrawal of Motion" for the pending Motion, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be a Stipulation of the parties to dismiss this Contested Matter pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 9014 and 7041.

The parties having stipulated to the dismissal, this Motion has been dismissed, no order of the court required.

25. 15-21449-E-13 BALBIR/SAWARNJIT SEKHON MOTION TO DISMISS CASE
MRL-2 Jeremy Heebner 4-20-15 [41]

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)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. By the court's calculation, 25 days' notice was provided.

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 ----------.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Balbir and Sawarnjit Sekhon ("Debtor") has been filed by Debtors on April 20, 2015. Dckt. 41. The court issued an order on April 21, 2015 setting the Motion for hearing

at 3:00 p.m. on May 19, 2015. Dckt. 43.

The Debtors request the dismissal of the case without prejudice stating that the Debtors and Tri Counties Bank have agreed to attempt to resolve their issues outside of bankruptcy.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on May 5, 2015. Dckt. 48.

The Trustee first argues that the Debtors do not have an absolute right to dismissal, as the court has the authority to sua sponte convert the case to a Chapter 7 instead of dismissal when the motion is in bad faith, an abuse of the bankruptcy process, and justified a conversion.

Next, the Trustee argues that the Debtors have been in a Chapter 11 bankruptcy filed on September 23, 2013 (Case No. 13-32471). In that case, the Debtors also filed a motion to dismiss stating that the Debtors and creditor will attempt to resolve the issues outside of bankruptcy. The consistent pattern has caused concern that the Debtors are either abusing the bankruptcy process or that the Debtors are not being fully informed of the circumstances.

The Trustee continues by stating that there may be a possible language barrier which caused difficulty for the Trustee to examine the Debtors at the 341 Meeting. The Meeting was continued to May 14, 2015.

The Trustee next states that in both the instant case and the previous Chapter 11 the Debtors transferred interest in properties or business asserts prior to filing. In the Chapter 11, the Debtors reported transferred a convenience store in September 2011. In the instant case, the Debtors reported transferring a 69-room hotel, the Ponderosa Inn, to his son on July 18, 2014.

Lastly, the Trustee argues that the Debtors have been represented by Mikalah Liviakis in both bankruptcy cases who has been paid an undetermined amount of money. The Trustee is not certain the Debtors have benefitted from either case. In the Chapter 11, the Trustee states that there are conflicting amounts paid to counsel. According to the Statement of Financial Affairs, the Debtors report payments of $10,000.00 but on the Disclosure of Compensation of Attorney for Debtors, the attorney is reported to have been paid $23,000.00 (Dckt. 1). In the current case, the Debtors report having paid Mr. Liviakis "around $25,000.00." Dckt. 1, pg. 34, #9.

In the instant case, the Debtors report to have paid counsel $1,600.00 prior to filing according to the Statement of Financial Affairs. Dckt. 1, pg 34, #9. This conflicts with the plan where the attorney fees paid prior are reported as being $1,200.00.

The Trustee is uncertain what benefit the estate or Debtors will or have received in the prosecution of two separate bankruptcy proceedings, resulting in the request for voluntary dismissal of both.

The Trustee requests that either the case be converted to a Chapter 7 or to set a date for filing a motion to convert or a motion to disgorge attorney fees.

APPLICABLE LAW

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. 9th 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....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

Debtors commenced this Chapter 13 case on February 25, 2015. This is not their first Chapter 13 case. Debtors commenced a prior Chapter 11 case on September 23, 2013, in this District. Bankr. E.D. Cal. No. 13-32417. That case was dismissed on March 18, 2014. Debtors were represented in the prior bankruptcy case by the same counsel they are represented in this case.

The prior Chapter 11 case was dismissed at the request of Debtors. The Civil Minutes for the hearing on Debtors' motion to dismiss states that Debtors' son purchased the note secured by Debtors' residence, and apparently agreeing to reduce the amount of the debt secured by the residence. Further,

> Dismissal is in the best interests of the creditors and the estate because the debtors desire to continue operating the hotel property, desire to continue generating income from the property, and desire to continue paying their creditors in the ordinary course of business. The motion will be granted and the case will be dismissed.

13-32417; Civil Minutes, Dckt. 131. On Schedule A in the Chapter 11 Case, Debtors list owning a 69 room hotel, the Ponderosa Inn in Redding, California. Id., Dckt. 1 at 15.

