

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 14, 2016 at 2:00 p.m.

1. [16-20901](#)-C-13 ALICIA GADDIS
MLA-3

MOTION TO CONFIRM PLAN
4-21-16 [[39](#)]

Mitchell Abdallah

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 21, 2016. 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 on the following grounds:

1. Section 6.01 of the amended plan states that debtor will object to any proof of claim filed by Champion Mortgage because debtor disputes arrears in the amount of \$5,014.29 owed to creditor. The provision does not require that funds be held for this claim. A proof of claim was filed by the creditor on May 23, 2016 (court claim #1) listing arrears of

\$4,641.89, and no objection has been filed to date. Unless an objection is filed, the trustee will commence payment of the claim after confirmation.

Debtor's Reply

Debtor has provided for payment of creditor, Champion Mortgage's arrears in the First Amended Plan but does request that funds in the amount of \$83.57 per month for months 1-60 of the Plan be withheld from payment to the creditor, Champion Mortgage subject to resolution of Debtor's forthcoming objection to creditor's proof of claim.

Discussion

As of June 9, 2016, the docket does not reflect that debtor has filed an objection to claim. Accordingly, the plan is inaccurately states that the debtor disputes creditor's claim. 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.

Timothy Walsh

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 19, 2016. 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 proposed plan calls for payments totaling \$21,350 through April 2016 while the trustee has received \$20,060 by May 2016. Thus, an additional \$310 is due for May 2016. Further, the plan proposes a lump sum payment of \$3,570 in November 2016 but does not explain the source of the funds.
2. The debtors did not file updated Schedules I or J in support of the plan.

It appears that debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6) because the proposed plan calls for payments totaling \$21,350 through April 2016 while the trustee has received \$20,060 by May

2016 and the plan proposes a lump sum payment of \$3,570 in November 2016 but does not explain the source of the funds. 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.

3. [16-21503](#)-C-13 BELINDA VIDALES
DPC-1

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
4-27-16 [[17](#)]

Candace Brooks

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2016. Twenty-eight 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 Debtor is not eligible to receive a discharge because Debtor 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). Debtor received a Chapter 7 discharge on September 3, 2013 (Case No.13-27206). Debtor filed this Chapter 13 case on March 11, 2016.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor 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 16-21503.

Rick Morin

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 4, 2016. 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. Debtor did not appear at the First Meeting of Creditors held on April 28, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

The court has considered the Trustee's concerns and finds them legitimate. 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. [16-21304](#)-C-13 EDUARDO/MARIE ORTEGA
MDE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-3-16 [[24](#)]

WELLS FARGO BANK, N.A. VS.

Peter Macaluso

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 3, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion Confirmation of Termination of Stay 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. 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 Confirmation of Termination of Stay is granted.

Wells Fargo Bank, N.A. seeks an order confirming termination of the automatic stay with respect to the real property commonly known as 2481 Bent Tree Dr., Roseville, California. The moving party has provided a Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that one or more single cases have been filed but dismissed within the year preceding the petition date. From the evidence provided to the court, and only for purposes of this Motion for Termination, the Debtors filed a voluntary chapter 13 bankruptcy petition on July 22, 2014 as case number 14-27476. That case was dismissed on September 24, 2015. The instant case was filed on March 2, 2016.

Debtors' Opposition

1. Movant Lacks Standing As No Proof of Claim Has Been Filed

In a review of the Claims Register in this case, the Movant has not filed a proof of claim as of May 30, 2016. See Claims Register, Case #16-21304. As such, the Movant lacks standing to file this motion.

2. 11 U.S.C. 362(C) (3)

In this instance, the Court should follow the majority of courts which conclude that the plain meaning of the phrase "with respect to the debtor" limits the termination of the automatic stay to the debtor and property of the debtor. In this instance, the Court should follow the majority of courts which conclude that the plain meaning of the phrase "with respect to the debtor" limits the termination of the automatic stay to the debtor and property of the debtor.

Discussion

Movant filed a proof of claim on June 3, 2016 thereby nullifying Debtors' objection to movant's standing. Debtors filed a previous bankruptcy petition that was pending and dismissed within the year preceding the petition date in the instant case. Pursuant to 11 U.S.C. § 362(c) (3), the automatic stay terminates thirty days after the petition is filed if the debtor has had a prior case dismissed within one year of filing.

The court shall issue a minute order stating that the automatic stay terminated on April 1, 2016.

No other or additional relief is granted by the 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 Confirmation of Termination of Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are terminated under 11 U.S.C. § 362(c) (3) on April 1, 2016.

No other or additional relief is granted.

W. Steven Shumway

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 May 2, 2016. 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 for the following reasons:

1. The plan overstates the amount paid through April 2016.
2. The plan proposes a 0% dividend to general unsecured creditors. However, Trustee believes that this is a typographical error and that Debtor's intend to pay unsecured creditors a 60% dividend.

Debtor's Reply

Debtors will stipulate that the order confirming Debtors plan payments will be \$21,450 total paid in through April 2016, then \$500.00 per month beginning May 25, 2016.

Debtors will stipulate that the order confirming will include language indicating unsecured creditors will receive no less than 60%.

Discussion

Pursuant to Debtors' stipulation, 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 the Motion is granted, Debtors' Chapter 13 Plan filed on May 2, 2016 is confirmed so long as the order confirming the plan states that plan payments will be \$21,450 total paid in through April 2016, then \$500.00 per month beginning May 25, 2016 and that unsecured creditors will receive no less than a 60% dividend, 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.

Peter Macaluso

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 May 3, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' modified plan proposes to provide for the secured portion of a claim filed by the Internal Revenue Service, but does not alter the plan payment from the confirmed plan.
2. Debtors did not file updated Schedules I and J to reflect increased income.
3. Debtors have not submitted to the trustee timely pay advices.

Debtor's Reply

The required Amended Schedules I and J were filed and served to the

Trustee on June 7, 2016, which supports confirmation.

Discussion

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

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

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

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

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

Timothy Walsh

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 19, 2016. 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 are proposing the monthly plan payment to remain the confirmed amount of \$620.00. However, the supporting motion states that the debtors are no longer employed and no longer in business and that their income is now reduced to Social Security. Debtors have not filed updated Schedules I and J. On those Schedules, Debtors' expenses amount to \$6,037.50--greatly exceeding their new income of \$3,446.00

As the Trustee's concerns highlight, the Debtors may not be able to afford the proposed plan payments. 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.

9. [16-22309](#)-C-13 ANN MCLAUGHLIN
DPC-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[13](#)]

Seth Hanson

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 18, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 continue the hearing to August 16, 2016 at 2:00 p.m.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtors did not appear at the First Meeting of Creditors held on May 12, 2016. Pursuant to 11 U.S.C. § 343, Debtors are required to appear at the meeting.
2. Debtors have failed to file all pre-petition tax returns required for the four years preceding the filing of the petition.
3. The plan will not complete within 60 months as required by 11 U.S.C. § 1322(d).

