

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

June 2, 2015 at 2:00 P.M.

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1. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE MOTION TO MODIFY PLAN  
TJW-2 SALINAS 4-13-15 [[55](#)]  
Timothy Walsh

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

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

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

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

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

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

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

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

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

1. The declaration filed by Debtors states that the Debtor lost his job in late 2014. Dckt. 57. Debtors have not filed supplemental Schedules I or J in support of this motion. The most recent Schedule I or J, filed over 29 months ago, reflect that Debtor was employed and Debtor's spouse was receiving unemployment.
2. Debtors are paid ahead \$22.00 under the terms of the proposed plan.

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

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

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

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

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

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**Tentative Ruling:** The Motion to Extend the 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).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 14, 2015. Fourteen days' notice is required. That requirement was met.

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. At the hearing -----.

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's third bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-26948) was dismissed for failing to comply with the terms of the Order Granting Extension. Debtor's second bankruptcy case (No. 13-28475) was dismissed when Debtors fell into a brief financial spell that prevented them from making their monthly plan payments to the Trustee. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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, Debtors state that Debtors caught up their delinquent plan payments related to their most recent prior filing; however, the case was dismissed the day prior. The Motion states that Debtors experienced a brief and temporary financial malady that has since been corrected. Debtor, Robert Trabert, works out of town and Robert's employer provides for reimbursement of expenses on the 15th of each month. In April of 2015, Robert had accumulated over \$3,000 in expenses; however, these expenses were not reimbursed by his employer. This cause Debtors to financially survive for more than two weeks before the reimbursement was provided.

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. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by 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 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2015. Fourteen days' notice is required. That requirement was met.

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

1. Debtor is over the median income and proposes the plan payments of \$530 for 11 months, then \$674 for 49 months with a 0% dividend to general unsecured creditors. Form B22C reflects negative projected disposable income. Schedule J reflects a \$140 expense for a car payment. Thus, Debtor has an additional \$140 to pay into the plan.
2. Debtor proposes to increase the plan payments from \$530 to \$674 in month 12 due to the pay off of the 401K loan. Debtor fails to list a separate deduction for the 401K loan on Schedule I or an expense on Schedule J. However, Debtor's pay advices reflect a deduction of \$47.18 for Loan2, which is deducted on a bi-weekly basis, and Debtor is proposing an increase of \$144.

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

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

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

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

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

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

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

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

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

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

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

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

**TRUSTEE'S OPPOSITION**

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

1. The plan fails the Chapter 7 liquidation analysis. Debtor admitted at the first meeting of creditors that he has an on-going lawsuit for the negligence of the murder of his brother. Debtor failed to disclose this asset on the Schedules and the SoFA.
2. Debtor proposes to value the secured claims of Newport Beach Holding Corporation's second deed of trust and of Paul Manka, Esq., but has not filed motions to value collateral.
3. On question #9 of the SoFA, Debtor failed to prove the date that attorney David Foyil was paid fees in the amount of \$2,000.
4. Class 1 of the plan provides "See Additional Provisions" for the monthly dividend to be paid to Class 1 mortgage arrears, however no additional provisions exist.

WELLS FARGO BANK, N.A.'S OPPOSITION

Creditor Wells Fargo Bank, N.A.'s claim is evidenced by a note secured by a deed of trust encumbering the real property commonly known as 14702 Hobnob Way, Nevada City, California. Creditor opposes confirmation as Debtor's plan fails to pay Creditors arrears in full. Creditor contends that pre-petition arrears amount to \$47,816.14, but the plan provides for the cure of only \$44,279.58 in arrears.

DISCUSSION

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. Thirty-five days' notice is required. That requirement was not met.

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

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

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

The Chapter 13 Trustee does not oppose confirmation of the plan as it proposes a 100% dividend to unsecured creditors. The Trustee wishes to make the court aware of that the docket reflects conflicting income amounts for the non-filing spouse. Debtor's supplement to schedule I, (dckt. 85), reports the non-filing spouse's income as \$2,474.29 net. While the Trustee previously reported to the court, based on pay stubs submitted by the Debtor, that the net monthly income of the spouse is \$4,388.16. Dckt. 74 & 75.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on April 21, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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6. [15-22417](#)-C-13 GARY EFHAN  
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
FRANCHISE TAX BOARD  
5-4-15 [[14](#)]

**Also #7**

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**Final Ruling:** No appearance at the June 6, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 4, 2015. Twenty-eight 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.

