

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

June 9, 2015 at 2:00 P.M.

1. [15-20502](#)-C-13 MICHAEL/ANGELA CRAIK MOTION TO VALUE COLLATERAL OF
CMO-3 Cara O'Neill BANK OF AMERICA
5-12-15 [[39](#)]

Thru #3

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Office of the United States Trustee, and incorrectly served on Creditors Bank of America and TD Bank USA, N.A. on May 12, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

Debtors move for (1) an order valuing the second mortgage of Bank of America and (2) an order avoiding a recorded judgment lien in favor of TD Bank USA, N.A. The motion is accompanied by Debtor Angela Craik's

declaration. The Debtor is an owner of the subject real property commonly known as 1808 San Gabriel Street, Roseville, California. The Debtor seeks to value the property at a fair market value of \$375,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$385,629. Bank of America's second deed of trust secures a loan with a balance of approximately \$38,866.22. Moreover, Debtors assert that TD Bank USA, N.A. is the holder of a judgment lien recorded against Debtors' real property in the amount of \$5,309.09.

The motion is denied without prejudice for two reasons. First, Debtors' motion seeks to affect the interests of two different creditors on two distinct, separate legal theories, improperly joining two requests for relief in one pleading.

IMPROPER JOINDER OF CLAIMS

The Motion seeks two types of relief:

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

2. [15-20502](#)-C-13 MICHAEL/ANGELA CRAIK
CMO-4 Cara O'Neill
5-12-15 [[42](#)]

MOTION TO VALUE COLLATERAL OF
TD BANK USA, N.A.

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

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

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

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

Debtors move for (1) an order valuing the second mortgage of Bank of America and (2) an order avoiding a recorded judgment lien in favor of TD Bank USA, N.A. The motion is accompanied by Debtor Angela Craik's declaration. The Debtor is an owner of the subject real property commonly known as 1808 San Gabriel Street, Roseville, California. The Debtor seeks to value the property at a fair market value of \$375,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$385,629. Bank of America's second deed of trust secures a loan with a balance of approximately \$38,866.22. Moreover, Debtors assert that TD Bank USA, N.A. is the holder of a judgment lien recorded against Debtors' real property in the amount of \$5,309.09.

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distinct, separate legal theories, improperly joining two requests for relief in one pleading.

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

Tentative Ruling: The 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 April 16, 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 objection to confirmation on the basis that:

1. The Plan relies on pending motions to value.
2. Debtor's Amended Plan (Dckt. 31) indicates that unsecured creditors are to be paid not less than 18%, while Debtor's declarations (Dckts. 33 & 34) indicate that unsecured creditors are to be paid not less than 18.34%.
3. Debtor's Amended Plan provides for the mortgage on Debtor's residence as a Class 1 debt and lists the ongoing contract payment as \$1,888.18 per month. Debtor's Schedule J (Dckt. 1) lists a mortgage payment of \$2,200.

Debtor's Reply

In response to the Trustee's concerns, the Debtor argues that:

1. The motions to value are unopposed and are thus likely to be granted.

2. Unsecured creditors are to be paid 18%.
3. Debtor has discussed the mortgage payment with the Trustee and amended their budget to remove the mortgage on Schedule J. The Amended Schedule J was inadvertently omitted and is now docketed.

Discussion

The docket reflects that the Debtor has resolved the Trustee's second and third concerns. The court has not granted the motions to value and thus the Trustee's first concern remains unresolved.

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.

Also #5

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 May 8, 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.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$500 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$500 is due on May 25, 2015. Debtor has paid \$0.00 into the plan to date.
- 2.
3. The Plan calls for a monthly payments of \$500 for 60 months and a \$45,000 lump-sum payment in month 2 from funds held by an attorney. (Dckt. 15, p 7). The Trustee is not certain if the Debtor is making sufficient income to afford the plan payments. Schedule I, (Dckt. 16, p.8), shows that Debtor is projected to make \$10,000 per month from his businesses. In contrast, Form 22C-1 shows only \$5,062.08 in net monthly income. Further, no evidence has been presented to prove that Debtor can make the lump sum payment and a claim for a constructive trust against the funds appears to have been pending at

the time of filing, (PoC 3, p. 18).