Debtor's Opposition

The Trustee objects to confirmation of Debtor's plan based on the following: (1) Debtor's non-appearance at the initially scheduled 341 meeting; (2) the 100% plan will not complete in 60 months in light of the unsecured proof of claim filed by BMW Financial Services and the proof of claim filed by the IRS; and (3) Debtor may not have filed the last 4 years worth of tax returns.

Debtor believes the first and last objections have been resolved. Debtor respectfully asks the Court to continue the confirmation hearing for two months to allow her to resolve objection number 2.

Discussion

The court's decision is to continue the motion to August 16, 2016 at 2:00 p.m.

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 August 16, 2016 at 2:00 p.m.

Gary Fraley

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 May 4, 2016. 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.

1. The plan fails to provide for the priority creditor Franchise Tax Board. The priority portion for the amount of \$1,823.20 is not currently listed to be paid through the Chapter 13 plan.
2. Debtor is \$270.26 delinquent in plan payments to the Trustee to date and under the proposed plan.
3. The plan will not complete within 60 months as required by 11 U.S.C. § 1322(d).

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

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

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

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

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

Cindy Lee Hill

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 4, 2016. 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. Debtor is \$3,586.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,586.00 is due on May 25, 2016. Debtor has paid \$0.00 into the plan to date.
2. At the first meeting of creditors, Debtor testified that she is now renting out another room in her home. It is unclear whether Schedule I reflects accurate rent income.
3. Debtor failed to file the Rights and Responsibilities.

The court has considered the Trustee's concerns and finds them legitimate. 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.

Michael Hays

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 18, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on May 12, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

The court has considered the Trustee's concerns and finds them legitimate. 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.

Jeffery Ogilvie

Final Ruling: No appearance at the June 14, 2016 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, respondent creditor, and Office of the United States Trustee on May 17, 2016. Twenty-eight days' notice is required. That requirement was met.

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 purchase real property commonly known as 7056 Riata Drive, Redding, California, which the total purchase price is \$235,000.00, with a 3.375% interest rate and monthly payments of \$1,352.26 for 30 years.

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 Trustee filed a statement of nonoppositon.

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 Mark and Sharon Howard, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 34.

Mohammad Mokarram

Final Ruling: No appearance at the June 14, 2016 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, 2016. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

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

The Motion to Confirm the Chapter 13 Plan
filed by the 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 27, 2016 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.

15. [16-21523](#)-C-13 JOHN/RATIKORN CHANDO
DPC-1

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
4-27-16 [[21](#)]

Mikalalah Liviakis

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2016. Twenty-eight 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 Debtor is not eligible to receive a discharge because Debtor 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). Debtor received a Chapter 7 discharge on December 2, 2015 (Case No.15-23419). Debtor filed this Chapter 13 case on March 11, 2016.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor 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 16-21523.

16. [16-21428](#)-C-13 KRISTEN JOHNSON
DPC-1
5-4-16 [[17](#)]
Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK

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 4, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. At the first meeting of creditors, Debtor testified that she recently obtained a full time job and that the income listed on Schedule is not correct. She also admitted that she will not have rent expenses as a result of her new position and thus the expenses listed on Schedule J are no longer correct.

The court has considered the Trustee's concerns and finds them legitimate. Due to Debtor's change in income and expenses, it is not clear

if Debtor can make the payments under the Plan or comply with the Plan. 11 U.S.C. § 1325(a)(6). Confirmation hinges on Debtor updated Schedules I and J.

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.

17. [16-21434](#)-C-13 CRISTINO VIBAT
DPC-1
Timothy Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-27-16 [[17](#)]

DEBTOR DISMISSED: 05/24/2016

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to overrule the Objection as moot.

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

1. The plan exceeds 60 months.
2. The plan fails the liquidation analysis.
3. The debtor cannot make the plan payments as he failed to list an expense for auto insurance.
4. The plan is not the debtor's best efforts as it proposes a 0% dividend to unsecured creditors.
5. Debtor is \$2,462.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,462.00 is due on May 25, 2016. Debtor has paid \$0.00 into the plan to date.

Debtor's Amended Opposition

Debtor requests a continuance to await the filing of the claim of the mortgage creditor, to allow debtor to be specific as to the amount owed, and

to calculate a new plan based upon the actual claim.

Prior

At the hearing held on May 24, 2016, the court continued the hearing to June 14, 2016 at 2:00 p.m.

Discussion

Prior to the continued hearing, the debtor was dismissed on May 24, 2016. Accordingly, the Trustee's Objection is overruled 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 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 overruled as moot.

18. [16-21137](#)-C-13 SUSAN GEDNEY
PPR-1

Ted Greene

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
5-31-16 [[31](#)]

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 31, 2016. 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.
--

Deutsche Bank National Trust Company opposes confirmation of the Plan on the basis that a Chapter 13 plan may provide for curing defaults "within a reasonable time" and maintaining payments. [11 U.S.C. §1322(b)(5)] Accordingly, the Plan must provide for the full payment of pre-petition arrearages owed to Secured Creditor.

Secured Creditor holds a senior lien on the real property described as 16560 Leafwood Court, Meadow Vista, California and is in the process of preparing a Proof of Claim, which will set forth the actual pre-petition arrearages. Debtor's Plan fails to provide full cure payments toward the total pre-petition arrears owed to Secured Creditor.

To cure the pre-petition arrearages of approximately \$115,931.28 over 60 months (the maximum plan length allowed), Secured Creditor must receive a

minimum payment of approximately \$1,932.19 per month from the Debtor through the Plan. However, the Plan only provides \$1,582.00 per month for 60 months toward satisfaction of the pre-petition arrears owed to Secured Creditor.

Discussion

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a creditor holding a senior mortgage on a debtor's principal residence. By altering Creditor's contractual arrearages, 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 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 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.

19. [15-29443](#)-C-13 GINA DANIELS
BLG-2

Pauldeep Bains

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PAUL R.
CHRISTENSEN
5-13-16 [[37](#)]

Final Ruling: No appearance at the June 14, 2016 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,, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. 28 days' notice is required.