<b>The Motion to Value secured claim of Franchise Tax Board, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the personal property. The Debtor seeks to value the property at a fair market value of \$1,950 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).

Creditor Franchise Tax Board is owed approximately \$16,809.14. See invoice dated February 6, 2015. Exhibit A. Dckt. 18. The Creditor has not yet filed a claim in this case.

The Franchise Tax Board has a lien on Debtor's personal property listed on Schedule B and listed below.

**Real Property /Fair Market Value**

Bank Accounts - Sacramento CU \$50.00  
Appliances \$200.00  
Electronic Equip \$150.00  
Furniture \$250.00  
Kitchen Items \$50.00  
Outdoor Items \$50.00  
Pictures \$50.00

Clothing \$50.00  
Interior Exterior Solutions, Inc. 100% Stockholder \$100.00  
1998 Mercedes I30 230k miles, poor condition \$500.00  
Painting equipment, ladders, rollers, extensions, etc. \$500.00  
TOTAL VALUE OF PERSONAL PROPERTY \$1,950.00

The creditor's secured claim is determined to be in the amount of \$1,950, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan that exceed that amount. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion  
pursuant to 11 U.S.C. § 506(a) is granted and  
the claim of Franchise Tax Board's secured by  
personal property listed in Debtor's Schedule  
B, is determined to be a secured claim in the  
amount of \$1,950, and the balance of the  
claim is a general unsecured claim to be paid  
through the confirmed bankruptcy plan. The  
value of the Debtor's personal property listed  
in Schedule B is \$1,950 and is encumbered by  
liens securing a claim which exceed the value  
of the Property.

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**Final Ruling:** No appearance at the June 6, 2015 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2015. Fourteen days' notice is required. That requirement was met.

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

#### SUMMARY OF MOTION

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

1. The plan relies on the Motion to Value Collateral of the Franchise Tax Board, set for hearing June 2, 2015.
2. Debtor proposes to value the secured claim of the Internal Revenue Service listed in Class 2, but has not filed a motion to value collateral.
3. The Internal Revenue Service filed a priority claim on May 1, 2015

in the amount of \$100. Debtor has failed to provide for this debt in the Plan.

#### DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's Objecting requesting that the priority I.R.S. claim for \$100 be provided as Class 5 in the order confirming the plan.

#### DISCUSSION

The court grants motion to confirm as Trustee's three concerns regarding confirmation have been resolved. First, the court has granted Debtor's Motion to Value Collateral of the Franchise Tax Board. Second, the Debtor has proposed to provide for the priority I.R.S. claim for \$100 in the order confirming the plan, which resolves Trustee's second and third concerns.

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

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

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

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

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

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**Tentative Ruling:** The Objection to 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).**  
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Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 7, 2015. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.) That requirement was met.

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Objection to Proof of Claim Number 6 of USDA Rural Housing Service is sustained.</b>
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Marilyn Theresa Paventy, the Debtor, ("Objector") requests that the court disallow the claim of USDA Rural Housing Service ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$55,541.36. Objector asserts that terms and conditions are described in the "Subsidy Repayment Agreement" between Objector and Creditor states that Objector may defer repaying the subsidy amount until title to the property is conveyed or the dwelling is no longer occupied by Objector. (See, Exhibit C, Proof of Claim No. 6 Part 3.). In its proof of claim, Creditor calculates the amount of the "Subsidy Subject to Recapture" to be \$22,659.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

According to the terms of the loan agreement and "Subsidy Repayment Agreement" between Objector and Creditor, Objector may defer repaying the subsidy amount until title to the property is conveyed or the dwelling is no longer occupied by Objector. (See, Exhibit C, Proof of Claim No. 6 Part 3.).

Based on the evidence before the court, the creditor's claim is disallowed in the amount of \$22,659. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of USDA Rural Housing Service, Creditor, in this case by Marilyn Theresa Paventy, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 6 of USDA Rural Housing Service is sustained and the claim is disallowed in the amount of \$22,659.

