

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

June 16, 2015 at 2:00 P.M.

1. [15-20004](#)-C-13 EVANGELINE MARAKAS MOTION TO CONFIRM PLAN
CAH-1 C. Anthony Hughes 5-1-15 [[65](#)]

Also #2

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 1, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

***The Trustee withdrew his opposition on June 4, 2015 as a result of Debtor's reply to the opposition.**

The Chapter 13 Trustee opposes confirmation on the basis that:

1. In the additional provisions of the plan, Debtor proposes to sell real

property, but no estimated amount and no explanation of how the Debtor can sell this property when Debtor has claimed the property as separate property of the spouse. The plan's proposal of 100% to unsecured creditors is not feasible without the lump sum payment from the sale.

2. In the Debtor's prior Chapter 13 case, Debtor listed a 1967 Corvette valued at \$35,000, however the asset is not listed in Schedule B. According to Schedule I, Debtor receives a pension or retirement income in that amount of \$4,403.26, however Debtor has failed to list any retirement on Schedule B.
3. At the first meeting of creditors, Debtor admitted that she earned income from her "Embroidery Diva" business and received Social Security income of \$1,700. Neither of which are listed on Schedule I.

Debtor's Reply to Trustee's Opposition

1. Debtor, her husband, a real estate agent and a business analyst filed supplemental declarations on May 18, 2015 that address the Trustee's first concern. (Dckt. 77-80). In her declaration, Debtor states that JP Rushing repossessed the Corvette and that it is in the possession of the Sheriff. Debtor also states that she has been added as owner of the property to be sold by quitclaim deed and that she intends to give JP Rushing \$270,000 of the sale proceeds to fully satisfy the debt owed.
2. Debtor amended Schedules B, C, I, and J on May 15, 2015, which address the Trustee's concerns regarding undeclared assets and income.

Creditor's Opposition

Creditor Jean-Pierre Rushing dba Interwest Judgment Recovery ("Creditor") submitted a late-filed opposition. Creditor contends that Debtor's pleadings were not timely received because they were not timely filed.

First, Creditor reiterates the Trustee's first concern regarding ownership of the property to be sold. Specifically, Creditor states that Debtor cannot declare under oath that she has the capacity to employ broker Daniel Edgington to sell the property because Debtor was added as owner of the property by quitclaim deed after the brokerage contract was entered into and Debtor did not sign the agreement.

Second, Creditor objects to relocation of Debtor's Corvette to a less expensive storage facility, which is provided for in plan section 6.04. In Section 6.06, Debtor has not sufficiently provided adequate protection for storage payments already made by Creditor to the Sacramento County Sheriff. Creditor has made three payments of \$300.00 each on March 10th, April 10th, and May 5, 2015 (see Exhibit 3). In addition, by 28 the June 16, 2015 hearing date, Creditor will have made an additional \$300.00 payment for a total of \$1,200.00 thus further reducing the value of Creditor's interest.

Debtor seeks to have the Trustee make a \$200.00 per month payment to the Creditor as an adequate protection payment. Of that amount, Debtor seeks to make Creditor responsible for future \$100.00 per month payments to "Valet Indoor Storage." Creditor argues that Debtor should first be responsible for the \$900.00 paid to the Sheriff as well as the \$300.00 amount due as that \$1,200.00 represents lost revenue that has already depreciated the value of

Creditor's total judgment.

Third, in Section 2.13, Debtor lists Creditor as a Class 5 Creditor with priority held in a Divorce Support Order (DSO) for a "Claim Amount" of \$162,497.68. The correct amount of the 6 claim as of June 2, 2015 is \$165,82650 with interest accruing at a rate of 10% and pre-bankruptcy costs of \$1,950.00 excluding the \$1,200.00 storage fee payments. The mere fact that Debtor acknowledges this debt to be a "DSO" should allow Creditor to continue to receive interest while the Debtor is in bankruptcy. Yet, despite repeated requests to amend Creditor's class from a Class 5 to a Class 2 creditor, Debtor has failed to do so.

Fourth, on Page 8, Section 6.01 entitled "Additional Provisions", Debtor states: "Upon sale of this Real Property, and after a hearing on a Motion to Sell, sale proceeds shall go to the Chapter 13 Trustee to pay Class 7 General Unsecured Creditors 100%." Creditor is not a Class 7 General Unsecured Creditor. Debtor represents Creditor in Section 2.13 to be a Class 5 Creditor. Yet, here, Debtor represents Creditor to be a Class 7 creditor.

Discussion

The Debtor has assuaged the Trustee's concerns regarding confirmation of the plan, thus the court will address Creditor's objections. The court agrees with several of the Creditor's objections.

First, the amount of the claim should be increased by \$1,950.00 to account for interest accruing at a rate of 10% post-confirmation and pre-bankruptcy costs and \$1,200 for storage payments already made by Creditor to the Sacramento County Sheriff. Additionally, reference to 100% payment of Class 7 creditors in section 6.01 should be changed as there are no creditors listed in Class 7.

The court also notes that the Additional Provisions provide that the plan is to be funded by the sale of property commonly known as 4793 Madrid Ridge, Las Vegas, Nevada. As the court recalls, at an earlier hearing it was represented that the Debtor's spouse, who is not a bankruptcy debtor, was going to voluntarily sell property in which the Debtor had no interest to fund the plan. If the non-debtor spouse fails to sell the property after 150 days from confirmation, the case will be converted to one under Chapter 7 and "a trustee shall be appointed to sell debtor's unexempt assets for the benefit of creditors." Plan Additional Provisions § 6.01, Dckt. 66. The plan does not grant the right to sell all of the interests in the Madrid Ridge property as part of the liquidation to pay creditors.

In substance, this "plan" merely requires Debtor to pay \$500 a month for a 20 month reprieve from her one creditor enforcing its rights to enforce a \$162,497.68 delinquent DSO debt stated in the Plan. Dckt. 66, Class 5. This bankruptcy case was filed on January 1, 2015.

Debtor has been in Chapter 13 bankruptcy cases since February 25, 2013. 13-22384 ("First Bankruptcy Case"). The First Bankruptcy Case was dismissed on July 16, 2013. 13-22384 Order, Dckt. 102. In dismissing the First Bankruptcy Case the court determined,

"The Trustee seeks dismissal of the case on the basis that the Debtor is at least \$1,700 delinquent in plan payments, the Debtor has paid \$850 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §

1307(c)(1). Further, the Trustee asserts that the Debtor has yet to confirm a Plan. The Trustees Objection to Confirmation was heard and sustained on April 30, 2013 and the Debtor has failed to amend the Plan and set a confirmation to date.

Creditor George K. Scott filed a support document, supporting the Trustees Motion to Dismiss the Case. In support of the Trustees motion the Creditor states the Debtors Chapter 13 plan is dramatically insufficient in the payments it proposed and even under this plan the Debtor has made only one payment. Creditor claims he is being prejudiced by the automatic stay that is preventing him from collecting the \$150,000 in family law judgement he is due. Furthermore, the Debtor has failed to list the income tax refund in her Schedule B of personal property; which Debtor disclosed she had coming to her for an amount in excess of \$8,000."