When the current Chapter 13 case was filed on February 25, 2015, Debtors did not list owning the Ponderosa Inn on Schedule A. Dckt. 1 at 12. On Schedule I Debtors list $840.00 a month income for "Disbursement from sale of hotel." Id. at 27. On the Statement of Financial Affairs, Debtors list $840.00 in income for 2015 and $5,040.00 in income for 2014 (both "estimated")

from "Distribution from sale of hotel." Id. at 30.

In response to Question 10, Debtors states that "Debtor short [sold] his 69 room hotel...for $1.8mm. The liens against the property exceeded $2 million." Id. at 34. The purchaser of the property is identified as Sam Sekhon, the Debtors' son. No note, purchase contract, or other personal property for which Debtors have the legal right to $840.00 a month in "Distribution from sale of hotel."

When Debtors filed the Chapter 11 Case, they stated under penalty of perjury that the hotel had a value of $900,000.00. 13-32417; Schedule A, Dckt. 1 at 15. The secured debt against the property is stated to have been $1,768,224.15. Id. Though Heritage Bank of Commerce Bank is listed on Schedule D (Id. at 22) no proof of claim for this debt was filed. In the current case, Debtors state that the value of the property more than doubled during the several months following the dismissal of the prior case and just prior to the filing of this case.

In opposing the Chapter 13 Plan in this case, the Chapter 13 Trustee has interposed the following:

A. At the First Meeting of Creditors the Debtors did not recall details of their Chapter 13 Plan.

B. Debtors had not explained why the bankruptcy case was necessary, when requesting dismissal of the prior Chapter 11 Case they stated to the court that they could afford to make the payments (in light of their son having purchased the debt secured by their residence) to their creditors outside of bankruptcy.

C. Though listing $840.00 income from "Disbursement from sale of hotel," Debtors did not schedule any asset (such as a note) to generate such income.

D. Debtors have not identified the assets, listed as potential claims against creditors, for the Chapter 13 Trustee and creditors to evaluate its value.

E. Debtors have not explained the sale of the hotel to an insider (Debtors' son) and the proceeds of the sale.

Objection to Confirmation, Dckt. 37.

In seeking to dismiss the current Chapter 13 case, Debtors state,

> Debtors hereby request dismissal of the above-referenced Chapter 13 bankruptcy without prejudice effective immediately. Tri Counties Bank ("Creditor") agrees to the dismissal of this case. Debtors and Creditor will attempt to resolve their issues outside of bankruptcy.

Here, cause exists to convert this case pursuant to 11 U.S.C. § 1307(b).

In reviewing the instant Chapter 13 case and the prior Chapter 11 case, it appears that the Debtors have a history of using the bankruptcy process to

leverage alleged negotiations with creditors. The Debtors have not provided any information or evidence that the prior dismissal aided in resolving any of the creditor's claims as the Debtors asserted in the Chapter 11 request.

Furthermore, it appears that the Debtors have sold assets which potentially have substantial equity that could be used for the benefit of the estate and the creditors but have provided little to no details of these sales. The Debtors failure to fully disclose the terms of the sale of the hotel as well as other sources of income (like the contribution of their son) raises serious concerns over whether the Debtors are being truthful and transparent with their financial realities.

As the Trustee notes in his response, it appears that dismissal in this case is improper. A review of the schedules in the instant case shows that the estate and creditors may better benefit from a conversion to a Chapter 7.

Therefore, 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is converted to a under Chapter 7 of Title 11, United States Code.

26. 15-21261-E-13 DPC-2 **RICHARD BRANTLEY**
Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-8-15 [21]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on April 8, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemption claim in the real property commonly known as 13731 Montfort Road, Herald, California is are disallowed in for all amounts in excess of $175,000.00.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on April 8, 2015. Dckt. 21. The Trustee objects stating that the Debtor has over-exempted under the homestead exemption.

According to Debtor's Schedule C (Dckt. 1), the Debtor has claimed an exemption in his real property known as 13731 Montfort Road, Herald, California in the amount of $195,000.00 pursuant to California Code of Civil Procedure § 704.730(a)(3).

California Code of Civil Procedure §704.730, subd. (a)(3), provides:

> (3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:
>
> (A) A person 65 years of age or older.

> (B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.
>
> (C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.

(Emphasis added). The court's review of the docket reveals that the Debtor has claimed an exemption in excess in the amount of $20,000.00 of that which is allowed pursuant to California Code of Civil Procedure § 704.730(a)(3).