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9. [15-22023](#)-C-13 JEFF NELSON AND LURDES  
DPC-1 ROSALES  
Julius Engel

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
5-6-15 [[20](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 6, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. The Debtor admitted at the first meeting of creditors that he was paying an additional \$600 per month for income taxes, which is not listed as a deduction on Schedule I or an expense on Schedule J.

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

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

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

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

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

\*\*\*\*\*

10. [14-28030](#)-C-13 BONITA MELENDEZ  
RJM-2 Rick Morin

OBJECTION TO NOTICE OF  
POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
4-23-15 [[55](#)]

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 23, 2015. 28 days' notice is required. That requirement was met.

The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges 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.

<b>The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges is sustained.</b>
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SUMMARY OF OBJECTION

The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges contends that the \$650.00 in fees claimed by Bank of America, N.A. ("Creditor") in their Notice of Post-Petition Mortgage Fees filed February 19, 2015 are not justified or reasonable based on the notice provided. Debtor contends that the Notice of Fees contains vague shorthand that appears to represent attorney's fees for reviewing debtor's Chapter 13 plan and for preparing a proof of claim in the case.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee agrees that it is unclear whether the fees claimed by Creditor are justified or reasonable based on the notice provided. Trustee contends that Creditor's Notice of Post-Petition Mortgage Fees provides an abbreviated fee description in relation to the fees claimed without including any kind of billing statement or further details to justify the claim.

## DISCUSSION

The Notice of Fees does not specify how much time was required for the enumerated tasks or specify the hourly rate being charged or the name or classification of the person who allegedly performed the tasks. Creditor did not attach billing statements explaining the charges and did not specify the statutory or contractual basis upon which it is assessing the fees. Due to the lack of specificity as to Creditor's fee request, the court sustains the Objection.

## ISSUANCE OF A MINUTE ORDER

An 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 Objection to Notice of Postpetition  
Mortgage Fees, Expenses, and Charges 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 Notice of Post-  
Petition Mortgage Fees of Bank of America, N.A.  
is denied in its entirety.

\*\*\*\*\*

11. [14-24232](#)-C-13 PETER/MARIA GALLARDO  
JDP-2 Christian Younger

OBJECTION TO CLAIM OF GREEN  
TREE SERVICING, LLC, CLAIM  
NUMBER 45  
4-3-15 [[33](#)]

\*\*\*\*\*

**Tentative Ruling:** The Objection to Claim 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 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 3, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 45 of Green Tree Servicing, LLC is overruled.**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

SUMMARY OF OBJECTION

Peter and Maria Gallardo, the Debtors, ("Objectors") requests that the court disallow the claim of Green Tree Servicing, LLC ("Creditor"), Proof of

Claim No. 45 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$44,211,58. Objectors received a Chapter 7 discharge in 2009 though the lien on their real property survived (No. 08-334615). Objectors later filed the present Chapter 13 case and filed a motion to value the collateral of Creditor whereby the motion was granted removing the Creditor's lien. Objectors assert that Creditor's unsecured claim was discharged in the previous Chapter 7 case.

#### CREDITOR'S OPPOSITION

Creditor contends that 11 U.S.C. §506(a) allows a claimant stripped of its lien to receive payment on its general unsecured claim from the chapter 13 estate despite a previous chapter 7 discharge.

#### DISCUSSION

In this District, the Court has held that §506(a) allows a claimant stripped of its lien to receive payment on its general unsecured claim from the chapter 13 estate despite a previous chapter 7 discharge. *In re Gounder*, 266 B.R. 879, 880-881 (Bankr.E.D.Cal. 2001).

In deciding a similar issue, the BAP cited *In re Gounder* for the proposition that a stripped off claim under Lam in a chapter 13 case does not become wiped out by virtue of a previous chapter 7 discharge, but becomes a general unsecured claim entitled to distribution under the Chapter 13 plan. *In re Eaton*, No. BAP EC-05-1261-PANMA, 2006 WL 6810924, at \*6 (B.A.P. 9th Cir. Feb. 28, 2006).

Based on the evidence before the court, the creditor's claim is allowed. The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Green Tree Servicing, LLC, Creditor filed in this case by Peter and Maria Gallardo, 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 objection to Proof of Claim Number 45 of Green Tree Servicing, LLC is overruled and the claim is allowed in its entirety.