4. The Trustee is uncertain as to whether the Plan was filed in good faith. First, there are discrepancies in Debtor's Schedule I and Form 22C-1. Second, Debtor did not disclose sufficient information to determine what community property assets exist, other than disclosing and valuing at \$5,000, "Possible community property interest in spouse's separate property, including Wife's real property (residence), retirement accounts (not property of the estate), and household goods." (Schedule B, item 35). Third, this case was filed after an arbitration award was issued. Fourth, Debtor has previously received a Chapter 7 discharge. Fifth, Debtor has not filed all tax returns based on the proof of claim of the IRS.

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.

5. [15-22302](#)-C-13 D JACK
GLM-1 Mark Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY LINDA HOLLAWAY AND
JAMES HOLLAWAY
5-14-15 [[33](#)]

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 May 14, 2015. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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James and Linda Hollaway opposes confirmation of the Plan on the basis that the plan and petition were not filed in good faith. First, Debtor filed after an arbitration award in favor of Creditors was issued, but before it was finalized thereby preventing Creditors from claiming secured status. Second, the day the arbitrator issued his tentative ruling requiring Debtor to put funds paid to him by Creditors into a trust, Debtor filed with the state to establish a new business entity to shield himself from liability. Second, debtor concealed assets from the court in his prior Chapter 7 bankruptcy.

From the evidence provided to the court, there is reason to believe that Debtor may have filed his petition in bad faith to shield assets from creditors. At this time, the court cannot find that the plan was filed in good faith pursuant to 11 U.S.C. § 1325(a)(3). 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 James and Linda Holloway 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.

Thru #8

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 May 13, 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. Debtors failed to appear and be examined at the first meeting of creditors held on May 7, 2015.

Debtors are required to attend the meeting of creditors under 11 U.S.C. § 343. Due to the Debtors failure to adhere to applicable provisions of the Bankruptcy Code, the Plan does not comply with 11 U.S.C. §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.

7. [15-22702](#)-C-13 ERIC/CLEOFÉ PRICE
APN-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY INFINITI FINANCIAL
4-13-15 [[14](#)]

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

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

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

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

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

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

Infiniti Financial Services ("Creditor") opposes confirmation of the Plan on the basis that the \$30,025.00 valuation allocated to its secured collateral under Debtor's proposed Plan is incorrect. As mandated by 11 U.S.C. § 1325, et seq., the value of Creditor's secured collateral must be the \$46,310.72 which was due and owing on Debtor's account with Creditor at the time of the Debtor's filing of the above-captioned case.

More specifically, as noted on the prevailing security agreement, Creditor has a purchase money security interest securing the debt which is the subject of its claim against Debtor and the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of Debtor.

Creditor objects to the Debtors' classification of its secured claim as one subject to 11 U.S.C. § 506(a) when, in fact, the subject vehicle was purchased by Debtor 520 days prior to their filing of the above-captioned case and, therefore, Creditor's claim is not subject to §506(a).

DISCUSSION

In 2006, Congress amended §1325(a) of the Bankruptcy Code to include a hanging paragraph at the end of §1325(a)(9). This insertion, which refers back to §1325(a)(5), states the following:

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

11 U.S.C. § 1325(a)(9).

"The majority of courts interpreting the hanging paragraph hold that it precludes a Chapter 13 debtor from using § 506 to cram down a 910-day vehicle." *In re Bea*, 2015 WL 3441169, at *5 (B.A.P. 9th Cir. May 29, 2015) (citing *In re Montoya*, 341 B.R. 41, 44 (Bankr.D.Utah 2006) (internal quotation marks omitted). In other words, a Chapter 13 Plan cannot create a secured claim equal to the car's value and an unsecured deficiency for the balance.

To comply with the hanging paragraph, a Chapter 13 debtor may either: (1) obtain the 910 claim creditor's approval of the plan, (2) surrender the collateral to the creditor or (3) provide lien retention and deferred cash payments equal to the allowed amount of the 910 claim. *In re Robinson*, 338 B.R. 70, 72 (Bankr. W.D. Mo. 2006).