Id., Civil Minutes, Dckt. 100.

The court does not find Creditor's remaining objection to confirmation convincing. The feasibility of the plan does not hinge on whether the Debtor had the capacity to employ broker Daniel Edgington at the time the contract was entered. The court authorized the employment by order filed on June 4, 2015. Dckt. 98. The Motion seeking employment of the real estate agent does not state that the Debtor is selling "property of the estate," but that the agent is to sell "Debtor's Property." The employment is for the 4793 Madrid Ridge Property.

In a supplemental declaration (Dckt. 77) Debtor states that she was added to the title of the 4793 Madrid Ridge Property via Quitclaim Deed on February 20, 2015. No copy of the recorded Quit Claim Deed has been provided as an exhibit and no statement of the Debtor's interest is given. The court does not know if it is a 1% tenants in common interest, a community property interest, or a 50% joint tenant interest.

In reviewing Amended Schedule B (Dckt. 76) the court notes that Debtor has \$20,000 in cash on hand (of which \$0.00 is claimed as exempt), a \$5,500 tax refund (of which \$5,500 is claimed as exempt), a \$35,000 Corvette Stingray (of which \$16,000 is claimed as exempt), and \$6,278 in a safe levied upon by her one creditor (\$6,278 claimed as exempt). *Id.*, Schedules B and C, pp. 4-9.

PROPOSED ADDITIONAL PROVISIONS

On May 27, 2015, Debtor filed Exhibit A which is the test for proposed additional provisions to the pending Chapter 13 Plan. These Additional Provisions are summarized as:

- a. Daniel Edgington shall be employed, as authorized by the court, to market the 4792 Madrid Ridge Property for sale. Mr. Edgington shall provide periodic reports (estimated to be every two weeks, not to exceed thirty days and within 3 days of any significant "movement" of the property."
- b. The Corvette Stingray will be moved from the possession of the Sheriff to Valet Indoor Storage, to be held pending further order of the bankruptcy court. Debtor shall pay the first and last month's rent in advance. The judgment lien of Jean-Pierre Rushing, Interwest Judgement Recovery shall continue in full forced and effect notwithstanding transfer of possession of the Corvette to the Valet Indoor Storage location.

- c. Creditor shall be responsible for paying the storage costs for the Corvette for Debtor (while Debtor performs the Plan).

Dckt. 81.

As Creditor's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. However, Debtor may wish to address Creditor's concerns at the hearing and cure any deficiencies in the plan through a confirmation order.

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.

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Insufficient 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 April 22, 2015. 28 days' notice is required. By the court's calculation, 27 days notice is required. That requirement was not met.

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

At the hearing -----.

<p>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is denied, and the case is not converted to one under Chapter 7.</p>

MAY 19, 2015 HEARING

At the hearing on May 19, 2015 the court set the matter for final hearing on June 16, 2015, to be heard in conjunction with the pending motion to confirm the First Amended Plan in this case.

SUMMARY OF MOTION

This Motion to Dismiss the Chapter 13 bankruptcy case of Evangeline Athan Marakas ("Debtor") has been filed by Jean-Pierre Rushing d.b.a. Interest Judgment Recovery("Movant"), the sole creditor and party-in-interest. Movant asserts that the case should be dismissed or converted based on the following grounds.

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

RESPONSE STATED BY TRUSTEE

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

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

OPPOSITION OF DEBTOR

Though only 27 days notice was given, Debtor filed an Opposition on May 18, 2015, the day before this hearing. The Opposition appears to stand primarily on the notice of hearing being one day short. Presumably, since Debtor and counsel were served, then one possible outcome would have been to request that the Opposition could be filed only nine days before the hearing, not the required ten days under the Local Rule.

The second ground for objecting states that the delay has been caused due to this creditor, and is addressed in the Declaration of Michael Barbieri, filed in support of a separate motion to confirm an amended plan in this case. No attempt is made to state with particularity such grounds in opposition to this Motion, but Debtor appears to direct the court to read other pleadings and determine what grounds should be stated in opposition to the present motion. Such "direction" misstates the role of the court and the duties of the parties.

The court has reviewed the Declaration of Mr. Barbieri (Dckt. 80), who is an employee of Debtor's counsel. He testifies under penalty of perjury,

- A. At the February 18, 2015 hearing when the Trustee's motion to dismiss this case was denied without prejudice, an agreement in principal was reached with Movant for treatment of his claim. (Mr. Barbieri does not testify that he was at the hearing and that he has personal knowledge of the "agreement in principal.")
- B. On March 5, 2015, Mr. Barbieri placed a phone call to Movant to advise him of Debtor's desire to file a first amended plan. (Mr. Barbieri does not testify as to whether he spoke with Movant or communicated that message to Movant.)

- C. On March 10, 2015 a copy of the proposed first amended plan was emailed to Movant for his review and approval. Movant did not respond. (Mr. Barbieri does not testify that he sent the copy or that Movant was suppose to respond to Mr. Barbieri.)
- D. On March 16, 2015, Mr. Barbieri sent an email to Movant requesting a response. The response from Movant was that Movant's attorney was out of town and Movant had not yet received a response from his attorney.
- E. On March 24, 2015, Mr. Barbieri sent another email to Movant requesting a response. Movant responded that a letter with proposed changes had been drafted and would be sent to Debtor's counsel.
- F. On March 25, 2015, Movant's comments were received and amendments were made to address the Movant's comments.
- G. On April 15, 2015, the revised first amended plan was sent to Movant for comment. No comments were received, but Movant's Motion to Convert was filed on April 22, 2015.

REVIEW OF PROPOSED FIRST AMENDED PLAN

On May 1, 2015, Debtor filed the Motion to Confirm the First Amended Plan. Motion, Dckt. 65. The Plan, Dckt. 66, provides that Movant shall be paid a Class 5 priority claim in the amount of \$162,497.68 through the Plan.

The Additional Provision provide that the 100% payment of claims through the First Amended Plan shall be funded through the following sources:

- A. \$10,000.00 Lump Sum Payment by Debtor Prior to Confirmation.
- B. \$500.00 a month payment for 36 months or until the Chapter 13 Trustee has sufficient funds to pay all claims in full;
- C. Proceeds from the sale of the real property commonly known as 4793 Madrid Ridge, Las Vegas, NV. This property is stated to being listed for \$434,000.00 and is encumbered by a lien securing debt of less than \$100,000.00.
- D. If Debtor does not sufficiently fund the plan to provide for payment of all claims in full prior to the 150th day after confirmation, the case shall be converted to one under Chapter 7 and the Chapter 7 Trustee shall proceed with liquidating assets of the estate.