\*\*\*\*

12. [13-31434](#)-C-13 MICHELE REED  
CA-1 Michael Croddy

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF CRODDY &  
ASSOCIATES FOR MICHAEL D.  
CRODDY, DEBTORS ATTORNEY(S)  
5-11-15 [[20](#)]

\*\*\*\*\*

**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, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 11, 2015. 28 days' notice is required. That requirement was met.

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Michael David Croddy, the Attorney for Debtor, ("Applicant") for Roosevelt and Raulette McClinton, ("Clients"), makes an First Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March, 2013 through June, 2015. Applicant requests fees and costs in the amount of \$3,321.60.

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

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

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

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

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

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

Id. at 959.

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

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

### **Fees and Costs**

The motion seeks approval of \$4,600 in fees and \$502.60 in costs. After application of the \$1,500 retainer and the \$281 paid to counsel for the filing fee, a total of \$3,321.60 in additional compensation is sought. Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

1. Work Performed: a) Met with Debtor, b) document preparation and filing, and c) attendance at meeting of creditors.
2. Dates of Importance: a) Initial consult on March 22, 2013, b) petition filed on August 30, 2013.
3. Time and Expenses: a) Senior attorney hours = 11.60 (\$4,350), b) Associate attorney hours = 0 (\$0), c) Legal Assistant hours = 2.00 (\$250), d) Clerical hours = 0 (\$0), e) Expenses = \$502.60, f) Total = \$5,102,60.

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

Fees & Costs	\$3,321.60
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The court shall issue an order substantially in the following form holding that:

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

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

**IT IS ORDERED** that Pauldeep Bains is allowed the fees and costs in the amount of \$3,321.60 as a professional of the Estate.

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**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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2015. Twenty-eight days' notice is required. That requirement was met.

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 Debtors ("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:

8049 Lomand Court, Sacramento, California

The proposed purchaser of the Property is Jose Vallejo and the terms of the sale are: a purchase price of \$205,000; short sale; \$19,500 down payment.

The home is encumbered by two liens both held by Wells Fargo Home Mortgage. The first lien is in excess of approximately \$292,578.29. The second lien is in excess of approximately \$54,750. The lender approves of the shortsale. Dckt. 132, Exhibit C, p. 4).

The motion states that Debtors will not receive proceeds and is silent as to the amount of any real estate commissions.

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



14. [15-22938](#)-C-13 THOMAS/PAULA DITTY  
DPC-1 Mohammad Mokarram

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
4-27-15 [[16](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 27, 2015. 28 days' notice is required. That requirement was met.

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

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

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtors are not eligible to receive a discharge because Debtors received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtors received a Chapter 7 discharge on April 27, 2012 (Case No. 2011-49309-D-7). Debtors filed this Chapter 13 case on April 10, 2015.

DEBTORS' STATEMENT OF NON-OPPOSITION

Debtor do not oppose the Objection to Discharge.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtors are not entitled to a discharge in this Chapter 13 case because Debtors received a discharge in a Chapter 7 case filed during the four year period preceding the date of the

order for relief in this case. The objection is sustained.

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-22938.

\*\*\*\*\*

15. [14-32148](#)-C-13 DEVIN/JESSICA SETH  
BLG-1 Bruce Dwiggin  
CASE DISMISSED AS TO JESSICA  
SETH ONLY 4/15/2015

MOTION TO CONFIRM PLAN  
4-21-15 [[39](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. Forty-two days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$689 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$689 is due on May 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Trustee is unable to determine the Debtor's intended treatment of secured claims. In Class 2, Debtor lists American Honda's secured claim held by a 2013 Honda. In Class 3, Debtor lists Nissan Motor Acceptance secured by a 2012 Nissan Murano. In Sections 6.01 and 2.10, Debtor indicates that he is moving the claim of American Honda from Class 2 to Class 3. It appears that this may be an error and the intention was to indicate that Nissan Motor Acceptance is moved to Class 3.
3. In his declaration, Debtor indicates that he and his spouse have separated and the case has been dismissed as to the Joint Debtor. Dckt. 42, p. 3. Debtor has failed to file an emended Schedule I

removing his separated spouse's income from the Schedule.