Here, Debtors' Plan reduces the value of Creditor's secured 910 claim to the value of the collateral without Creditor's approval in violation of 11 U.S.C. § 1325(a)(9). Accordingly, 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 Infiniti Financial Services having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

confirmed.

8. [15-22702](#)-C-13 ERIC/CLEOFÉ PRICE
DPC-1 Mary Ellen Terranella

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
4-28-15 [[18](#)]

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.

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 28, 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.
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SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtors are not eligible to receive a discharge because Debtor's 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 June 6, 2011 (Case No. 11-24280). Debtors filed this Chapter 13 case on April 1, 2015.

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 15-22702.

9. [15-22707](#)-C-13 SCOTT WEIR
MKO-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY LORIE AND WILLIAM
ARKLEY
5-12-15 [[15](#)]

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 May 12, 2015. Fourteen days' notice is required.

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

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

Lorie and William Arkley ("Creditors") hold a first deed of trust against the Debtor's primary residence. Creditors oppose confirmation of the Plan on the basis that the Plan modifies the terms of the mortgage. Creditors hold an interest only balloon payment note. (Dckt. 19, Ex. 1). The plan provides for monthly payments at a 2.00% interest rate instead of paying the rate of 12.500% per annum (+3.00% default penalty) per the terms of their mortgage.

Pursuant to 11 U.S.C. 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By altering Creditor's contractual interest rate, the Plan violates 11 U.S.C. 1322(b)(2)'s anti-modification provision. 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 Lorie and William Arkley having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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).

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 13, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to continue the hearing on the Objection to June 30, 2015.

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

1. The Plan relies on a motion to value collateral being filed for Santander. As of May 13, 2015, Debtor has failed to file such motion.

Debtor's Reply

The Debtor has recently filed a motion to value set for hearing on June 30, 2015. Debtor requests the court to continue this confirmation hearing to that date, so that the motion to value matter can be resolved.

Discussion

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 continued to June 30, 2015.

11. [15-22737](#)-C-13 ANGELA SEIBERT
BF-1 Dale Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
4-20-15 [[16](#)]

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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).

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

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

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

The court's decision is to continue the hearing on the Objection to June 30, 2015.

Creditor's Objection

JPMorgan Chase Bank, N.A. ("Creditor") is the holder of a claim secured by the Debtor's primary residence. Creditor opposes confirmation of the Plan on the basis that the Plan understates the pre-petition arrearage owed to Creditor.

Debtor's Reply

Creditor seems to only contend that the pre-petition arrearages are \$7,731.78, rather than the \$4,112.46 listed in Debtor's plan. Debtor reports she made at least one recent payment of \$2,056.23 directly to Debtor's Reply Creditor. If so, this may offset the arrearages owed.

Even with the full arrearages of \$7,731.78, there should be enough paid in to Debtor's plan, over the life of the plan, to pay back this amount in full, in addition to all other requirements of the plan. If the plan needs only a technical modification, Debtor requests this be handled with the order confirming the plan.

Further, as of today, May 26, 2015, Chase has yet to file a claim in this case.

Debtor's Second Reply

In her reply to the Chapter 13 Trustee's objection to confirmation, Debtor stated that counsel for Creditor and Debtor's attorney seem to be in agreement to resolve the arrearage amounts in the Order Confirming Plan. (Dckt. 36)

Discussion

Pursuant to 11 U.S.C. 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a mortgage on a debtor's principal residence. By understating the pre-petition arrearage owed to Creditor, the Plan violates 11 U.S.C. 1322(b)(2)'s anti-modification provision.

Given that Debtor and Creditor have indicated willingness to resolve the arrearage discrepancy in the order confirming the plan, the court will be prepared to confirm the plan, once the Trustee's objection is resolved, and cure the arrearage discrepancy by court order.

At this time, the court's decision is to continue this matter to coincide with the hearings for the Chapter 13 Trustee's objection to confirmation and the Debtor's motion to value the collateral of Santander.

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 JPMorgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is continued to June 30, 2015.