The Motion For Approval of Compromise 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 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 for Approval of Compromise is granted.
--

Gina Daniels, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Paul R. Christensen, ("Settlor"). The claims and disputes to be resolved by the proposed settlement are \$190,000 in child support arrears owed by Paul Christensen. As of November 20, 2015, Mr. Christensen owed \$56,577.73 in arrears and \$133,324.76 in interest thereon for a total balance owed of \$189,902.49.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt.40):

1. Mr. Christensen has offered Petitioner a \$65,000.00 lump sum payment as full satisfaction of the balance owed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the

settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

The probability of success in the litigation;

Any difficulties expected in collection;

The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that all four factors have been met:

1. The amount is based on a child support order and is not in dispute. Litigation for the purposes of assessing the amount of liability would not be necessary.
2. Petitioner believes this amount is more than she would ever be able to collect from Mr. Christensen. The only reason he is able to make this offer now is because of his family offering to make the payment for him in order to provide closure.
3. Petitioner's plan payment was dependent upon Mr. Christensen continuing to make his \$600/month payments during the life of the plan. At this point, Petitioner has 55 months left in her plan which is dependent on receiving a total of \$33,000.00 in child support payments from Mr. Christensen over the life of the plan. This settlement will help ensure Petitioner will have the funds to remain current in her plan payments.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. 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 Approve Compromise filed by Gina Daniels, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Paul R. Christensen ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the

executed Settlement Agreement filed as Exhibit
A in support of the Motion(Docket Number 40).

20. [16-20347](#)-C-13 ROBERT CAMPBELL
ULC-1

MOTION TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
5-11-16 [[47](#)]

Ronald Holland

Final Ruling: No appearance at the June 14, 2016 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, respondent creditor, and Office of the United States Trustee on May 11, 2016. 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.

The Motion to Value secured claim of the Franchise Tax Board, "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 15009 Rio Circle, Rancho Murieta, California. The Debtor seeks to value the property at a fair market value of \$635,000 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 \$631,700. Franchise Tax Board's tax lien secures a loan with a balance of approximately \$74,716. 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 Franchise Tax Board secured by a tax lien recorded against the real property commonly known as 15009 Rio Circle, Rancho Murieta, 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 \$635,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

21. [11-42548](#)-C-13 DAVID O'REILLY
DPC-6

CONTINUED MOTION TO DISMISS
CASE
4-18-16 [[138](#)]

Scott de Bie

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. That requirement was met.

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

The court's decision is to deny the motion to dismiss.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtors are \$20,000.00 delinquent in plan payments to the Trustee to date. Debtor has paid \$102,151.60 into the plan to date.

Debtor's Opposition

Debtor has filed a modified plan which proposes that the deadline for the sale of the motorcycle (scheduled to fund a lump sum payment of \$16,000) be extended three months to July, 2016. Debtor requests this matter be continued to be heard in conjunction with the motion to modify the plan set for hearing on June 14, 2016 at 2:00 p.m.

Trustee's Reply

The Trustee agrees with Debtor's request for a continuance.

Discussion

The court has approved the Debtor's modified plan-thereby rendering the motion to dismiss moot.

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

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

The Motion to Dismiss the Chapter 13 case
filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that the Motion to Dismiss is
denied as moot.

Scott de Bie

Final Ruling: No appearance at the June 14, 2016 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 29, 2016. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

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

The Motion to Confirm the Chapter 13 Plan
filed by the 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 29, 2016 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.

Scott Sagaria

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 11, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$690 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$690 is due on May, 2016. Debtor has paid \$0.00 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. 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.

Eric Schwab

Tentative Ruling: The Motion to Convert the Bankruptcy Case 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 January 8, 2016. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case 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.

<p>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.</p>
--

This Motion to Dismiss the Chapter 13 bankruptcy case of Scott and Elizabeth Nethercott ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The joint debtor Scott Nethercott passed away on November 19, 2014.
2. The Debtor improperly exempted 100% of the value of post-petition settlement funds (\$193,191.00), while proposing a 0% dividend to creditors.
3. The Trustee's objection to exemption was sustained. Dkt. 61.

4. The Debtor failed to file a motion for omnibus relief under Local Rule 1016-1(b).

DEBTORS' OPPOSITION

In Opposition to the Motion, Debtor asserts the settlement funds pertain to a personal injury lawsuit related to the death of joint debtor.

Debtor's personal injury counsel has held \$13,000.00 of the net settlement funds in reserve to be turned over to the Chapter 13 Trustee to make one final distribution to creditors to pass liquidation in the Chapter 13 Plan. The actual amount necessary to pass liquidation is \$7,800.00 plus administrative expenses.

Elizabeth Nethercott has received and utilized net Settlement funds for the support of herself, her dependents and her household.

LEGAL STANDARD

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

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

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

PRIOR

At the hearing held on April 5, 2016, Debtor, ignoring the court's sustaining the objection to claim of exemption, proposes to retain \$180,191.00 and allow \$13,000.00 to be paid into the plan, which would be liquidation value, apparently if the Debtor were allowed an exemption.

The problem is that the Debtor did not and does not have an exemption to claim in the monies. What Debtor elected to do was purportedly spend the \$180,191.00 since receiving the monies sometime after August 2014.

The court continued the hearing to afford the Debtor, Debtor's bankruptcy counsel, Debtor's personal injury attorney, and the Chapter 13

Trustee to address the rights and interests of the estate, approval of the compromise, and authorization to employ and allow compensation for Debtor's personal injury attorney, to the extent that such relief is proper.

DISCUSSION

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The court has held that the \$193,191.00 in post-petition settlement funds was not entitled to exempt status. Dkt. 61. Nevertheless, the Debtor has refused to turnover the funds to the estate for disbursement to creditors. Debtor's failure to turnover the property to estate by increasing monthly plan payments is cause to convert the case.

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

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

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

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

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

Muoi Chea

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 31, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2010 Toyota Prius, which the total purchase price is \$13,203.38, with monthly payments of \$290.14. Debtor obtained preapproval for a loan in the amount of \$9,703.88 at an interest rate of 19.00%.

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.

Debtor's 2009 Toyota Corolla was totaled in a car accident and is beyond repair. Debtor seeks a reliable car to commute to work. The offer that Debtor received for the 2010 Prius was the best offer after going to seven auto dealerships. Debtor told the dealerships that the bankruptcy court will only approve financing at an interest rate around 10%, but three dealerships denied her financing and the other three offered an interest rate of over 20%. Debtor cannot afford to pay for a rental car, which will cost more than \$290.14 per month.

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 POUNG FOUA Melanie Yang, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 24.

26. [16-22756](#)-C-13 BENECIA GULLEY
MMM-1

MOTION TO VALUE COLLATERAL OF
TOYOTA CHASE AUTO FINANCE
5-16-16 [[15](#)]

Mohammad Mokaraam

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

Correct Notice Not 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 16, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Chase Auto Finance, "Creditor," is denied without prejudice.
--

The Motion filed by Benecia Elaine Gulley ("Debtor") to value the secured claim of either Toyota Financial Services or Chase Auto Finance ("Creditor"). The court is uncertain of: (1) what entity Debtor is seeking to alter the rights of, and (2) whether that entity of properly served.