### **Debtor's Reply**

In a late-filed reply, Debtor has addressed the Trustee's concerns in turn:

1. Debtor will be current in his plan payments by the hearing date of June 2, 2015. The moving and separating of Debtor and his wife made it very difficult to get his finances straightened out. He is now on track and in charge of his finances and caught up.
2. Debtor will file a supplemental declaration clearing up the issue as to which vehicle is being surrendered. Said declaration will be filed concurrently with this response.
3. Debtor will file an amended Schedule "I" concurrently with this response to show the difference in his income now that he is separated from his wife.

### **Discussion**

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

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

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

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

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

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**Final Ruling:** No appearance at the June 2, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.**

The motion seeks permission to obtain credit for the purpose of purchasing a manufactured home. Debtor is currently paying rent for her residence in the amount of \$1,500 per month. The purchase contract will require payments of \$547.48 and with the inclusion of space rent for the home of \$440 and insurance of \$47.33, Debtor's housing expense would be reduced by approximately \$465.00 per month. This would enhance Debtor's ability to make plan payments.

The terms of the purchase shall be \$67,000 for the total purchase price and \$512 for the monthly payments over a period of 276 months at a 9.59% annual interest rate on the purchase. There is a \$13,400 down payment for the purchase, which Debtor's parent will supply as a gift. Debtor asserts that she can support the payment of \$512 per month, as this is less than her monthly rental expense.

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

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

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and Carlye Louis Butcher-Lucey ("Debtor") is authorized to incur debt and obtain credit in order to purchase the Manufactured Home as described in Exhibit A, Docket 45.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. Forty-two days' notice is required. That requirement was met.

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

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

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

Creditor, Melissa Ericsson, objects to confirmation of the Plan on the following basis:

1. The Plan was not proposed in good faith under 11 U.S.C. § 1325(a)(3). Creditor is Debtor's ex-spouse and is familiar with Debtor's earnings. Creditor asserts that historically, Debtor's employment with the state has enable him to earn annual gros wages of approximately \$90,000 to \$120,000 up until 2013-2014 when the Debtor was placed on administrative leave. Debtor retur4ned to employment in July 2014, and there appears to be no reason why Debtor will not return to this level of annual gross employment. Debtor's plan is based on Debtor's projected gross wages of \$7,200, and Creditor states that Debtor is guaranteed overtime that he did not list on his bankruptcy petition.

Moreover, Creditor states that Debtor did not propose the plan in good faith because he overstated his expenses. The expense statement filed with state court is \$700 less than the expense statement filed with the Bankruptcy Court.

2. The Plan does not provide for known a valid Priority claims.
3. The Plan does not provide for known changes in Debtor's financial circumstances during the life of the Plan.

Creditor first states that according to this Schedule J, Debtor is presently making payments of \$1,100 per month for child support. Assuming this amount is correct, Creditor asserts that a portion of the domestic support obligation is paid on account of Debtor's 16 year-old daughter, who turned 17 on October 26, 2014. Debtor will not be required to provide on-going support when this dependent reaches the age of majority in October 2015. The Plan should increase for the termination of support, and increase for the final 23 months.

Second, Creditor states that Debtor is over-deducting for taxes. When they were married, Debtor and Creditor were receiving \$10,000 - \$12,000 per year. If that continues, then the monthly payment to unsecured creditors should be increased based on this over-deduction.

4. The Plan is based on a potentially incomplete Asset-Exemption structure.

Debtor's assets are enumerated in Schedules A & B. However, Schedule B does not reveal any vacation credits, to which Debtor is entitled as a state employee. This could be a potential undisclosed asset of \$22,048.38. Creditor asserts that the court does not have a complete understanding of assets that could have been liquidated in a hypothetical chapter 7 for the benefit of unsecured claims.

Next, Creditor states that Debtor is currently selling firewood that he is not disclosing to the court.

Finally, Creditor states that Debtor is now married as of March 31, 2015. Debtor's new wife lives with the Debtor and not only contributes towards expenses, but her income should be considered community property and committed toward the plan payments. Debtor's failure to disclose this marriage and spouse's income is evidence of bad faith.