Final Ruling: No appearance at the July 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2015. 35 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).

hahaha

The court's decision is to grant the Motion to Modify Plan.
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PREVIOUSLY

At the initial hearing on April 28, 2015, the court **continued the hearing on the Motion to Confirm the Modified Plan to 2:00 p.m. June 9, 2015.** The court ordered that Debtor's supplemental pleadings be filed and served by May 22, 2015, and replies, if any, on or before May 29, 2015.

SUMMARY OF MOTION

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

TRUSTEE'S OPPOSITION

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

1. The plan increases plan payments from \$350 to \$465 after the Trustee sought to dismiss the plan as it would take 60 months to complete.
2. There is a discrepancy in the debtor's listed income found in Schedule I and the SOFA. The Trustee opposes confirmation of the modified plan unless the debtor furnishes sufficient evidence to prove their income, such as a copy of their 2014 tax return, last paystub of the 2014 year, or more substantial declaration explaining the discrepancy.

DEBTOR'S RESPONSE

Debtor provides that Debtor will provide all requested documentation to Trustee, including tax documentation and paystubs.

TRUSTEE'S RESPONSE

Chapter 13 Trustee provides that he has reviewed the information provided by Debtor, and is convinced that Debtor will be able to make plan payments called for in the modified plan and should not reasonably be expected to pay more.

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 March 19, 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.

13. [14-25965](#)-C-13 CRISENTE/JACQUELINE
DPC-1 VALDEZ
Mark Wolff

OBJECTION TO CLAIM OF KEYSTONE
NATIONAL BANKING ASSOCIATION,
CLAIM NUMBER 9
4-14-15 [[37](#)]

Final Ruling: No appearance at the June 9, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtors, Debtors' Attorney, parties requesting special notice, and Office of the United States Trustee on April 15, 2015. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

Proof of Claim Number 9-1 (filed on September 24, 2014) of Keystone National Banking Association amends, supercedes, and replaces original Proof of Claim No. 4-2 (filed on June 25, 2015).

The Objection to Amended Proof of Claim Number 9-1 (filed on November 7, 2014) of Keystone National Banking Association is sustained and Amended Proof of Claim Number 9-1 (filed on November 7, 2014) is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Keystone National Banking Association ("Creditor"), Amended/Duplicate Proof of Claim No. 9 filed on November 7, 2014 ("Claim"), Official Registry of Claims in this case.

Proof of Claim No. 4-2: The Claim is asserted to be unsecured in the amount of \$46,786. Objector asserts that Creditor filed an unsecured claim on June 25, 2014, Proof of Claim No. 4-2, unsecured in the amount of \$35,147.64.

Proof of Claim No. 9-1: Creditor then subsequently filed Proof of Claim No. 9-1 on September 24, 2014 for an unsecured amount of \$46,786. The Claim No. 9-1 is not identified as an amendment, but does change the amount

of the Claim as stated above from \$35,147.64 to \$46,786 and attaches a Default Judgment.

Amended Proof of Claim No. 9-1: On November 7, 2014, Creditor filed an amended unsecured claim of \$46,786 "amending" Claim No. 9-1 filed September 24, 2014. Trustee contends that this "amended" Proof of Claim No. 9-1 is in fact a duplication of Proof of Claim No. 9-1 filed on September 24, 2014.

Trustee believes the Creditor's Claim 9-1 filed on September 24, 2014, was intended to be an amendment of the Original Claim No. 4, and that Amended/Duplicate Proof of Claim No. 9-1 filed on November 7, 2014 should be disallowed in its entirety as it appears to be a duplication of Proof of Claim No. 9-1 filed on September 24, 2014.

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

The court 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 Keystone National Banking Association, Creditor filed in this case by 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 Proof of Claim Number 9-1 (filed on September 24, 2014) by Keystone National Banking Association amends, supercedes, and replaces original Proof of Claim No. 4-2 (filed on June 25, 2015).

IT IS FURTHER ORDERED that Chapter 13 Trustee's objection to Amended Proof of Claim Number 9-1 (filed on November 7, 2014) of Keystone National Banking Association is sustained and Amended Proof of Claim Number 9-1 (filed on November 7, 2014) is disallowed in its entirety.