First, the motion in the first sentence names the Creditor as Chase Auto Finance. In the last sentence, the Motion asks the court to approve the motion as to Toyota Financial Services. The court may presume that the proper Creditor is Chase Auto Finance, as that is the party that Debtor served with certified mail, Dckt. 18. However, as the motion references each creditor only once in the actual motion, the court requires clarification as to this point.

Second, look to the Service of Process reflects that the Motion, notice, and declaration of debtor was served upon Chase Auto Finance by certified mail to two separate addresses:

Chase Auto Finance
Attention: Attn: Office Authorized to Accept Service of
Process
P.O. Box 29506
Phoenix, AZ 85038

Chase Auto Finance
Attn: Office Authorized to Accept Service of Process
c/o C T Corporation System

818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

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

Here, that Debtor served "Chase Auto Finance" by certified mail, suggesting that the entity "Chase Auto Finance" is an FDIC insured bank. However, a search on the FDIC website for "Chase Auto Finance" returns no results. Turning next to the California Secretary of State business search, "Chase Auto Finance" does return a search result, however the result is "Chase Auto Finance Corp." with a surrendered status. The court is unclear what Phoenix, Arizona address Debtor has attempted to serve, or whether the CT Corporation System, Los Angeles, California address continues to be a valid one.

Thus, the court being uncertain as to what creditor Debtor is attempting to value the collateral of, and/or whether that creditor was properly served, 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 Benecia Elaine Gulley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

ALTERNATIVE RULING

Debtor has above named two separate creditors. If Debtor can clarify to the court which Creditor named is the proper one, and can show correct service upon that Creditor, the court will issue the following alternative ruling:

The Motion filed by Benecia Elaine Gulley ("Debtor") to value the secured claim of Chase Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 BMW 535i ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$13,850 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in January 1, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$20,041. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$13,850. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Toyota Chase Auto Finance (“Creditor”) secured by an asset described as 2010 BMW 535i (“Vehicle”) is determined to be a secured claim in the amount of \$13,850, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$13,850 and is encumbered by liens securing claims which exceed the value of the asset .

* * * *

27. [16-21857](#)-C-13 MARIA MORENO
DPC-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-11-16 [[12](#)]

DEBTOR DISMISSED: 05/31/2016
Anthony Huges

Final Ruling: No appearance at the June 14, 2016 hearing is required.

The case having previously been dismissed, the Objection is moot. The case having been voluntarily dismissed by the Debtor May 31, 2016.

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 Chapter 13 Trustee, 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.

28. [16-22359](#)-C-13 DENNIS/KIM CAMPBELL
JAA-1

Timothy Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
5-4-16 [[13](#)]

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 4, 2016. 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, Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2006-OPT1, Mortgage-Pass-Through Certificates, Series 2006-OPT1, holds a security interest in Debtor's real property commonly known as 5010 Rowe Drive, Fairfield, California, by virtue of a mortgage recorded on September 30, 2005 in Solano County, CA. Said mortgage secures a note in the amount of \$382,000. Creditor opposes confirmation of the Plan on the basis that the plan includes inaccurate payments towards the Note and Mortgage. Creditor is owed pre-petition arrears of \$59,217.88. However the plan proposes only to pay \$45,179.15. Therefore the plan does not comply with 11 U.S.C. §§ 1322(b)(3) and 1325(a)(5) and cannot be confirmed.

A look at the plan reflects that Debtors have provided arrears on Creditor's claim of \$45,179.15, and not the \$59,217.88 asserted by Creditor.

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 Creditor, Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2006-OPT1, Mortgage-Pass-Through Certificates, Series 2006-OPT1, 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.

Candace Brooks

Final Ruling: No appearance at the June 14, 2016 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 May 6, 2016. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 6, 2016 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.

30. [16-20563](#)-C-13 SHEILA FOSTER
MET-3

MOTION TO CONFIRM PLAN
5-2-16 [[58](#)]

Mary Ellen Terranella

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 May 2, 2016. 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.

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the basis that it is not clear if Debtor can afford plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6).

Trustee's Objection to Confirmation, DPC-1, was heard and sustained by the court on May 3, 2016, Dckt. 70. The objection in part was premised on the fact that Debtor had not provided payment advices received 60 days prior to filing under 11 U.S.C. § 521(a)(1)(B)(iv). To date, the only paystubs received by Trustee are those from PSA Healthcare listed as one of Debtor's part time jobs in Schedule I. No other paystubs have been provided to Trustee.

Moreover, Debtor admitted at the 341 meeting that she recently acquired a part time job at Senior Helpers and still works for PSA Healthcare. Debtor amended her schedule I on May 2, 2016, Dckt. 62. It is not clear why "Part time job income-2 jobs" line 8h remains unchanged at \$1,000.00, and line 12 (combined monthly income) remains unchanged at \$4,522.00. According to Trustee's calculations from the provided paystub from PSA Healthcare, the average gross income is \$2,202.16 and the average net income is \$1,161.70.

Next, Debtor's declaration in support, Dckt. 60, states that she and her mother have been "living in motels since we were evicted, but expect to find an apartment within the next few weeks." Debtor's mother has a pending and active chapter 13 case, which lists rental expenses for a property in Benicia, California. Debtor's address in the voluntary statement is a property in Vallejo, California. No change of address has been filed nor any evidence of motel expenses. Trustee is unclear if Debtor has found an apartment or continues to reside in motels.

Debtor in her declaration does not explain her mother's ability to contribute \$750 per month.

DISCUSSION

The court agrees that Debtor's documents, including the plan, amended schedules, statements made at the 341 meeting, and voluntary petition reflect inconsistent and inaccurate accountings of income and expenses. It is not clear whether Debtor can afford the plan payments asserted. No documentation has been provided to the satisfaction of the Trustee as to paystubs for two part time jobs, it is not clear what Debtor's monthly income actually is. Moreover, whether Debtor continues to live out of motels is of concern. This is a considerable expense, and one that will affect whether or not Debtor can afford plan payments. Finally, it is of concern that Debtor lists in her income a monthly contribution from her mother of \$750, who herself is undergoing a chapter 13 case. 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.

Mary Wolff

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 February 1, 2016. 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.