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

Debtor responds to Creditor's objections as follows:

1. Creditor asserts that Debtor's proposed plan is in bad faith. However, Creditor bases these accusations on the fact that he "may, sometime in the future make more money than reported in the schedules from increased overtime." Debtor states that is may make more money in the future, and if that time comes, he will comply with appropriate practices and notify the trustee and move to modify his plan. There is, however, no legal obligation for him to guess what he might make in future wages.
2. Debtor responds to Creditor's objection as to the discrepancy in expenses reported to state court and the Bankruptcy Court. Debtor states that his rent and food expenses have increased since his

daughters are spending more time with him, and he avers in a declaration that these increases are reasonable.

3. Debtor next addresses the Creditor's objection as to the known reduction of child support payments in October 2015. Debtor states that he has already addressed this concern in the Debtor's Declaration filed with the Motion to Confirm the First Amended Chapter 13 Plan. The child support for his daughter will cease in October 2015, and pursuant to the requirements of the Siskiyou County court, his support payments will be reevaluated at that time. Debtor states that no doubt, the \$93 a month he is now paying for his daughter will be redistributed to pay for his other minor child. Should there be a significant change, Debtor will modify his plan to reflect.
4. Debtor addresses Creditor's objection that he is over deducting on taxes to receive a substantial refund. Debtor states that this was the practice while Debtor was married to Creditor, but is a luxury he can no longer afford. His deductions now reflect the amount he anticipates will equal his annual tax obligations and anticipates receiving little, if any, tax refunds.
5. Creditor questions whether Debtor has included potential assets for vacation credits. Debtor states that he was on administrative leave for a year prior to the bankruptcy. He is unaware of any such "credits" that have any potential value to the bankruptcy estate.
6. Creditor believes the Debtor is selling firewood for additional income. Debtor states that while he and Creditor were married, he would occasionally sell firewood to supplement his income. However, he states under penalty of perjury that he no longer does so.
7. Finally, Creditor notes that Debtor has gotten remarried and has not included his current wife's income. Debtor's new wife works for PG&E in the Bay area and maintains her home there. She uses none of her income to support Debtor, but uses it to pay for her living expenses in the Bay area.

## **DISCUSSION**

The court notes that Creditor's objections are largely speculative and based on knowledge that she had of the Debtor from the time they were married. Creditor bases her objections on, among other things, income Debtor received while he was married to her, tax practices that she and Debtor engaged in while they were married, and Debtor's practices in supplementing his income during the period they were married. Debtor has submitted a declaration under penalty of perjury, Dckt. 57, satisfying the court and the Chapter 13 Trustee that the plan is submitted in good faith. Moreover, the court agrees that the proper procedure would be to modify the plan to be consistent with future income and child support obligations.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 7, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

**Also #19**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtor did not appear at the first meeting of creditors on April 23, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor did not provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11

U.S.C. § 521(a)(1)(B)(iv).

4. Debtor has not paid filing fees pursuant to 11 U.S.C. § 1325(a)(2). Debtor has failed to make a payment of \$79 due on March 23, 2015.
5. Debtor's plan appears to be essentially blank. The Plan proposes \$0 payments for 0 months and does not list any creditors to be paid.
6. Debtor's petition failed to list Debtor's prior case, Case No. 14-30977.

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

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

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

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

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

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19. [15-21269](#)-C-13 BOUNTHEU THIENPHETH  
PD-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
4-29-15 [[48](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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Creditor is Deutsche Bank National Trust Company, and holds a note secured by deed of trust on the real property commonly known as 522 Rome Street, Weed, California. Creditor states that its total secured claim is in the amount of \$112,515.55. Creditor opposes confirmation of the Plan on the basis that Debtor's plan does not properly provide for Creditor's claim and because it is not feasible. Moreover, Creditor states that Debtor has no income and is unable to propose a chapter 13 plan.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor Deutsche Bank National Trust Company, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor has not provided supplemental schedules I and J in support of the proposed reduction in plan payments. Debtor is under the median income with a monthly plan payment under the confirmed plan of \$400 for 54 months. Debtor's modified plan proposes plan payments of \$400 total paid in through month 2 then \$185 per month for 34 months.

Debtor's motion and declaration indicate respectively that Debtor has filed amended Schedules I and J, or that Debtor has filed an updated budget. Trustee is unable to locate either in the court docket. Debtor's most recent Schedules were filed March 3, 2015, and indicated the Debtor was returning to work on March 16, 2015, and supported plan payments of \$400. Debtor may not be able to pay that, or may be able to pay more, depending on her current budget.