Id. This 150 day period effectively gives Debtor slightly more than a year to consummate a sale of the Nevada Property.

The hearing on the Motion to Confirm the First Amended Plan is set for hearing on June 16, 2015. Opposition, if any, to the First Amended Plan was due June 6, 2015. The Trustee lodged and withdrew an opposition. Creditor lodged an opposition.

Objection by Trustee

The Trustee has filed an opposition to the Motion to Convert the First

Amended Plan. Opposition, Dckt. 71. The grounds stated with particularity in the opposition are summarized as follows:

- A. No information is provided as to how the Debtor can sell the property, which is claimed as separate property of the Debtor.
- B. No information is provided as to how long the property has been marketed and the basis for the opinion of value by the Debtor for the property.
- C. On Schedule A Debtor lists other property, which shows as "sold pre-petition" by Movant (Debtor's spouse) without payment to Debtor.
- D. No evidence is provided as to the source of and ability to pay the \$10,000.00 lump sum payment. The \$10,000.00 payment is required to reach a 100% dividend on all claims.
- E. Debtor has not listed a 1967 Stingray Corvette, which was listed in the prior bankruptcy case of Debtor as having a value of \$35,000.00.
- F. Debtor lists \$4,403.26 in pension or retirement income, but no such asset is listed on Schedule B.
- G. Debtor admitted at the First Meeting of Creditors that she would be receiving \$1,700.00 of additional Social Security Income, but such is not included on Schedule I or in Debtor's Motion to Confirm.

Response and Amended Schedules

Debtor filed a Supplemental Declaration on May 18, 2015, responding to the Trustee's opposition to the Motion to Confirm. Dckt. 77. In addition to stating that she is not operating the business "Embroidery Diva," she states,

- A. She began receiving Social Security income of \$1,715.00 in March 2015 and has filed a supplemental Schedule I to disclose that income.
- B. She has amended Schedule B to include:
 - 1. CalPERS retirement benefits and account;
 - 2. The 1967 Corvette Stingray, valued at \$35,000.00. She states that the vehicle has been "repossessed" by Movant and that it is in the possession of the Sheriff.
- C. She has amended Schedule C to claim exemptions in the disclosed assets.
- D. She listed the Nevada Property for sale on December 10, 2014. She had to evict the tenant, and obtained possession March 31, 2015. The real estate agent is actively marketing the property.

Id.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 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 unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b) (1).

The docket reflects that Trustee no longer opposes confirmation of the amended plan. Although Debtor has not yet addressed creditor Jean-Pierre Rushing dba Interwest Judgment Recovery's late-filed opposition to confirmation, the court finds that the concerns are easily curable and thus do not amount to cause to convert the case when confirmation appears achievable.

Cause does not exist to dismiss or convert this case pursuant to 11 U.S.C. § 1307(b).

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 and the case is not dismissed.

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 29, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. [15-22921](#)-C-13 HELGA IMBERY
DPC-1 Seth Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-21-15 [[15](#)]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 21, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to remove the Objection from the Calendar, the Trustee having dismissed the Objection no June 12, 2015 (Dckt. 19).

The Trustee filed a "Notice of Withdrawal" on June 12, 2015, Dckt. 19, stating that the Objection to Confirmation was withdrawn. The court construes this "Notice" as an election to dismiss the Objection to Confirmation without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Objection was filed. **The Objection to Confirmation having been dismissed without prejudice, the matter is removed from the calendar.**

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 21, 2015. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtor's best effort and is not filed in good faith as indicated by:

1. Debtor is above median income and has filed a 60 month plan. Schedule J shows Debtor's monthly net income as \$4,704. The proposed monthly plan payment is \$1,175. Debtor's plan could be completed in 14 months.
2. Debtor was prior Chapter 13 case was dismissed for delinquency of payments.

DEBTOR'S RESPONSE

On June 9, 2015, Debtor filed a Response to the Objection to Confirmation. Dckt. 19. The Debtor's response is summarized as follows:

- A. Debtor's prior Chapter 13 case was to save a house. Current

counsel believes that his prior counsel in that case, eight years ago, was proposing a plan which could not be achieved. The house was lost to foreclosure.

- B. The Debtor is funding the Plan with payments from his deceased Mother's trust. Debtor does not consider payments from a trust "regular income." Rather, Debtor believes that "regular income" is something that is a reward for work done." Dckt. 19, p. 2:6-8.5. (Debtor provides no legal authority that trust disbursements are not regular income or that trust interests are not property of the bankruptcy estate.)
- C. The payments from the Trust are not guaranteed and change from year to year depending on how the trust corpus performs.
- D. The Debtor is "piqued" at the Trustee taking "umbrage" over a car having been purchased thirteen months prior to the commencement of this case. Debtor postulates, "Perhaps as debtors we are not so fortunate as the trustee as to be able to predict how long an aging car is going to last, when it is time to buy a new one, and when our debts will become so overwhelming that we seek the assistance of third parties and the Court to settle and pay the debts." *Id.*, p. 2:20.5-23.5.
- E. The Trustee misstates that creditors will wait sixty months to be paid. Rather, they will be paid monthly over the sixty months. Debtor comments, "Or am I wrong, and the trustee is now holding onto all funds to the unsecured creditors until the sixtieth month, and then making a single distribution to each unsecured creditor?" *Id.*, p. 2:9.5-11.5.
- F. If the Debtor had hidden his vested interest in the Trust and not disclosed the payment and the interest, he could have easily qualified for a Chapter 7 case. The Debtor disclosing this asset and income, as required by the Bankruptcy Code, is stated as the Debtor taking the "high road." *Id.*, p. 3:12.5-17.
- G. Debtor, being reasonable, proposes to amend his plan to provide for making \$2,000 a month payments. Debtor qualifies this proposal, stating, "This approach is made with the understanding that the trustee will not wait until the sixtieth month to begin making distribution to unsecured creditors, as he suggests in his opposition." *Id.*, p. 3: 19.5-25.

The Response, and its tone, manifests either a misunderstanding or lack of understanding of bankruptcy law or a contention that Debtor is above the bankruptcy law. The court begins with the Debtor's Schedules.

Debtor lists having a combined monthly wage income of \$4,856.07 with his non-debtor spouse. Debtor also lists income of \$3,777.00 from a trust. Statement of Current Monthly Income, Form 22C, Dckt. 1 at 8-9. On Schedule I Debtor lists having \$830 a month deducted for income tax, medicare, and Social Security from his \$3,199 wages and \$331 from the non-debtor spouse's wages. An additional \$254 is deducted for health insurance, \$12 for insurance, and \$102 for "Accounts Receivable." *Id.* at 35-36.

On Schedule J Debtor states that his Monthly Net Income is \$4,704,

after paying \$2,398 in expenses. *Id.* at 37-39.

On Schedule B Debtor lists an interest in a Trust, with annual income of \$45,000 for 12 years, with a current value of \$540,000.00. *Id.* at 25.