CREDITOR OPPOSITION

The Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmbs, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., ("Creditor") opposes Debtor's motion on the basis that:

1. Creditor's claim is secured by a priority first deed of trust recorded against real property commonly known as 2652 Roxby Way, Roseville, California. At the time of filing the petition, arrearages were owed in the amount of \$35,725.34. Debtor's plan does not provide for the full amount of arrears owed, only for \$24,000.
2. Debtor does not show how Debtor expect to make all payments under the plan or comply with the plan. Debtor is to make monthly payments of \$3,875, however Debtor has a net monthly income of \$3,875.13. This amount will be insufficient to pay for the plan once the full amount of arrears owed on Creditor's claim is accounted for.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee opposes confirmation on the basis that:

1. Debtor cannot afford to make plan payments, 11 U.S.C. § 1325(a)(6).
 - a. Debtor's plan changes treatment of IRS claim from a class 2 creditor to a class 4 creditor with a monthly contract installment of \$75.00. Debtor's motion to confirm states debtor will continue paying the IRS \$75.00 per month directly pursuant to the pre-petition agreement with the IRS. No verification of any pre-petition agreement has been provided to Trustee. It is not clear if the IRS has agreed to receive \$75.00 per month.
 - b. Debtor's plan relies on a motion to value collateral, which to date has not been filed.
2. Debtor's plan specifically states \$2,000 in attorney's fees were paid and an additional \$3,000 shall be paid through the plan. Disclosure of attorney compensation also shows that \$5,000 in attorney fees have been charged in this case. However, only \$4,000 is allowed through routine procedure if this is a non-business case.
3. Debtor failed to use the correct median family income on lines 16c and 20c. The median family income figures were updated effective for cases filed on or after November 1, 2015.
4. Debtor failed to provide proof of his social security number at the first meeting of creditors held on February 4, 2016.

MARCH 15, 2016 HEARING

At the hearing on March 15, 2016, the court continued the instant motion to take place concurrently with the pending motion to value the collateral of Bank of America, N.A.

APRIL 5, 2016 HEARING

At the hearing on April 5, 2016, court granted the motion to value the collateral of Bank of America, N.A. However, even if the court had granted such motion to value, Creditor and Trustee's basis for opposition remained unresolved. Included amongst the basis for opposition is Debtor's failure to fully account for the arrearages owed to Creditor. The court ordered that on or before April 22, 2016 Creditor should file and serve a Proof of Claim or other evidence of the arrearage, and Replies, if any should be filed and served on or before May 3, 2016.

VOLUNTARY WITHDRAWAL OF CREDITOR'S OPPOSITION

On April 27, 2016, Creditor The Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmb's, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., voluntarily withdrew its opposition to Debtor's motion to confirm plan. Creditor states that upon filing its proof of claim, it became evident that the proposed plan sufficiently provides for the arrears due of Creditor's claim.

DISCUSSION

A number of issues have been resolved, however a number of basis for objection remain. First, as noted above, one basis for Trustee's opposition was that the court had not granted a motion to value the collateral upon which the plan relied. On April 7, 2016, the court granted said motion to value collateral of Bank of America, N.A., Dckt. 47.

Next, one major basis for opposition was the Debtor had not fully accounted for the claim of Creditor The Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmbbs, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., who objected on the basis that full arrearage had not been accounted for. Creditor has since withdrawn its opposition, stating that it had become clear that Debtor's plan does in fact provide for the full amount owed.

However, a number of issues remain. It is unclear to the court whether Debtor has accounted for the \$75.00 per month payment to the IRS pursuant to a pre-petition agreement. No such pre-petition agreement had been provided to Trustee, and as such it was unclear whether Debtor was faithfully accounting for the debt to the Internal Revenue Service. Proof of Claim Number 2 reflects that Debtor owes a total of \$52,505.45, \$9,401.00 of which is secured, the remainder of which is unsecured. In the same vein, Debtor had not provided to Trustee proof of his social security number at the 341 meeting. Finally, it is unclear if Debtor has updated his median family income, as requested by Trustee, and whether the issue of the attorney's fees has been resolved. As such, the court will not at this time confirm the plan.

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 to Confirm the Plan is denied.

Thomas Gillis

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 11, 2016. 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, David Cusick, opposes confirmation of the Plan on the basis that:

1. Debtor is \$135 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$135 is due May 25, 2016. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtor does not appear to be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule I reflects income of \$133. When examined at the 341 meeting, Debtor stated no knowledge of this source of income.
3. Debtor claims an exemptions in 4 bank accounts under CCP 704.070. Instead of reporting the amount to be exempt, she enters 75%. By

failing to designate an amount, Debtor causes Trustee an administrative burden. Trustee determined the amount not exempt is \$232.

4. Debtor indicated at her 341 meeting on May 5, 2016, that she was recently married and now has an additional last name of Vasquez, which is not reported on the voluntary petition.

Fist, the court notes Trustee's dissatisfaction with Debtor's lazy claim of 75% exemption in bank accounts, and urges Debtor's counsel to take note that he is causing an unnecessary administrative burden on Trustee. The court further agrees that Debtor does not appear to make plan payments. First, Debtor has not made a single plan payment, and second, does not appear to be award of the source or existence of \$133 per month income reported in the schedule I. 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.

33. [16-22266](#)-C-13 MICHAEL AIRINGTON AND
DPC-1 SUSAN BOLDI

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-18-16 [[37](#)]

Douglas Jacobs

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 18, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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 Main Street Asset Solutions, which was set for hearing on May 24, 2016. If the motion is not granted, Debtors cannot comply with the plan.
2. Debtors' plan may not be their best efforts under 11 U.S.C. § 1325(b). Debtors' plan proposes to pay \$203 per month for 60 months and 3% to general unsecured creditors. The statement of current monthly income indicates that Debtors are over the median income.
 - a. Form 122C-2 reflects \$1,080 per month for taxes. Trustee's review of the 2015 federal and California tax returns shows

total tax refunds of \$9,230. Debtors have not proposed that their income tax refunds be paid into the plan for the benefit of unsecured creditors.

- b. Section 2.11 of the Debtors' plan lists a secured debt to Sunnova at a payment of \$650 per month. Debtors' budget also reflects this payment. The contract shows a monthly payment of \$276.04 "before optional scheduled prepayment," and "196.22 "after optional scheduled prepayment." The loan is 25 years and the date of issue is November 3, 2015. Debtors are proposing to pay this secured debt at \$650 per month, and pay it off in 64 months when the actual payment is \$196.22 per month and the loan is 25 years. Debtors are improperly diverting funds which could otherwise be available to unsecured debts.
- c. Debtors testified at the 341 meeting that their business is now closed. However, a search of the California Secretary of State website reflects that the business is "Active." Debtors' 2015 tax returns do not reflect an income, but if the business remains active Debtors could seek to recover income from it.

DEBTORS' RESPONSE

Debtors respond to Trustee's objection to plan, noting that the Motion to Value Collateral of Main Street Asset Solutions is set for evidentiary hearing on July 19, 2016, and agrees that the plan cannot be confirmed. Debtors urge the court to sustain Trustee's objection, and assert they will amend their plan to be consistent with the outcome of the evidentiary hearing.