## **DEBTOR'S RESPONSE**

Debtor provides that the amended schedules I & J were inadvertently not filed, and that said amended schedules were being filed concurrently with the response.

## **DISCUSSION**

On May 27, 2015, Chapter 13 Trustee filed a notice of withdrawal of Trustee's objection, Dckt. 107. The Trustee's only objection having been resolved, the modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the  
Plan is granted and the proposed Chapter 13  
Plan filed on April 27, 2015 is confirmed.

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21. [15-21877](#)-C-13 CHRISTIAN STEELE  
PD-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY VERTICAL INFILL LLC  
4-30-15 [[27](#)]

CASE DISMISSED: 05/11/2015

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**Final Ruling:** No appearance at the June 2, 2015 hearing is required.  
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The case having previously been dismissed on May 11, 2015, the Objection is moot.

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

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

The Objection to Confirmation of the plan by Vertical Infill, LLC as Trustee for Polaris Trust, 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 Objection is moot, the case having been dismissed.

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**Final Ruling:** No appearance at the June 2, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2015. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 9, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Indymac Mortgage Services listed in Class 2C. To date, Debtor has not filed such motion.
2. Debtors received a combined total of \$10,987 for their 2013 refunds. The Trustee has not yet received a copy of Debtors' tax returns for 2014. Debtors admitted at the first meeting of creditors that they received \$8,000 for their 2014 tax refund. It appears that Debtors have historically received tax refunds and no future tax refund income is projected on Schedule I. Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense. Trustee asserts that Debtors' plan may not be their best efforts under 11 U.S.C. § 1325(b). Debtor appears below median

income and where the Debtor is receiving substantial tax refunds, Debtors have more income available to pay to unsecured claims.

3. Debtors' plan may not pay unsecured creditors what they would receive in a chapter 7 liquidation. Debtors failed to list their 2014 tax return on Schedules B & C. The plan proposes to pay unsecured creditor 0% dividend, where the plan estimates unsecured at \$70,030.42.

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

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

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

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

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

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Also #25

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**Final Ruling:** No appearance at the June 2, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 22, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Leonard and Maria Summers ("Debtor") seeks court approval for Debtor to incur post-petition credit. Green Tree Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$460.27 a month at an interest rate of 5.5% for a total of 480 months. The modification will make effective the new principal balance of \$71,767.75. The maturity date will be March 1, 2055.

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

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 Debtors Leonard and Maria Summers 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 Leonard and Maria Summers ("Debtor") to amend the terms of the loan with Green Tree Servicing, LLC, which is secured by the real property commonly known as 6713 6th Street, Rio Linda, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 88.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on a limited basis. Trustee provides that the proposed treatment of creditor Green Tree Servicing LLC is contingent on the court granting the Debtors' Motion to Approve Loan Modification. Trustee has no opposition to the motion for loan modification.

The court granted Debtors' Motion to Approve Loan Modification on June 2, 2015, resolving the Chapter 13 Trustee's only basis for objection.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed on April 22, 2015 is confirmed.

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

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

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

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

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

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

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

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

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

1. Debtors' Plan may not be in Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' schedule I filed April 17, 2015 discloses that Debtors have 28.6% withheld from pay as Tax, Medicare, and Social Security deductions. Debtors' schedule I filed April 1, 2013 reflected 31.1% as withholding. Debtors have provided tax returns for 2013 and 2014 to Trustee. These returns disclose that Debtors received tax refunds of \$17,355 in 2013 and \$9,558 in 2014. Trustee requests that Debtors be required to turn over to Trustee any tax refunds received in the future as additional plan payments.
2. While Debtor has filed a declaration in support of the motion to confirm, the declaration does not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a).