The Trustee's Objection is not clear as to whether he is objecting to the entire claimed exemption, necessitating Debtor filing an amended Schedule C, or merely the amount in excess of $175,000.00. In light of the Trustee's pragmatic approach to oppositions and objections, geared to resolve matters rather than promote otherwise unnecessary litigation, the court construes the Objection just to be to the amounts in excess of $175,000.00.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained and the and the exemption claim in the real property commonly known as 13731 Montfort Road, Herald, California is are disallowed in for all amounts in excess of $175,000.00.

27. 10-44663-E-13 MARY MANNER **MOTION TO MODIFY PLAN**
AJP-8 Al Patrick **4-1-15 [129]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2015. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 1, 2015 is confirmed. 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.

28. 10-44663-E-13 MARY MANNER
DPC-7 Al Patrick

CONTINUED MOTION TO DISMISS CASE
3-2-15 [117]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 117.

The Trustee seeks dismissal of the case on the basis that the Debtor is $2,820.00 delinquent in plan payments, which represents multiple months of the $420.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed an opposition to the instant Motion on March 12, 2015. Dckt. 125. The Debtor argues that the Debtor has filed and served a motion to Confirm Modified Plan which is set for hearing on April 14, 2015. Further, the Debtor objects to the amount due under the plan. The Debtor asserts that the calculation of 48 months at $420.00 per month is $20,160.00 plus six payments of $115.60 per month totally $933.60 for payments due through and including March 25, 2015 payment, for a total of $21,093.50 and not the $22,680.00 alleged by the Trustee. The Debtor states that she plans to be current under the modified plan on or before March 25, 2015.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing on the Motion to Dismiss to 3:00 p.m. on April 14, 2015, to be heard in conjunction with the Motion to Confirm the Modified Plan. Dckt. 136.

TRUSTEE'S REQUEST FOR CONTINUANCE

The Trustee filed a request for a continuance on April 6, 2015. Dckt. 134. The Trustee states that the Debtor has filed a new modified plan and Motion to Confirm on April 1, 2015 which is set for hearing at 3:00 p.m. on May 19, 2015. Dckt. 129. The trustee requests that the court continue the instant Motion to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Confirm.

DISCUSSION

The court, on May 19, 2015, granted the Debtor's Motion to Confirm, which provides for the Debtor's delinquency. Therefore, because the Debtor appears to be current under the recently confirmed plan, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

29. 14-23363-E-13 LINDA WHITE — MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso — 4-9-15 [39]

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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2015. By the court's calculation, 40 days' notice was provided. 35 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.

Linda White ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 9, 2015. Dckt. 39.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 29, 2015. Dckt. 47. The Trustee objects on the following grounds:

1. The proposed plan may not be the Debtor's best effort. The Debtor's supplemental Schedule J reflects a transportation costs of $425.00 monthly and vehicle expense of $98.00 monthly. Dckt. 43. However, the Debtor states her vehicle has been totaled. To explain, the Debtor states that the expenses are for the Debtor's son to drive her around.

2. The proposed plan does not authorize $408.29 in interest paid to Class 2 creditor Chase Auto Finance.

DISCUSSION

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

The Trustee's objections are well-taken. These are the same objections that the Trustee raised on the Debtor's prior Motion to Confirm, which the court sustained. The Debtor once again fails to provide any receipts, bills, or any form of evidence to support the use of the plan payments to rent a car. Additionally, the Debtor once again fails to explain if her son is also using the rented vehicle and, if so, is he contributing to that expense. The Debtor states that she is retired and that her license has been suspended. The Debtor does not explain why she is not using public transportation or other less expensive means of transportation.

The Debtor was aware of the court's concern based on the prior Motion to Confirm. The Debtor has not provided any evidence or testimony to ease these concerns. Without more, the court continues to not be able to determine the financial reality of the Debtor or whether the plan is feasible.

Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 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.

30. 09-47666-E-13 FARRELL/DAWNELLE JACKSON — MOTION TO VALUE COLLATERAL OF
SDB-4 Scott de Bie — JP MORGAN CHASE BANK, N.A.
4-17-15 [107]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on April 17, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $84,000.00.

The Motion to Value filed by Farrel and Dawnelle Jackson("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 11923 S.E. 98th Circle, Belleview, Florida ("Property"). Debtor seeks to value the Property at a fair market value of $84,000.00 as of the petition filing date. As the owner, 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).

FN.1. The Debtor indicates that the court had previously granted a Motion valuing the claim of the Creditor on February 9, 2010. However, due to improper service, the Debtor is filing the Motion again to ensure proper service.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The

ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

OPPOSITION AND WITHDRAWAL

Creditor filed an opposition to the instant Motion on May 5, 2015. Dckt. 113. The Debtor filed a response on May 12, 2015. Dckt. 114. However, on May 13, 2015, the Creditor filed a Notice of Withdrawal of its opposition. Dckt. 117. Therefore, the court will not address those items.