Debtor's Plan requires him to fund it with only \$1,175 a month (which Debtor will increase to \$2,000, only if the Trustee is ordered to disburse monies to creditors monthly). This leaves the Debtor with from \$2,704 to \$3,529 of Monthly Net Income left unaccounted for by Debtor.

This \$1,175 monthly payment is to first be used to pay the Chapter 13 Trustee and then Debtor's counsel \$3,000 through the plan. Plan, Dckt. 5. The plan monies then go to pay \$563.80 a month for the 2014 car loan.

Assuming an 8% Trustee fee of \$94 based on \$1,175.00 Plan payment and deducting for a \$563.80 car payment, there will be \$518 a month to fund payments for counsel's \$3,000 in fees and creditor claims. If counsel is paid his money off the top, rather than having it proportionately spread over the 60 months of the plan, it will take six months of payments before there will be any money to pay creditors holding general unsecured claims. Then, beginning in the seventh month of the plan payments to the Internal Revenue Service on its \$17,027.80 will begin. At \$518 a month it will take thirty-three months to pay this claim (without interest).

Beginning in the fortieth, the Trustee will be able to begin making the Class 7 general unsecured claims dividend to creditors holding \$11,277 in claims. At \$518 a month, the distributions will take twenty-eight months. That will take the Plan into sixty-eight months, exceeding the sixty month maximum. 11 U.S.C. § 1325(d).

During the sixty-eighth months of the Plan (with creditors holding only \$11,277 of general unsecured claims being paid in months forty through sixty-eight) Debtor will be taking, and not accounting for \$256,836 in Monthly Net Income. (\$3,777 monthly trust distribution times the sixty-eight months of the Plan.)

The Chapter 13 Trustee having objected, Debtor must either,

- A. Pay property of a value not less than the amount of the claim (which requires the payment of interest to provide for present value of the claim) or
- B. All of Debtor's projected disposable income must fund the plan for the applicable commitment period.

11 U.S.C. § 1325(b) (1).

Projected disposable income is defined to be "current monthly income" less necessary expenses. 11 U.S.C. § 1325(b) (2). When the Debtor is above median income, as is this Debtor, the "necessary expenses" must be computed using the Internal Revenue Service expense guidelines under 11 U.S.C. § 707(b) (2). 11 U.S.C. § 1325(b) (3).

The term "current monthly income" is defined as "income from all sources that the debtor receives without regard to whether such income is taxable,...." 11 U.S.C. § 101(10A). Debtor offers no legal authority that the trust income is not within "income from all sources."

Debtor is also required to propose a Plan in "good faith." 11 U.S.C. § 1325(a)(3).

In considering good faith in the context of prosecuting a Chapter 13 Plan, 11 U.S.C. § 1325(a)(3), the determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

Here, Debtor proposes to keep from funding the plan with \$256,836 in Monthly Net Income, stringing out paying his delinquent taxes for thirty-nine months and his general unsecured claims for months forty to sixty-eight of the Plan. In contrast, using the full \$4,704 of Net Monthly Income, Debtor could fund the following,

Trustee's Fee of \$376 a month (assumes 8%).....	\$5,300
Attorneys' Fees.....	\$3,000
Internal Revenue Service Delinquent Taxes.....	\$17,027
Auto Loan.....	\$30,058
General Unsecured Claims.....	\$11,277

in just fourteen months.

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Additionally, Debtor's "Plan" to divert \$256,836 in Monthly Net Income in order to string creditors out, without interest or good reason for delay, is not in good faith. 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.

6. [14-31437](#)-C-13 GARY DUERNER
DPC-1 Pro Se

Thru #8

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
1-22-15 [[27](#)]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

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

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

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

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

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

The court's decision is to overrule the Objection and confirm the Plan.
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FEBRUARY 24, 2015 HEARING

The hearing was continued to allow the parties to conduct discovery. At the continued the court shall set the matter for an evidentiary hearing if the matter has not been resolved.

REVIEW OF MOTION

Chapter 13 Trustee opposes confirmation of the Plan on the basis that treatment of U.S. Bank under Class 2 creates several problems, including:

1. Plan payment is insufficient to pay Class 2 creditor. Section 2.09 calls for a monthly dividend to Class 2 creditor of \$2,500. Section 6.01 (payment plan) appears to call for plan payments to the Trustee

of \$82 for 1 month, \$106 for one month, \$234 for 58 months, and one lump sum payment of \$145,000 through a refinance by the end of the plan. Section 6.02 appears to reiterate that Class 2 creditor will be paid a monthly dividend of \$2,500. The plan does not state that the Debtor will make this payment directly, and states "Trustee shall pay each Class 2 claim the monthly amount specified below as the monthly dividend."

2. Debtor's schedules are inconsistent with paying the claim directly. According to schedule A, Debtor owns two properties. Schedule D states that Debtor owes two secured obligations to Desert Island Community Association and U.S. Bank. Schedule J reflects a rental or home ownership expense of \$1,791, which based on the entries in 4a-4d appears to include Homeowner's association dues if they are being paid at all. The Statement of Financial Affairs reflects no payments aggregating \$600 or more to creditors in the 90 days prior to filing.
3. Debtor has not provided evidence that he has paid December and January payments directly to Creditor. This case was filed November 21, 2014. Monthly obligations are due on the 1st and late of the 15th, and two payments will have come due since commencement of the case. Trustee has reviewed PACER and does not see any evidence that these payments have been made.
4. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Avoid a Homeowner's lien. No motion to value or avoid lien appears pending.
5. Debtor has not provided sufficient proof of income. The income listed on line 13 of schedule I of \$2,500 "added salary" and \$2,000 "rental income" appears to be income that is anticipated, not actual. Schedule I & J appear to only support plan payments of \$82 without these amounts. No proof of either source of income have been provided to Trustee in form of bank statements or cancelled checks or lease agreement.

DISCUSSION

The docket reflects that the treatment of the claim of U.S. Bank, N.A. has been resolved per stipulation. Dckt. 71. Given that the Trustee's concerns regarding this matter have been resolved, the court's decision is to overrule the Objection and confirm the Plan.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 16, 2015 hearing 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).

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

Below is the court's ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 26, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of U.S. Bank, N.A., "Creditor," is denied as moot.

FEBRUARY 24, 2015 HEARING

The hearing was continued to allow the parties to conduct discovery. At the continued the court shall set the matter for an evidentiary hearing if the matter has not been resolved.

REVIEW OF MOTION

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 900 Island Drive #106, Rancho Mirage, California. The Debtors seeks to value the property at a fair market value of \$220,000 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173

(9 Cir. 2004).

Creditor, U.S. Bank, N.A., holds a first deed of trust securing a loan with a balance of approximately \$450,000, according to Debtor's schedule D. Therefore, Creditor's claim secured by subject property is under-collateralized. Debtor asserts that the Creditor's secured claim should be determined to be in the amount of \$220,000.