DISCUSSION

The court notes that the Motion to Value the Collateral of Main Street Asset Solutions is indeed set for evidentiary hearing on July 19, 2016. Debtors cannot afford the proposed plan payments until this issue is resolved. This, taken together with the various factors raising doubts as to Debtors' best efforts, is a sufficient basis to sustain Trustee's objection. Thus, as requested by Trustee and Debtors, the court will sustain the objection, and Debtors will file a new plan consistent with the outcome of the evidentiary hearing on July 19, 2016, Dckt. 50.

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.

34. [16-22266](#)-C-13 MICHAEL AIRINGTON AND
KO-1 SUSAN BOLDI

OBJECTION TO CONFIRMATION OF
PLAN BY MAIN STREET ASSET
SOLUTIONS, INC.
5-18-16 [[42](#)]

Douglas Jacobs

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 18, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Main Street Asset Solutions, holds an interest in Debtors' real property commonly known as 10791 S. Ponderosa Way, Rough and Ready, California. Debtors' plan proposes to value the collateral of Creditor. Creditor opposes confirmation of the Plan on the basis that:

1. Debtors have not filed their plan in good faith under 11 U.S.C. § 1325(a)(3).
2. Creditor does not accept Debtors' plan, as it was based on a valuation that Creditor disputes.
3. The proposed plan is not feasible under 11 U.S.C. § 1325(a)(6). Creditor contests the valuation of the property asserted by Debtors in their Motion to Value the Collateral of Creditor.

The court notes that the Motion to Value the Collateral of Creditor was filed by Debtors, Dckt. Control No. DBJ-1, and heard by the court on May 24, 2016. The court set the matter for evidentiary hearing on July 19, 2016, Dckt. 50, noting that Creditor offered a competing valuation of the property. The Debtors have noted that they will propose a new plan consistent with the outcome of this evidentiary hearing, Dckt. 55. 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, Main Street Asset Solutions, 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.

35. [16-21970](#)-C-13 JOHN TALLEY AND WENDY
JDM-1 JONES-TALLEY

OBJECTION TO CONFIRMATION OF
PLAN BY TRAVIS CREDIT UNION
5-11-16 [[14](#)]

Peter Cianchetta

Final Ruling: No appearance at the June 14, 2016 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 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 11, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection as moot.

Creditor, Travis Credit Union, opposes confirmation of the Plan on the basis that Creditor holds a purchase money security interest in Debtor's 2012 GMC Terrain, on which the balance is \$19,744.48 as of the filing of the petition, and Debtor only provides an interest rate of 0% per annum, and Creditor believes it is entitled to an interest rate of 6.5%.

DISCUSSION

The court notes that on May 13, 2016, Creditor and Debtor submitted a signed stipulation of the parties providing that the interest rate will be 4.5% per annum. Dckt. 18. On May 24, 2016, the court entered an order approving this stipulation. Dckt. 19. The basis to Creditor's objection to confirmation has been mooted by this stipulation and order granting.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled as moot 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 xxxx 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 30, 2016 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.

Pro Se

Final Ruling: No appearance at the June 14, 2016 hearing is required.

Hearing Set by Court Order, Dckt. 13 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Chapter 13 Trustee, and Office of the United States Trustee on May 31, 2016.

The Motion to Impose Automatic Stay has been set for hearing by order of the court, entered June 1, 2016, Dckt. 13.

The Motion to Impose the Automatic Stay is continued to July 19, 2016 at 2:00 p.m.

Susan Laughery ("Debtor") seeks to have the provisions of the automatic stay imposed in the instant case pursuant to 11 U.S.C. § 362(c)(4)(B). This is Debtor's fourth bankruptcy filing within the past year. First, on September 28, 2015, the Debtor filed a chapter 13 bankruptcy which was dismissed on December 19, 2016 because Debtor did not provide the chapter 13 trustee the required paperwork, Dckt. 61, Case No. 15-27551.

Second, on February 3, 2016, the Debtor filed her second chapter 13 bankruptcy which was dismissed on March 7, 2016 because Debtor did not file or serve a chapter 13 plan or motion to confirm plan prior to a court-set date, Dckt. 19, Case No. 16-20600.

Third, on April 5, 2016, the Debtor filed her third chapter 13 bankruptcy which was dismissed on May 4, 2016 for failure to timely file opening documents, Dckt. 18, Case No. 16-22149.

On May 16, 2016, Debtor filed the instant chapter 13 bankruptcy. This is Debtor's fourth bankruptcy petition pending in the past year.

Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), the provisions of the automatic stay never went into effect upon the filing of the instant case. If within 30 days after the filing of the later case, a party in interest requests it, the court may order the stay to take effect in the case as to any or all creditors, only if the party in interest demonstrates that the filing of the later case was in good faith as to the creditors to be stayed after notice and a hearing. 11 U.S.C. § 362(c)(4)(D)(i)(I).

On May 31, 2016 (which was less than 30 days after the filing of the petition), the court received a letter from Debtor, appearing pro se, urging the court to impose the automatic stay in this case. On June 1, 2016, the court set the matter for hearing in open court on June 14, 2016 to determine whether the automatic stay should be imposed. On June 7, 2016, the court received a second letter asking the court to reschedule the date of hearing for after July 6, 2016, as the Debtor had a pre-planned vacation scheduled and as such she would be unable to attend the hearing as scheduled on June 14, 2016.

The Debtor is reminded that at present, no automatic stay is currently in effect in her case. The court will grant the request and continue the hearing on the motion to impose stay until after July 6, 2016. However, Debtor is not excused from adhering to any other deadlines or filings that may be required of her in the interim.

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 Impose the Automatic Stay 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 continued to July 19, 2016 at 2:00 p.m.

Jeffrey Ogilvie

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 18, 2016. 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. Debtor may not be able to make proposed plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's plan proposes payments of \$15,48 per month for 36 months. Debtor's amended schedule J shows a net monthly income of \$17.00. Trustee believes Debtor's budget is insufficient for the care and maintenance of Debtor and her dependants. Debtor's amended schedule J lists three minor children.
 - a. Line 7 lists food and housekeeping expenses of \$483 per month. The IRS standard for a 4-person household for these expenses is \$899.
 - b. Line 9 lists clothing and laundry for \$125. The IRS standard for a 4-person household is \$244.

- c. Debtor testified at the 341 meeting that while she is separated from her spouse but not divorced, her spouse is not employed and that he also pays Debtor's cell phone bill.