DISCUSSION

The Creditor's deed of trust secures a claim on the non-residence Property with a balance of approximately $84,000.00. Therefore, Creditor's claim secured by a deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $84,000.00, and therefore payments in the secured amount of the claim 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 Farrell and Dawnelle Jackson("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 JPMorgan Chase Bank, N.A. secured by a deed of trust recorded against the real property commonly known as 11923 S.E. 98th Circle, Belleview, Florida, is determined to be a secured claim in the amount of $84,000.00, 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 $84,000.00 and is encumbered by liens securing claims in the amount of $111,756.24, which exceed the value of the Property which is subject to Creditor's lien.

31. 14-28170-E-13 BARBARA WALTERS
SNM-1 Stephen Murphy
OBJECTION TO ALLOWANCE OF INTERNAL REVENUE SERVICE'S PRIORITY TAX CLAIM
3-27-15 [19]

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

The Debtor having filed a Withdrawal of the Objection to Allowance of Internal Revenue Service's Priority Tax Claim (Dckt. 29), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

32. 14-28170-E-13 BARBARA WALTERS
SNM-2 Stephen Murphy
OBJECTION TO ALLOWANCE OF FRANCHISE TAX BOARD'S PRIORITY TAX CLAIM
3-27-15 [23]

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

The Debtor having filed a Withdrawal of the Objection to Allowance of Franchise Tax Board's Priority Tax Claim (Dckt. 27), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

33. 10-46774-E-13 MAURY/ELIZABETH TOVEY MOTION TO MODIFY PLAN
PLC-5 Peter Cianchetta 4-3-15 [79]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 3, 2015 is confirmed. 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.

34. 15-21082-E-13 PLC-1 STEVEN/MARIA PETERSON Peter Cianchetta

MOTION TO VALUE COLLATERAL OF RPM LENDERS 4-20-15 [20]

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). The Defaults of the non-responding parties are entered by the court.

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, Creditor, and Office of the United States Trustee on April 20, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is denied without prejudice.

The Motion filed by Steven and Maria Peterson ("Debtor") to value the secured claim of RPM Lenders ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 1996 Chevy Suburban 1500 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $1,316.00 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).

However, the Debtor fails to provide evidence that the lien on the Vehicle was incurred more than 910 days prior to filing the bankruptcy. The lien on the Vehicle is a purchase money security interest which is subject to the hanging

paragraph of 11 U.S.C. § 1325(a). The Debtors, in the Motion, only mention the hanging paragraph in paragraph 7 which stated: "Subject to the restrictions contained in 11 U.S.C. § 1325(a)(9), the Debtors' Chapter 13 Plan may propose that certain partially secured claims be allowed as secured for the purposes of distribution only to the value of the collateral held by the secured creditor."

Nowhere in the declaration or Motion does the Debtors state when the lien was incurred. The Creditor has not filed a Proof of Claim. The Debtors do not provide a copy of the security agreement as an exhibit. Without this information, the court cannot determine if valuation of the purchase money security interest is proper.

Because it is so easy to affirmatively state, not merely on information and belief, in the motion, and a debtor testify under penalty of perjury that (1) it is not a purchase money motion or (2) it is a purchase money motion that was granted on [specific date stated], the court is not inclined to infer from general pleading that such facts exist.

Debtor's testimony appears to be generic text, "6. We believe and assert that this creditor holds a valid security interest in the ASSET in the nature of a non-purchase money security interest." Declaration, Dckt. 22. How could Debtor merely "believe," and not know, whether the debt was for the purchase of the vehicle. Such language appears to be used to promote misstatements by declarants, under the guise of "well I believed," rather than providing actual, truthful, personal knowledge testimony. Fed. R. Evid. 601, 602.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Steven and Maria Peterson ("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 without prejudice.

35. 15-20384-E-13 RANDAL MCKIM — MOTION TO CONFIRM PLAN
EJS-1 Eric Schwab — 3-26-15 [26]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2015. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 36, 2015 is confirmed. 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.

36. 12-37390-E-13 STACY MORRISON **MOTION TO SELL**
CAH-2 Nekesha Batty **4-23-15 [45]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303.