CREDITOR'S OBJECTION

U.S. Bank, N.A., Creditor, objects to Debtor's Motion to Value, asserting that the balance of the loan is estimated at roughly \$712,971.90 at the time of Debtor's commencement of the case.

Moreover, Creditor contests Debtor's valuation of the property. Instead, Creditor had a Broker's Price Opinion conducted on the property in November 2014, estimating the value of the subject property to be closer to \$325,000.00. See Declaration of Kathleen Tabberer and Exhibit A.

DEBTOR'S RESPONSE

Debtor asserts his own valuation is correct, stating that he has been a licensed real estate broker for over 35 years. Debtor has owned the property for nearly 13 years and has inspected the interiors of dozens of units within the Dessert Island community. Debtor insists that Creditor's BPO uses only an observed exterior appearance and is totally unreliable without the necessary interior inspections that dictate the true value of the condominium unit. Because the Creditor's BPO does not include considerations of the interior, as Debtor's assessment has, BPO submitted by Creditor is incorrect.

DISCUSSION

The parties have resolved this valuation dispute by stipulation. Dckt. 71. The court's decision is to deny the Motion to Value as moot.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied as moot.

8. [14-31437](#)-C-13 GARY DUERNER
SW-1 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK, N.A.
1-22-15 [[31](#)]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

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

Below is the court's 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 January 22, 2015. Fourteen days' notice is required. This requirement has been 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 overrule the Objection.

FEBRUARY 24, 2015 HEARING

The hearing is continued to allow the parties to conduct discovery in connection with the related motion to value. At the continued the court shall set the matter for an evidentiary hearing if the matter has not been resolved.

REVIEW OF OBJECTION

Creditor, U.S. Bank, N.A. opposes confirmation of the Plan on the basis that:

1. Debtor's plan does not provide for arrearages to secured creditors. 11 U.S.C. § 1325(a)(5)(B)(ii). To cure the pre-petition arrears of at

least \$262,828.15 over the term of the plan within 60 months, Creditor must receive a minimum of \$4,380.47 per month through the plan. Debtor's plan provides for payments to Trustee of \$85 month one, \$106 month two, \$234 for months 3-60. Debtor does not appear to have sufficient fund to cure the arrears, and the plan is not feasible.

2. Debtor's plan is not feasible in that it does not provide for arrearages to secured creditors. 11 U.S.C. §§ 1325(a)(6) and 1322(d).
3. Debtor's attempt to reduce the value of the Creditor's secured claim based on the value of its collateral is not be successful. However, Debtor has not substantiated any basis for the reduction in value of the collateral to \$220,000, and has not filed a motion to value.

DISCUSSION

Creditor's concerns have been resolved by stipulation of the parties. Dckt. 71. The court's decision is to overrule the objection and confirm the Plan.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 5, 2014 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.

9. [14-32243](#)-C-13 ANDRES DELGADILLO
RPH-1 Robert Huckaby

CONTINUED MOTION TO VALUE
COLLATERAL OF MERIWEST CREDIT
UNION
1-26-15 [[24](#)]

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

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

Below is the court's ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 26, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Meriwest Credit Union, "Creditor," is granted.
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, California. The Debtors seeks to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$328,953. Meriwest Credit Union's second deed of trust secures a loan with a balance of approximately \$48,646.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

On May 18, 2015, Meriwest Credit Union, Creditor, withdrew its opposition to the Motion to Value. Dckt. 51.

In its opposition, Creditor states that the principal balance owed to Creditor as of the filing of the bankruptcy petition was \$41,648.39. Creditor objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$368,500.00 based on a Value Sure Automated Valuation Model. Creditor argues that its claim is therefore secured by the subject property.

PREVIOUSLY

This motion was continued to 2:00 p.m. on May 5, 2015, to allow the parties to conduct discovery, with the court stating that if the matter had not been resolved, the court would set an evidentiary hearing at the continued hearing date.

DISCUSSION

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

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

The 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 Meriwest Credit Union's secured by a second deed of trust recorded against the real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, 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 \$240,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

10. [14-32243](#)-C-13 ANDRES DELGADILLO
DPC-1 Robert Huckaby

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-4-15 [[32](#)]

Also #10

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 4, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

PREVIOUSLY

At a hearing on February 24, 2015, the court continued the Motion to Value on which Debtor's plan relies to May 5, 2015. As this Objection relies on the resolution of the Motion to Value, it was continued to the same date.

SUMMARY OF OBJECTION

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

1. Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a pending Motion to Value the secured claim of Meriwest Credit Union on a second deed of trust. The Motion is set for hearing on February 24, 2015 and if it is not granted, Debtor's plan lacks sufficient monies to pay the claim in full.
2. Debtor lists Meriwest in Class 4 of the Plan with a monthly payment of \$2,049. Creditor filed a secured claim (Claim 3-2) indicating mortgage arrears in the amount of \$4,582.80 and a regular monthly payment of \$1,968.58. The plan states that this debt is current, so it appears to not comply with applicable law. 11 U.S.C. § 1325(a)(1).

DISCUSSION

Trustee's objection relies upon the pending Motion to Value the Collateral of Meriwest Credit Union. The court has granted the Motion to Value thereby resolving the Trustee's concerns.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 30, 2014 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.

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 6, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is \$2,343 delinquent in plan payments to the Trustee to date. According to the proposed modified plan, payments of \$78,721.60 have become due. Debtor has paid \$76,378 into the plan to date. The last payment posted on November 25, 2014 in the amount of \$2,548.65.

As the Trustee's concern highlights, 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.

12. [15-21848](#)-C-13 JOHN LABARBERA, AND
BLG-1 JACLYN LABARBERA
Bruce Dwiggins

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
5-13-15 [[34](#)]

Also #13

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

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

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

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 PNC BANK, N.A., "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 19850 Holstein Lane, Redding, California. The Debtor seeks to value the property at a fair market value of \$332,945 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 \$406,239.22. PNC BANK, N.A.'s second deed of trust secures a loan with a balance of approximately \$73,065.71. 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 Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 19850 Holstein Lane, Redding, 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 \$332,945 and is encumbered by senior liens securing claims which exceed the value of the Property.

13. [15-21848](#)-C-13 JOHN LABARBERA, AND
DPC-1 JACLYN LABARBERA
Bruce Dwiggins

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-20-15 [[38](#)]

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 20, 2015. Fourteen days' notice is required.

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

The court's decision is to 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 under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of PNC Bank. If the motion is not granted, Debtors do not have sufficient monies to pay the claim in full and should be denied confirmation.
2. Debtors are delinquent in plan payments, and all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtors are \$2,821 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,821 is due on May 25, 2015. Debtors have paid \$0 into the plan to date.
3. Debtors did not provide for all priority tax claims required under 11 U.S.C. §§ 1325(a)(9) and 1322(a)(2), and not all tax

returns have been filed under 11 U.S.C. §§ 1325(a)(9) & 1308. On April 6, 2015, IRS filed court claim #9, indicating that Debtors owe \$16,176 in priority tax for the 2014 tax year with returns not filed. This should be filed under Class 5 of the plan.