14. [15-22465](#)-C-13 DARWIN PRICE
APN-1 Eric Gravel

OBJECTION TO CONFIRMATION OF
PLAN BY GATEWAY ONE LENDING &
FINANCE
4-23-15 [[20](#)]

Also #15

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 23, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditor, Gateway One Lending & Finance, opposes confirmation of the Plan. Creditor holds a secured interest in Debtor's vehicle, a 2011 Mitsubishi Galant (VIN: 4A32B2FF7BE004771). Debtor purchased said vehicle on July 2, 2012, and became obligated to pay the sum of \$15,157.56 at an accruing interest of 10.75% per annum to Creditor, who financed the vehicle. Creditor object to confirmation of the chapter 13 plan on the following basis:

1. Debtor's chapter 13 plan reduces Creditor's claim to \$9,522. Instead, Creditor contends that the balance due and owing on Debtor's account is \$9,670.
2. Debtor has not provided adequate protection payments. Creditor asserts that Debtor has filed to acknowledge that Creditor has a purchase money security interest, and as such,

has failed to provide Creditor with pre-confirmation adequate protection payments.

3. Creditor objects to post-confirmation monthly adequate protection payments of \$158.70, as this is insufficient to accommodate that rate at which Creditor's security will depreciate.
4. Creditor objects that the proposed chapter 13 plan suggests an interest rate of 0% on Creditor's claim. At the time of filing this case, the Prime Rate was 3.25%. Creditor suggests that Creditor's secured claim accrue interest at the fair market rate of 6.25% per annum.
5. Debtor has not provided Creditor with valid, written proof that Debtor is current on insurance coverage for the property. As such, Creditor believes Debtor is operating the vehicle with no insurance coverage in violation of their contractual agreement and California Vehicle Code § 16451.

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, Gateway One Lending & Finance 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.

15. [15-22465](#)-C-13 DARWIN PRICE
DPC-1 Eric Gravel

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-13-15 [[25](#)]

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

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

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

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

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

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that it appears Debtor is not able to make plan payment required under 11 U.S.C. § 1325(a)(6). Debtor is \$160.56 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$710.56 is due on May 25, 2015. The case was filed on March 27, 2015, and has paid \$550 into the plan to date.

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.

16. [15-22666](#)-C-13 MARIBEL BAHNER
SJD-1 Susan Dodds

MOTION TO VALUE COLLATERAL OF
A-L FINANCIAL CORP.
4-22-15 [[18](#)]

Also #17

Tentative Ruling: The Motion to Value secured 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 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, and Office of the United States Trustee on April 22, 2015. By the court's calculation, 48 days' notice was provided. 28 days' notice is required. This requirement was met.

The Motion to Value secured 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of A-L Financial Corp. ("Creditor") is denied without prejudice.

The Motion filed by Maribel Bahner ("Debtor") to value the secured claim of A-L Financial Corp. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Toyota Solara ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$5,998 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).

DISCUSSION

Pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), Debtor may not lien strip a debt incurred within 910 days prior to the filing of

the petition and the Vehicle is the personal use of the Debtor. Creditor has a purchase money security interest securing the debt and the Vehicle was acquired for personal use of Debtor.

Apparent Misstatement of Facts Under Penalty of Perjury

The Debtor states under penalty of perjury in her declaration that "loan secured by the subject vehicle was made more than 910 days before this case was filed." Dckt. 20, paragraph 5. While the Debtors do not provide the date the Vehicle was purchased, a look at Proof of Claim No. 2 filed by Creditor shows that the Vehicle was purchased August 10, 2013 based on the attached Retail Installment Contract. This is 599 days, less than 910 days from the date of filing the instant bankruptcy case, which was on April 1, 2015.

The Debtors appear to have knowingly misstated under penalty of perjury in testifying that the Vehicle was purchased more than 910 days prior to the date of filing. Or it may be that Debtors never read their declaration and merely signed it because it was presented to them as something necessary for them to win. Neither is a positive conclusion for someone trying to convince the court, creditors, and the Chapter 13 Trustee that they are prosecuting the case in good faith.