3. Debtors' plan does not provide for the Notice of Post-petition Mortgage Fees, Expenses, and Charges filed September 24, 2013. This claim was included in confirmed plan as a minor modification and order granting.
4. Trustee is uncertain of proposed plan payments. The additional provisions state the Debtors shall increase monthly payments by \$639.74 starting May 1, 2015 to the amount of \$3,964.14. Debtors did not specify a plan payment for the periods prior to May 1, 2015. Debtors have paid Trustee \$83,544.04 through April 30, 2015. The last receipt of \$3,964.40 was April 28, 2015. Trustee is uncertain if this receipt is intended to be the May 2014 payment.
5. The dividend stated in § 2.15 of 8% to unsecured creditors is misleading. According to Trustee's calculations the unsecured dividend is approximately 35%.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Debtor has not provided sufficient evidence to show that the plan is proposed in good faith. 11 U.S.C. § 1325(a)(3).
  - a. The ordering confirming plan ordered the Debtor to immediately notify the clerk of the court of any change in the Debtors' address. While the Debtors now state that they are separated and living in separate residences, the Debtors have not filed an address change with the court.
  - b. The order confirming plan ordered the Debtor to immediately notify the Trustee in writing of any change in employment. While Debtors now state that their income has changed, Debtors have not stated when it occurred so that Trustee

cannot determine if the reason for the modification includes the changes in income.

- c. Debtors' schedules showed 4 cars and 2 motorcycles. Debtors has not explained when they purchased an additional vehicle, although the claims filed by Creditor show the date of contract as October 4, 2014 and the purchase as Debtor Sonya Mitchell.
  - d. Debtors refer to new debt being incurred including medical bills incurred by Debtor Phillip Mitchell. Debtor does not give the amount of debt or explain the nature of the debt. Without the explanation, the Court should not find the plan proposed in good faith as the debt could in any amount, and Debtor could have medical issues rendering the plan unfeasible.
  - e. Debtors' declaration states that they have incurred a tax obligation for the tax year 2014. Debtors do not specify how much the tax debt is, or whether the Debtors have adjusted their withholding. The court cannot determine if the plan will allow the Debtors to pay all ongoing taxes or if the \$100 expense for the next 36 months, a total of \$3,600, will overpay the taxes.
2. Trustee cannot determine if Debtors can make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors have had changes of addresses and employment without reporting, and have incurred post-petition debt including a vehicle purchase and medical bills without permission of the court. Debtors may not be able to continue making plan payments, and Debtors have not been willing to comply with the plan or local rules.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtor is \$5,200 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5,200 is due May 25, 2015. The case was filed on March 11, 2015, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).
3. The plan is not feasible under 11 U.S.C. § 1322(d) as the plan will not complete within 60 months.

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

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

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

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

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

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Thru #31

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 11, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1476 Dreamy Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$254,520.32. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$105,594.22. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-

collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1476 Dreamy Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$245,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Bank of America, N.A. To date, Debtor has not filed such motion.
2. Debtor may not be able too make plan payments required under 11 U.S.C. § 1325(a)(6).
  - a. Debtors' Schedule J lists net income of \$259.26, while the plan proposes a payment of \$355 per month. Debtors do not have enough net income to make plan payments.
  - b. The statement of current monthly income shows Debtors are below median income. Debtors' schedule I list unemployment

compensation of \$1,800 per month. Trustee is not certain how long this income will continue where this income is not listed on the Statement of Monthly Income, or the Statement of Financial Affairs. Trustee did not receive any statements showing proof of this income.

c. Class 4 of Debtors' plan lists an expense for two Worldmark timeshares of \$200 per month. Debtors' Schedule J does not list any maintenance expenses for the timeshares. While Debtors may choose to surrender the timeshares, the current plan does not propose to do so.

3. Debtors' plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

4. Debtors prior filing is not disclosed, Case No. 13-34181.

Debtors filed a Motion to Value the Secured Claim of Bank of America, N.A. on May 11, 2015, which the court granted on June 2, 2015, resolving the Trustee's first objection. However, the remainder of Trustee's objections have not been resolved. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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31. [15-22199](#)-C-13 ROBERT/KRISTEN THOMAS  
PD-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
4-29-15 [[21](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 29, 2015. Fourteen days' notice is required. This requirement was met.

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

Creditor, Wilmington Savings Fund Society, FSB, doing business as Christina Trust, opposes confirmation of the Plan. Creditor's claim is evidence by a promissory note executed by Debtors in the original sum of \$301,366, secured by a deed of trust encumbering real property commonly known as 1476 Dreamy Way, Sacramento, California. Creditor opposes confirmation of the proposed plan on the basis it does not provide for the full value of Creditor's claim and cure Creditor's pre-petition arrears of \$19,917.10.

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, Wilmington Savings Fund Society, FSB, doing business as Christina Trust, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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