4. Debtors provided Trustee with a copy of only their 2012 tax return. Trustee is unable to determine if Debtors have filed all required returns, and based on claim #9, Debtors appear to not have filed 2014 and may have filed 2013. Debtors have not provided the Trustee a copy of the 2013 tax return if it was filed, contrary to 11 U.S.C. § 521(e)(2)(A).
5. Debtors do not appear to have provided for all of their disposable income for the applicable commitment period of the plan, under 11 U.S.C. § 1325(b). Debtors have not reported on their tax return amount for 2013 and have not yet filed their 2014 income tax return.
6. Debtors' plan may fail the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$0 and Debtors are proposing a 0% dividend to unsecured creditors.

The court has granted Debtors' Motion to Value the Collateral of PNC Bank, resolving Trustee's first objection. However, Trustee's remaining objections are outstanding, and thus 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.

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 21, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor's plan may not be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor's projected disposable monthly income listed on Schedule J totals \$3,178.84, and Debtor is proposing a plan payment of only \$2,083.
2. Debtor's plan fails the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$10,878, and Debtor is proposing a 0% dividend to unsecured creditors. Debtor's non-exempt equity consists of \$1,700 in guns, \$4,600 in 2014 tax refund, \$1,742 in a 2014 Honda Sierra CRF450R, \$1,544 in a 2014 Honda Sierra CRF250R, and \$1,292 in a 2013 Kawasaki KX250ZDF.
3. Debtor has not listed all creditors or noticed correct

creditors. On Schedule F, Debtor lists debt owed to Superior Court of San Joaquin. When questioned at the First Meeting of Creditors, Debtor indicated that he was party to a lawsuit. Debtor has not listed the defendant in the lawsuit or the attorney representing the party. Debtor also did not disclose any pending or settled lawsuit on his Statement of Financial Affairs.

4. Similarly, Debtor has not listed all assets, as he admitted that he is a party to a lawsuit not yet disclosed.
5. Debtor has not provided the Trustee with a tax transcript or copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. Under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3), this is required 7 days before the date set for the first meeting.
6. It does not appear that the plan accounts for all of Debtor's projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). On Schedule B, Debtor reports a tax refund of \$4,600. Debtor admitted that the tax refund was received post-petition. Debtor also indicated that he received tax refunds in 2013 and anticipates receiving one for 2015. Debtor has not disclosed the money received from tax refunds as a source of income on Schedule I. The Trustee argues that the tax refunds are additional disposable income that Debtor can pay into the plan to contribute toward general unsecured claims. A \$4,600 tax refund equates to an additional \$383.34 per month. Trustee suggests that Debtor propose to turn over all future tax refunds as an additional payment into 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.

15. [15-20970](#)-C-13 JESSE LOVEDAY
DPC-1 Richard Jare

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-24-15 [[16](#)]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

PREVIOUSLY

This objection came on calendar before this court on April 21, 2015. At the April 21, 2015 hearing, the court continued the matter to June 15, 2015, as the final payment due for filing fee payment installments to Trustee was on June 09, 2015. The court noted that if the record reflected that Debtor made all filing fee payments by that date, Trustee's objection could be overruled as moot.

SUMMARY OF OBJECTION

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

1. Debtor has not paid filing fees related to this case. On February 9, 2015, the court granted the Debtor's motion to pay fees in installments (dckt. 6). The Trustee contends that the Debtor's plan is not confirmable because all fees are not paid.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

TRUSTEE'S UPDATED STATUS

On June 2, 2015, Chapter 13 Trustee filed an updated objection to confirmation, reiterating the grounds for objection (1.) nonpayment of filings fees, and (2.) no tax documents provided. Trustee further provides that on May 22, 2015, Trustee filed a motion to dismiss due to Debtor's failure to make plan payments. Debtor is delinquent \$120 and another payment of \$60 is due on June 25, 2015.

DISCUSSION

The court docket reflects that Debtor paid \$80 filing fee installment on March 10, 2015, and a \$160 filing fee installment at April 21, 2015. However, the final filing fee payment installment became due on June 9, 2015, and \$70 remains outstanding. Trustee is correct that Debtor has remaining filing fees to be paid. Further, Trustee provides in his update that Debtor has not provided the requested tax documents to Trustee for his review. As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

16. [15-21474](#)-C-13 CHRISTOPHER DEAN
EAT-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY SAN
FRANCISCO FIRE CREDIT UNION
4-9-15 [[35](#)]

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 9, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the objection.
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PREVIOUSLY

This matter came on calendar before this court on May 5, 2015, at which time the court's decision was to continue the hearing on the Objection to June 16, 2015. The court ordered Debtor to file supplemental pleadings on or before May 22, 2015, relating to the asserted loan modification; and any response thereto filed and served on or before June 5, 2015.

SUMMARY OF OBJECTION

Creditor, San Francisco Fire Credit Union opposes confirmation of the Plan. Creditor claims to hold a first priority Deed of Trust against real property commonly known as 2718 Adriatic Way, Sacramento, California. Creditor objects that Debtor's plan is not confirmable because the Plan does not provide for Creditor arrearage claim in full and thus fails to meet the feasibility

requirement.

Creditor asserts that Debtor's loan is in default in total arrearages of \$52,700.98. In order to provide for Creditor's arrearage claim in full, Debtor will need to increase the monthly arrearage divided from \$416.66 to approximately \$878.35, rendering the plan not feasible under 11 U.S.C. §§ 1322(b) (5) & 1325(a) (6).

DEBTOR'S OPPOSITION

Debtor responds to Creditor's objection to the plan. First, Debtor states that under 11 U.S.C. § 1322(b) (5), Debtor's plan provides for the terms of a loan modification which includes a \$25,000 lump-sum, and on-going payments of \$1,853.30 per month until paid in full by December 1, 2052. Debtor states that Creditor objects without any competent evidence in efforts to either mislead the court or without any actual knowledge as to the status fo the account. Second, Debtor provides that under 11 U.S.C. § 1325(a) (6), Creditor has objected without any evidence that Debtor cannot make plan payments.

DEBTOR'S SUPPLEMENTAL REPLY

On May 22, 2015, Debtor submitted a supplemental reply. Debtor provides that he has performed on a loan modification dated January 14, 2015, as directed by Creditor San Francisco Fire Credit Union. Debtor provides his declaration and supporting documentation as support and evidence before the court. Further, Debtor provides that Creditor has filed a proof of claim and received two monthly payments from Trustee, which has been negotiated and not returned.

CREDITOR'S SUPPLEMENTAL DECLARATION

On July 4, 2015, Creditor submitted the supplemental declaration of Baochau Nguyen, Bankruptcy Supervisor, supplementing the Objection to Confirmation of Debtor's Chapter 13 Plan.