Therefore, for the reasons stated above, the Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

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 March 13, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan relies on a pending motion to value the collateral of A-L Financial Corp., without which Debtor cannot afford to make payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and confirmation should be denied.

DEBTOR'S RESPONSE

Debtor provides that she anticipates that the Motion to Value the Collateral of A-L Financial Corp. will be granted, and upon granting of such motion, Debtor's plan will be feasible and confirmable.

DISCUSSION

The court has denied Debtor's Motion to Value the Collateral of A-L

Financial Corp. without prejudice due to non-compliance with the "hanging paragraph" of 11 U.S.C. § 1325(a), wherein Debtor may not lien strip a debt incurred within 910 days prior to the filing of the petition. 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.

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 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 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.

Final Ruling: No appearance at the July 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2015. 35 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).

The court's decision is to grant the Motion to Modify Plan

PREVIOUSLY

At the initial hearing on April 14, 2015, the court continued the hearing to 2:00 p.m. on June 9, 2015, with supplemental pleading filed and served by May 5, 2015, with replies, if any, by May 26, 2015.

SUMMARY OF MOTION

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

TRUSTEE'S OPPOSITION

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

1. Trustee is uncertain of the Wyndam/Worldmark Time Share as a business tool. The time share was utilized 19 times over a span of 31 months (June 2012 through December 2014). Of the 19 uses, six constitute use by Debtor or a relative bearing the last name of Lupton.
2. The plan does not provide for the priority claim of the State Board of equalization filed February 26, 2014 (claim #13).
3. Trustee is uncertain of the treatment of Santander Consumer USA, which is not provided for in the plan.

DEBTORS' RESPONSE

In reply to the Trustee's opposition, Debtors state that:

1. The total cost of the time share is \$486 per month, which includes a monthly lease payment of \$227 plus \$259 in membership dues and maintenance fees which also billed monthly.

2. One of the six "Lupton" uses of the time share was for a trade show in Las Vegas, a business expense.
3. Debtors feel that time share is a business tool to differentiate their business from competitors.
4. If the State Board of Equalization claim was not paid prior to filing, Debtors will further modify the plan to include the claim.
5. The Santander claim was inadvertently left out, and Debtors will further modify the plan to include the claim.

DEBTORS' POST-HEARING RESPONSE

Following the hearing on April 14, 2014, Debtors provided a supplemental response providing that: (1.) Debtors have remedied the defect with regard to Santander Consumer USA; (2.) Debtors point out that the California State Board of Equalization has withdrawn their claim on April 28, 2015; and (3.) Debtors reassert the importance of the Timeshare as an important incentive program, and suggest that losing the program would adversely affect their sales going forward.

DISCUSSION

On May 7, 2015, Chapter 13 Trustee filed a notice of withdrawal, withdrawing all objections to confirmation of the first modified plan. Based on declaration of Dennis Lupton in which Debtor provides his basis for using the time shares as a business tool, the court is satisfied that 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 March 3, 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.

20. [15-22788](#)-C-13 JAMES AQUINO AND PEGGY
DPC-1 MARTIN
W. Scott de Bie

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-13-15 [[19](#)]

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

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

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

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

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

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

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

1. Trustee states that it is not clear if Debtor can afford to make payments under the plan, 11 U.S.C. § 1325(a)(6). Section 6.01 of the plan calls for a lump sum payment of \$42,000 into the plan from net proceeds of Co-Debtor's interest in a trust held by the 50th month of the plan. Debtors admitted at First Meeting of Creditors that the Trust includes the house of Debtor Peggy Martin's mother, in which Debtor Peggy Martin has a 1/7 interest. It has not been made clear to Trustee that the sale would not be contested by any of Debtor's other siblings, and Trustee has not received a copy of the Trust.
2. Debtors' proposed plan is not in Debtors' best efforts under 11 U.S.C. § 1325(b). According to Trustee's calculations,

Debtors appear to be over the median income, not under the median income. Debtors propose plan payments of \$500 for 12 months, \$715 for 44 months, and \$42,000 from the net proceeds of the sale of Co-Debtor's interest in a trust by the 50th month of the plan with a 100% dividend to unsecured creditors.