Here Movant proposes to sell the “Property” described as follows:

A. 9467 Windrunner Lane, Elk Grove, California

The proposed purchaser of the Property is Oscar Barela III and Sommer Varela and the terms of the sale are:

1. Purchase Price of $269,000.00.

2. Arms length transaction.

3. Debtor will receive $3,000.00.

4. All creditors with liens and security interest encumbering the Property will be paid in full before or simultaneously with the transfer of title or possession to the Buyer.

5. Sold in “as-is” condition.

6. The delinquent homeowner’s association dues will be requested paid by the short payoff lender in the process of negotiating the short sale. In the event that the short payoff lender is unwilling to pay or allocate a portion thereof, the Buyer will be required to pay the full amount.

7. All costs of sale, such as escrow fees, title insurance, and broker’s commissions, will be paid in full from the sale proceeds

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 24, 2015.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The terms of the sale of the Property is reasonable. The sale provides for the payment of all secured liens on the Property and the funds from the sale will further provide for the Debtor’s plan.

DISBURSEMENT TO DEBTOR

Debtor is requesting to receive $3,000.00 of the short sale proceedings, presumably for having used her position as the fiduciary of the bankruptcy estate to conduct the sale. The Motion state that this is proper in light of the Plan providing for a 100% dividend. However the Plan, Dckt. 5, stretches the payment of the 100% over 60 months, ending in October 2017. Based on the information provided, the court cannot determine that the payment of $3,000.00 to the Debtor personally for conducting the sale on behalf of the estate is proper.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Stacy Morrison 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 the Stacy Morrison the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Oscar Barela III and Sommer Varela or nominee ("Buyer"), the Property commonly known as 9467 Windrunner Lane, Elk Grove, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $269,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 48, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
>
> 5. The $3,000.00 to be made from escrow to Debtor stated in the Motion shall be disbursed to the Chapter 13 Trustee, who shall hold the $3,000.00 pending further order of the court. Debtor may request by motion disbursement of all or some portion of the $3,000.00 as is proper. If no such motion is filed, the Trustee shall disburse the monies through the Chapter 13 Plan.

37. 13-30998-E-13 RALPH SETTEMBRINO CONTINUED MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 3-17-15 [49]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 17, 2015. By the court's calculation, 42 days' notice was provided. 35 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.

Ralph Settembrino ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2015. Dckt. 62.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. Debtor has failed to file a Motion to Avoid Lien of Credit Bureau Associates. Credit Bureau Associates is provided in the plan in the amount of $641.00 at 0% interest and $0.00 monthly dividend in Class 2C. However, the creditor has filed a secured claim court claim #3-1 in the secured amount of $640.59. The creditor's claim is not provided for in the plan confirmed October 16, 2013.

2. The Debtor has not filed supplemental Schedules I or J in support of the plan. Trustee notes the proposed Plan includes Class 4, a monthly contract installment of $1,850.00 for rental property. The Debtor's Schedule I filed on August 21, 2013 reports rental income of $1,370.00 with a monthly mortgage payment on Schedule J of $1,370.00. Almost two years has elapsed since the last budget filed by the Debtor. If Debtor's mortgage payment on their rental property has increased $480.00 and no other expenses have decreased or their income has not increased, Debtor will not be able to afford the Plan payments.

APRIL 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Debtor's Motion to Avoid Lien. Dckt. 73.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor has filed a Motion to Avoid Lien of Credit Bureau Associates on April 19, 2015 which is set for hearing on May 19, 2015. Dckt. 66. The court granted the Motion to Avoid and avoided the lien in its entirety. Therefore, the Trustee's first objection is overruled.

However, the Trustee's second objection raises concerns over the viability of the plan in light of the rental mortgage payment. The Debtor has failed to file supplemental Schedules that reflect any changes in the income or expenses. Under the current Schedule I and J, it appears that Debtor does not have sufficient income to fund the plan. With the increased mortgage payment for the rental property, it appears that the Debtor cannot afford plan payments as required by 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 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.

38. 13-30998-E-13 MET-4 RALPH SETTEMBRINO Mary Ellen Terranella

MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC.
4-19-15 [66]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Kelkris Associates, Inc., dba Credit Bureau Associates ("Creditor") against property of Ralph Settembrino ("Debtor") commonly known as 1002 Neptune Court, Suisun City, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $601.59. An abstract of judgment was recorded with Solano County on November 16, 2007, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $216,000.00 as of the date of the petition. The unavoidable consensual liens total $307,210.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Kelkris Associates, Inc., dba Credit Bureau Associates, California Superior Court for Solano County Case No. FCM090557, recorded on November 16, 2007, Document No. 200700119196 with the Solano County Recorder, against the real property commonly known as 1002 Neptune Court, Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.