Creditor provides that the loan modification agreement ("Loan Modification") dated January 14, 2015, on which Debtor relies as the basis for his supplemental reply, was indeed sent to Debtor. Said Loan Modification was a coordinated effort with an organization called "Keep Your Home California" ("KYHC"), wherein Debtor's proposed the Loan Modification contemplating a \$25,000 contribution from KYHC towards the reduction of Debtor's loan. The Loan Modification sent to Debtor on January 14, 2015 was prepared utilizing income information from Debtor's paystubs and anticipated KYHC's assistance.

Creditor's records reflect that the loan modification was not completed. First, Creditor states that they never received a signed loan modification from Debtor. Second, Creditor contends that even if they had received a signed loan modification, the loan modification could not be finalized because on February 4, 2015, KYHC informed Creditor that Debtor did not qualify for the KYHC assistance contribution because of Debtor's insufficient income. On February 5, 2015, KYHC informed Creditor that KYHC was closing Debtor's file, and no KYHC contribution was paid to Creditor.

On February 6, 2015, Creditor sent to Debtor a Loan Modification denial letter. Creditor has provided a copy of this letter in submitted exhibits. Creditor did not receive an appeal from the denial decision.

DISCUSSION

To start, the court notes that on May 5, 2015, Creditor San Francisco Fire Credit Union c/o Cenlar FSB filed a proof of claim in the secured amount of \$389,889, showing arrearages of \$51,590.62. Proof of Claim No. 9.

Next, Creditor has sufficiently raised doubts about the Plan's feasibility. Debtor's supplemental reply indeed seems assert feasibility of the plan based on the existence of a loan modification between Debtor and Creditor. That such loan modification does not exist raises questions as to whether Debtor is properly providing for Creditor's claim. This is reason to sustain the objection. See 11 U.S.C. § 1325(a)(6).

Further, the court is concerned by the apparent lack of understanding shown by the Debtor as to whether or not a loan modification even exists. Debtor states in his supplemental reply that "has performed on the Loan Modification," Dckt. 57, has provided a copy of a loan modification agreement signed only by Debtor to "support the existence of a loan modification," Dckts. 57 & 58, Exhibit 3, and makes no mention in the supplemental reply brief or declaration that said loan modification was actually denied on February 6, 2015, see Dckt. 61, Exhibit 1. At its worst, Debtor's supplemental reply and declaration appears to have been an effort to misrepresent to the court that a loan modification exists where one does not. At its best, Debtor's supplemental papers demonstrate a gross misunderstanding as to the current status of his obligations on the loan.

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 San Francisco Fire Credit Union 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 is sustained and the Chapter 13 plan is not confirmed.

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Sell Property is granted.
--

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

- a. A manufactured mobile home described as a 2003 Oakwood, bearing decal LBF7116, on leased property located at 4123 Annapolis Lane, North Highlands, California.

The proposed purchaser of the Property is Jackie Lee Swaim and the terms of the sale are for the purchase price of \$48,000. Debtors assert that the property value is \$50,000, and have disclosed that Brian L. Fitterer, Inc. holds a purchase money lien in the amount of \$27,895, and Kennedy Meadows MHC holds a mechanics lien in the amount of \$3,405. Debtors provide that Debtors signed a Home Sales Addendum in which Kennedy Meadows MHC was given a right of first refusal to purchase the mobile home for \$48,000, which they rejected on May 1, 2015.

The Motion seeks to sell Property free and clear of the liens of both Brian L. Fitterer, Inc. and Kennedy Meadows MHC ("Creditors"), leaving less than \$16,000 equity after the costs of sale.

CREDITOR'S OPPOSITION

Creditor Brian L. Fitterer, Inc. aka Fairway Estates holds a purchase money lien of \$27,894.68, and opposes the sale of the Property to Jackie Lee Swaim. Creditor asserts a valid right of first refusal to purchase the Property from Debtors for the purchase price offered by an prospective buyer, or the original purchase price of the Property mobile home, \$33,250, whichever is less, from a contract entered into between Debtors and Creditor in December 2013. Creditor states that Creditor bargained for this right of first refusal at the time the purchase money loan was made, providing the substantial consideration of reducing the interest rate on Debtors' purchase money balance and reducing the duration of the loan repayment period.

Creditor states that they have made an unequivocal offer of \$33,250, and states that Debtors have ignored this offer and is a demonstration of Debtors' bad faith in this bankruptcy case. Creditor asserts that they do not consent to the sale as stated in Debtors' Motion to Sell "free and clear," and the court should not approve the sale where Debtors are presently in default on their chapter 13 plan. Further, Creditor points out that Trustee has set a motion to dismiss for June 24, 2015, and that Debtors case should be converted to chapter 7 or dismissed.

DEBTOR-MOVANT'S RESPONSE

Debtors reply to Creditor's opposition, asserting two basis. First, Debtors state that upon entering into the contract wherein Debtors granted Creditor right of first refusal in December 2013, the terms were not fairly negotiated or explained to Debtors and Creditor was in an unfair bargaining position. Second, Debtors state that to permit Creditor to exercise a right of first refusal for \$33,150 would be to unjustly enrich Creditor and deprive Debtors of hard labor and materials purchased for \$16,000-20,000, which added substantial value to the Property (including painting, replacing laminate floors with wood, replacing stairs, adding a porch, etc.).

Debtors assert that they should be permitted to proceed with the sale of the Property for \$48,000 and that Creditor should be required to make restitution for the great enhancements to the value of the Property.

DISCUSSION

The contract addendum which Creditor now proffers as the basis for asserting its right of first refusal reads, in relevant part, as follows:

Tenant grants the park owner a right of first refusal to purchase Tenant's mobile home for the price the home was purchase for by the tenant noted herein or the offer given at time of sale, WHICHEVER IS LESS.

Home Sales Addendum, Dckt. 78.

Creditor asserts that under the contract addendum entered into between Creditor and Debtor Marra Salazar, Creditor is exercising its "right of first refusal" to purchase the mobile home property with an unequivocal offer \$33,250 (the original purchase price). Creditor states that "Debtors have failed, and refuse to fulfill their obligations under the Right of First Refusal, which requires that they accept \$33,250 for the Mobilehome[,] " Creditor's Opposition, Dckt. 75.

Debtors have refused this offer, and have proceeded with the instant

motion to sell, seeking permission from the court to proceed on the current bid from Proposed Buyer Jackie Lee Swaim of \$48,000, or better offer/overbid in open court. Debtors state in their Motion to Sell that and declaration of Debtors' attorney, Michael Noble, that they have offered Kennedy Meadows dba Fairway Estates a right of first refusal to purchase the mobile home for the bona fide purchase price of \$48,000.

Right of First Refusal is an Executory Contract

Pursuant to federal law, the sale of the property identified as a manufactured mobile home described as a 2003 Oakwood, bearing decal LBF7116, on leased property located at 4123 Annapolis Lane, North Highlands, California, will proceed in accordance with 11 U.S.C. §§ 363 and 1303.