DISCUSSION

The Chapter 13 Trustee raises valid concerns as to whether Debtor is able to afford the plan payments of \$15.48 on a \$17.00 per month income. A review of the debtor's schedules reflects that Debtor's rent for herself and three dependents "is covered by non-filing spouse in lieu of child support." However, the docket reflects no declaration filed by the non-filing spouse that the non-filing spouse will be able to or be willing to pay the rent or cell phone expenses upon which Debtor and Debtor's proposed plan relies. The court is also highly skeptical of Debtor's ability to support a four-family household on such meager income, and shows in the amended schedule J incredibly low expenses, proclaiming monthly expenses at often half the amount suggested by the IRS as the standard for a four-person family.

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.

Marc Visenat

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 18, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the first meeting of creditors on May 12, 2016. 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 business documents. 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. Section 2.08 of the plan lists a debt to Placer County for property taxes. The plan language in section 2.08 indicates that class 1 "includes all delinquent secured claims that mature after the completion of this plan." This debt will be paid in full during the life of the plan and therefore should be listed in section 2.09,

Class 2A.

4. Debtor's schedule I indicates net business income on line 8a of \$4,450. Debtor has failed to file an attachment to the schedule showing gross business income and expenses as required by the form.

The chapter 13 trustee has raised numerous grounds for concern, raising issues as to the confirmability of the proposed plan. Debtor has not provided Trustee with adequate information to determine feasibility of the plan, not shown up to the 341 meeting, and not provided requested business documents. Moreover, Trustee is correct in pointing out that Debtor has misclassified the Placer County property tax debt in the plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Scott Hughes

Final Ruling: No appearance at the June 14, 2016 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. 28 days' notice is required. This requirement was met.

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

Robert and Louise Ford ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-26227) was dismissed on March 3, 2016, after Debtor fell delinquent on plan payments. *See Order, Bankr. E.D. Cal. No. 15-26227, Dckt. 23, March 3, 2016.* Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor explains that they filed the instant case in efforts to save their residence from a trustee's sale scheduled for May 19, 2016. Debtor explains that in the previous case, Debtor was trying to stop a trustee's sale on their home. Debtors had an illness and death in their family. When they incurred unexpected funeral and travel expenses, they fell behind on plan payments, and they were not able to catch up on them. Rather than try to modify and increase payments to include all the missed mortgage payments, Debtors decided to file a new case with payments lowered.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee opposed the motion, stating that Debtors provided no proof of increased travel expenses and do not provide any significant details such as who the family member was or their relationship to the deceased.

DEBTOR RESPONSE

Debtor responds with supporting declaration, details as to the travel dates, and how much as spent on expenses.

CHAPTER 13 TRUSTEE

On June 7, 2016, Chapter 13 Trustee filed a motion of non-opposition to the granting of this motion.

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

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

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

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

The Motion to Extend the Automatic Stay filed by the 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 and parties, unless terminated by operation of law or further order of this court.

Stephen Reynolds

Final Ruling: No appearance at the June 14, 2016 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 20, 2016. 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 20, 2016 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.

Stephen Reynolds

Final Ruling: No appearance at the June 14, 2016 hearing is required.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 5, 2016. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis the Debtor is causing unreasonable delay in filing a new plan. Debtors filed their case on December 23, 2015 and have yet to confirm a plan. Trustee's Objection to Confirmation was heard and sustained at the hearing on March 1, 2016 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

Counsel for Debtor appeared and advised the court that on the morning of April 20, 2016, a modified plan and motion to confirm were filed, with the confirmation hearing set for June 14, 2016.

The motion to confirm plan is granted, and thus this motion to dismiss is

denied.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is denied without prejudice.

Steele Lanphier

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 May 2, 2016. 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 plan filed as DC#75 does not contain page 7. The plan filed as DN#78 contains page 7, Section 6-Additional provisions for section 1.01 and 1.03. The debtors did not clarify why the plan was refiled. Trustee notes the plan served on the trustee was the plan in DN#78 which included page 7.
2. Debtor's Motion to Modify does not comply with applicable law. The motion does not cite applicable code such as 11 U.S.C. § 1329 which is required under the local rules and FRBP 9013. While the legal authority is not novel or unique, the moving party should include a legal basis to notify the parties as to the basis for the proceeding.

DISCUSSION

The Chapter 13 Trustee points out two deficiencies in Debtor's motion: first, that Debtor has filed two plans on the docket, without explanation, one containing insufficient information, Dckt. 75, and has served the later-filed plan on parties, Dckt. 78. The original modified plan, Dckt. 75, contains the docket control number ELG-1, and was filed on the same date the Motion to Modify was filed on May 2, 2016. One day later, Debtor uploaded the second modified plan, Dckt. 78, with no docket control number associated and without explanation to parties or the court. The court agrees that this could lead to confusion, and parties and the court lack certainty as to which plan Debtor is seeking to confirm.

Second, Debtors' Motion and Memorandum of Points and Authorities do not cite any legal authority. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g). LBR 9014-1(d)(5) requires that each motion, opposition, and reply cite legal authority relied upon by the filing party. These deficiencies taken together, the court will deny the motion.

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.

43. [12-41189](#)-C-13 MARK/CYNTHIA STORAGE
PGM-3

Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY
4-27-16 [[99](#)]

Final Ruling: No appearance at the June 14, 2016 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, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 27, 2016. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.
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Peter Macaluso, the Attorney for Debtor, ("Applicant") for Mark and Cynthia Storage, ("Client"), makes a Application for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 2015 through March 2016. Applicant requests fees in the amount of \$1,500 and no costs.

The Chapter 13 Trustee filed a statement of nonopposition.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

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

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

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

- Motion to Dismiss and Opposition
- Motion to Modify and Modified Plan
- Appearances
- Meetings with clients

Amounting to 1.05 hours of work, at \$300 per hour, totaling \$3,015 in fees. Of this amount, Applicant is seeking \$1,500 in fees.

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

Fees	\$1,500.00
Costs	\$0.00

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

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

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

IT IS ORDERED that Peter Macaluso is allowed the fees in the amount of \$1,500.00 and costs in the amount of \$0.00 as a professional of the Estate.

Scott de Bie

4-28-16 [[30](#)]

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 28, 2016. 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.

Creditor, ANZ Guam, Inc. dba Amerika Samoa Bank, holds a first priority secured claim against Debtor's residence, and also holds a second secured claim against Debtor's residence. Debtor filed this chapter 13 case to void Creditor's second lien and treat it as unsecured based on the present value of the property. Creditor is not and did not oppose the valuation of the property, and therefore the second lien will be treated as unsecured.