Trustee believes Debtor James Aquino's income is \$2,292.05 more per month than what was reported in schedule I. Based on Trustee's analysis, it appears Debtors are over the median income and Form B22C should be amended. It appears Debtors have the ability to increase plan payments and be contingent on Debtors' interest in the Trust.

DEBTORS' RESPONSE

Chapter 13 Debtors respond to the Chapter 13 Trustee's objection to confirmation of chapter 13 plan as follows:

1. Debtors propose to supplement their monthly plan payments with a lump sum payment of \$42,000 from the net proceeds from a trust. The value of the real property in the trust is no less than \$350,000 and is free and clear of liens, and Debtor Peggy Martin holds a 1/7 interest in that property. All beneficiaries have agreed that the house will be sold and the proceeds will be divided equally. Debtor Peggy Martin's mother has passed since the filing of this bankruptcy case, and the manager of the trust will shortly market the property for sale. Although Trustee notes that he has not received a copy of the Trust, Debtors contend that other than noting so in the objection, Trustee has not requested a copy of the Trust.
2. Trustee asserts that the proposed plan payments are not Debtors' best efforts based on pay stubs provided to him for the 60 days prior to the filing of the petition. Debtors state that Trustee did not request further pay stubs, and had Trustee done so, he would note that Debtors' average monthly income for the last 6 months reflect what Debtors reported. Trustee's use of 60 days worth of pay stubs results in a erroneous projection of income. Debtors' plan is proposed at 56 months, not to escape the commitment period of 60 months for over-median Debtors, but because it will only take 56 months to pay 100% of all debts and thus the commitment period of 11 U.S.C. § 1325(b) (4) (A) does not apply.

The court is satisfied that Debtors will be able to make a lump sum payment of \$42,000 from Debtor Peggy Martin's interest in the Trust, and that Debtors have reported an accurate monthly income, and thus the plan is in Debtors' best efforts pursuant to 11 U.S.C. § 1325(b). 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 April 6, 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.

21. [15-22590](#)-C-13 GARY/STEPHANIE SELBY
DPC-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-13-15 [[23](#)]

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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

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

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to continue the Objection to June 16, 2015 to be heard in conjunction with Debtors' Motion to Value Collateral of Best Buy.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Best Buy, which is set for hearing on June 16, 2015. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

DEBTORS' RESPONSE

Debtors state that they have file a Motion to Value the Collateral of Best Buy/CBNA, set for hearing on June 16, 2015.

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

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

The Objection to the Chapter 13 Plan filed by the 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 continued to June 16, 2015 to be heard in conjunction with Debtors' Motion to Value the Collateral of Best Buy/CBNA.

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 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 Motion to Confirm Plan is denied as moot, and the Chapter 13 Plan filed on February 23, 2015 is not confirmed.

PREVIOUSLY

At the hearing on April 14, 2015, the court continued this matter to to June 9, 2015 to occur after the hearing on the Trustee's Objection to Exemptions, in which Chapter 13 Trustee objected to Debtor's use of the California exemptions for a "food truck" pursuant to CCP § 704.060 in the amount of \$4,850. At the hearing on April 28, 2015, the court sustained Trustee's objection to claim of exemption, and the claimed exemptions were disallowed in their entirety. Dckt. 55.

SUMMARY OF OBJECTION

The Chapter 13 Trustee opposes confirmation on the basis that:

1. The Plan fails the Chapter 7 liquidation analysis. Debtor's non-exempt equity totals \$7,102 based on a "food truck" (pending objection to exemptions set for 4/28/2015, dckt. 40), and the Debtor is proposing a 7.63% dividend to unsecured creditors.
2. The Debtor is over the median income, but the plan is a 60 month plan.

DISCUSSION

The court notes that no further supplemental briefings have been filed on the instant motion since the hearing on April 14, 2015. Further, the court notes that on May 6, 2015, Debtor filed an amended chapter 13 plan, Dckt. 60, and accompanying Motion to Confirm Plan, Dckt. 59, set for hearing before this court on June 30, 2015. As such, the instant motion to confirm plan is denied as moot.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to 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 as moot and the proposed Chapter 13 Plan filed on February 23, 2015 is not confirmed.