Debtor and his non-filing spouse own a residence in American Samoa, which was a principal residence from 1991 to November 2015, when his schedule indicate he moved to California. Debtor's non-filing spouse is living in the residence which is subject to a mortgage granted to the Bank, but the Debtor apparently moved to California in late 2015 to facilitate his plan to cure the arrears on the first mortgage and scrap off the second mortgage held by Creditor. However, Debtor initially went further claiming in schedule J that his wage earning non-filing spouse is a dependent not living with him so that he can claim a homestead exemption under CCP

703.140(b)(1) (claiming an exemption in real property "that the debtor or a dependent of the debtor uses as a residence"). Subsequently, Debtor amended his exemption claims choosing to rely on 11 U.S.C. § 522(d)(1) presumably based on a more favorable definition of the term "dependent" in § 522(a)(1). At the same time, for purposes of Form 122C-1, Debtor takes the position that he has two people in his household. However, Debtor's schedules do not appear to include expenses in schedule J for two households which you would expect based on his claim to reside in California and also from claiming his wife as a dependent.

Creditor opposes confirmation of the Plan on the basis that the plan may not be feasible pursuant to 11 U.S.C. § 1325(a)(6) because Debtor does not appear to have the resources to make all required proposed plan payments and support his claimed dependents.

Creditor further asserts that Debtor has not provided for the full arrearages on the first mortgage.

DEBTOR'S RESPONSE

Debtor responds to Creditor's limited objection, taking issue with Creditor's assertions that the budget does not provide sufficient monies to support the Debtor and his spouse as well as pay the required plan payments necessary to maintain ongoing mortgage payments to Creditor and cure the mortgage arrears because Debtor's budget does not provide for two households. Instead, Debtor asserts that Debtor's budget is based upon his return to American Samoa in May 2016 and is thus designed to support only the one household consisting of Debtor and his non-filing spouse. Debtor further points out as to Creditor's claim that the plan does not provide for the full arrears, it has not yet filed a claim and therefore Debtor has not been able to examine it to determine accuracy. However Debtor notes that the plan is proposed at 49 months and if a claim is filed and allowed for more than the amount currently provided for, an extension of the plan is available to cover this amount.

DISCUSSION

Creditor's basis for objection is founded on what appears to be confusion as to where Debtor was living (together or apart from the non-filing spouse, who is his dependent), whether Debtor was sufficiently providing enough room in his budget if he is indeed providing for two households, takes issue that Debtor claims an exemption under 11 U.S.C. § 522(d)(1), and that Debtor has not provided for the full arrearages in their first mortgage payments. However, the court finds that Debtor sufficiently explains rebuts these basis for objection.

Debtor explains that in May of 2016, Debtor returned to American Samoa where he will be residing with his wife in one two-person household. This is consistent with Debtor's schedule J (which provides for the expenses of one household), Debtor's Form 122C-1 (which states that Debtor has a two-person household), and Debtor's amended schedule C (which claims an exemption in the American Samoa residence under 11 U.S.C. § 522(d)(1), permitting an exemption in real property that the debtor or dependent of the debtor uses as a residence—here both Debtor and his dependent use this real property as a residence). Therefore, Creditor's concern that the plan is not feasible under 11 U.S.C. § 1325(a)(6) because Debtor does not have sufficient resources to support two households is not at issue. Debtor has clarified that he is supporting one household.

Further, the court notes that Creditor has not filed a proof of claim in this case to show what the full amount of arrearages are. Debtor may adjust the 49 month plan in the event they must do so to reflect the full amount of arrears owed if a proof of claim shows that current arrears provided for in the plan is insufficient.

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 Creditor ANZ Guam, Inc., 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 15, 2016 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.

45. [16-21790](#)-C-13 DON/THERESA PERALTA
DPC-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-4-16 [[17](#)]

Dale Orthner

Final Ruling: No appearance at the June 14, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation of Plan is overruled as moot, and the matter is removed from the calendar.**

Scott Shumaker

Final Ruling: No appearance at the June 14, 2016 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 15, 2016. 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 15, 2016 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.

47. [16-21597](#)-C-13 DAVID/IMELDA HUE
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY EXETER FINANCE
5-5-16 [[20](#)]

Michael Benavides

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 5, 2016. 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.

Exeter Finance ("Creditor") objects to confirmation of the Chapter 13 plan on the basis that Debtor financed the purchase of a 2007 Lexus IS 250 and the proposed plan does not provide for a high enough interest rate. The Debtor provides for an interest rate of 2.79%, which is less than the guidelines under *Till v. SCS Credit Cor.*, 541 U.S. 465 (2004). The prime rate was 3.50% at the time of the filing of this case. Creditor asserts that a fair interest rate here is 6.50% per annum.

According to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the interest rate must be the prime-plus or formula rate. In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716

(Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The prime rate in effect at the commencement of the case, 3.5%, plus a 1.25% risk adjustment, for a 4.75% interest rate is common. Here, Debtor provided 2.79% in the proposed plan. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. §1325(a) (5) (B) (ii).

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

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

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

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

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

Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-20-16 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 24, 2016. 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.

The court's decision is to sustain the Objection to Confirmation of Plan.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan fails to provide for priority debts as required by 11 U.S.C. § 1322(a)(2). The IRS filed a proof of claim for \$12,136.73, of which \$12,103.55 is priority. Debtor's plan does not provide for the priority portion of the debt.
2. Debtor has not complied with 11 U.S.C. § 1325(a)(2). On April 5, 2016, the court issued an order to show cause which was set for hearing on April 20, 2016. Debtor has failed to make a payment of \$79.00 due March 31, 2016.

As to the second ground, the Debtor has made the final installment payments for the filing fees in this case. April 20, 2016 Docket Entry Report.

MAY 24, 2016 HEARING

At the hearing on May 24, 2016, the court continued the hearing to June 14, 2016 at 2:00 p.m. The court further ordered that on or before June 3, 2016, Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental pleadings.

DEBTOR'S SUPPLEMENTAL DECLARATION

On June 6, 2016, the Debtor filed the supplemental declaration, DCkt. 36. Debtor provides that she filed her 2015 federal tax return on June 4, 2016, and declared that she does not owe for the 2015 tax year and instead will be receiving a tax refund from the IRS.

DISCUSSION

The Debtor has filed a supplemental declaration, averring that she filed her 2015 federal tax return with the IRS, and that she is to receive a refund. However, Debtor has not resolved a primary issued--that her plan does not provide for the priority debt of the IRS, Proof of Claim No. 1, which reflects that Debtor owes \$12,103.55 which is a priority debt. Debtor states that she is to receive a refund, however the court is not sure as to the relevance of the refund to the failure to provide for the priority debt. The docket does not reflect that Debtor has remedied this issue. Having failed to account for the priority claim of the IRS, 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 the hearing on the Objection to Confirmation is sustained and the plan is not confirmed.

Gary Fraley

Final Ruling: No appearance at the June 14, 2016 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 May 4, 2016. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 4, 2016 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.