The right of first refusal here is executory in nature, and thus subject to rejection by the bankruptcy court under 11 U.S.C. § 365(a). *In re Robert L. Helms Construction & Development Co., Inc.*, 139 F.3d 702, 705-06. Many courts have determined that rights of first refusal are per se executory in nature. See *In re AbitibiBowater, Inc.*, 418 B.R. 815 (Bankr. D. Del. 2009); *In re Kellstrom Indus., Inc.*, 286 B.R. 833 (Bankr. D. Del. 2002); *In re Fleishman*, 138 B.R. 641 (Bankr. D. Mass. 1992); *In re A.J. Lane & Co., Inc.*, 107 B.R. 435 (Bankr. D. Mass. 1989); *In re Hardie*, 100 B.R. 284 (Bankr. E. D. N. C. 1989); *In re G-N Partners*, 48 B.R. 462 (Bankr. D. Minn. 1985); *In re Waldron*, 36 B.R. 633 (Bankr. S. D. Fla. 1984), *rev'd on other grounds*, 785 F.2d 936 (11th Cir. 1986); *but see In re Bergt*, 241 B.R. 17 (Bankr. D. Ala. 1999) (determining the right of first refusal in that case was not executory). The Ninth Circuit has opined that an option is executory if "further performance from each party at the time the petition is filed" is required. *In re Helms Constructoin & Development Co., Inc.*, 139 F.3d at 705-06.

In re CB Holding Corp., the District of Delaware addressed a similar issue to the one at bar and rejected that the existence of a Creditor's right of first refusal could preclude the sale of an asset at auction. *In re CB Holding Corp.*, 448 B.R. 684, 689 (Bankr. D. Del. 2011). The court found compelling that the right of first refusal is executory in nature because there remained material obligations to be performed by each party: the debtor is "obligated to give written notice to the landlord of any intent to sell the [asset] separate from the lease and to offer to sell the [asset] to the landlord [for a set amount]. The Landlord . . . is required to accept the offer within thirty days of the notice." *Id.*

Similarly here, material obligations that arise render this right of first refusal executory in nature. Debtors here are obligated to give notice to Fairway Estates with a copy of the offer upon receipt of the offer of intent to purchase the mobile home, and Fairway Estates is required to meet and agree to its terms within ten business days through written notice. Thus, the contractual addendum is executory and may be rejected under 11 U.S.C. § 365(a).

Interpretation of Contract Addendum

As an aside, the court questions the Creditor's interpretation of the contractual provision at issue. Indeed, to determine that Debtors are in fact obligated under the contracted Right of First Refusal to accept \$33,250, an offer \$14,750 less what a bona fide buyer has proposed for the mobile home, would be contrary to any basic understanding of the right of first refusal and against public policy.

Under California law, the right of first refusal is understood to be "a

preemptive right to purchase property on the terms and conditions of an offer to purchase by a third person" *C. Robert Nattress & Associates v. CIDCO* (1986) 184 Cal. App. 3d 55, 56. Although a literal matching of terms is not necessary, see *Mitchell v. Exhibition Foods, Inc.* (1986) 184 Cal. App. 3d 1033, 1046, the party must generally agree to the similar terms and conditions of the third party offer so that the seller receives the same value or benefit of the bargain. *Id.* at 70-73; see *Bill Signs Trucking v. Signs family Limited Partnership* (2007) 157 Cal. App. 4th 1515, 1523.

The interpretation sought by plaintiffs is one which would amount to the forfeiture of property rights. Indeed, a fundamental rule of construction becomes applicable. The law abhors a forfeiture and where there are two possible constructions of a contract, one of which leads to a forfeiture and the other avoids it, the construction which avoids the forfeiture must be made if at all possible. *Ballard v. MacCallum*, 15 Cal.2d 439, 444. A forfeiture provision in a contract normally will be construed strictly against the party for whose benefit it was incorporated into the instrument. *In re Construction Contractors of Ocala, Inc.*, 196 B.R. 188 (Bankr. M.D. Fla. 1996).

To interpret the contractual provision as proposed by Creditors would reduce Debtors' "ownership" in their property to something more akin to a lease. Debtors would be obligated to sell their property to Fairway Estates at no more than \$33,250, never able to realize the true value of their property, a property value which has increased due to, at least in part, Debtors' own efforts and improvement on the mobile home (materials alone costing around \$16,000 according to Debtor's declaration), resulting in Debtors' forfeit of \$14,750.

The court, however, will not enact the labor of the interpretation or construction of the contractual provision (again, consisting of constructing this provision strictly against the party for whose benefit it was incorporated). Instead, the court has reached its conclusion that Debtors may proceed with the sale on the grounds that the contractual addendum is executory and may be rejected under 11 U.S.C. § 365(a).

Motion to Sell

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

"(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal

11 U.S.C. § 363(f)(1).

18. [15-22986](#)-C-13 KENNETH ISENHOWER
KK-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
4-30-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 30, 2015. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Creditor, JPMorgan Chase Bank, N.A., holder of a secured claim recorded against real property commonly known as 206 U Street, Rio Linda, California, opposes confirmation of the Plan on the basis that Debtor's plan does not provide for pre-petition arrearages amounting to \$552.21 owed to Creditor. Further, Debtor's plan does not provide that post-petition mortgage payments are to be tendered to JPMorgan by Debtor outside the plan. As the plan does not propose to pay the claim in full, Debtor's plan should not be confirmed under 11 U.S.C. §§ 1322(b)(5) & 1325.

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

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

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 11, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Best Buy CBNA, "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of assets described as a Sony Cybershot H55 Camera, a Net10 LG 40 Phone, a GoPro HD Outdoor Hero, and a Casio PX130-88 Keyboard ("Assets"). The Debtor seeks to value the Assets at a fair market value of \$250 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).

Assets are currently encumbered with a secured lien held by Creditor Best Buy CBNA with a principal balance of \$2,217. Therefore, the Creditor's claim secured by a lien on the Assets is under-collateralized. The creditor's secured claim is determined to be in the amount of \$250.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Best Buy/CBNA "Creditor" secured by Assets described as a Sony Cybershot H55 Camera, a Net10 LG 40 Phone, a GoPro HD Outdoor Hero, and a Casio PX130-88 Keyboard ("Assets"), is determined to be a secured claim in the amount of \$250.00, 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 \$250 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

The court's decision is to overrule the Objection and confirm the Plan.

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

1. The Plan relies on the Motion to Value Collateral of Best Buy, which is set for hearing on June 16, 2015.

The court has granted the Motion to Value, thereby resolving the Trustee's only objection to confirmation.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on March 31, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2015. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 11, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. [14-32092](#)-C-13 NATHAN/MELANIE ROBINSON
MET-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 4
4-27-15 [[42](#)]

Final Ruling: No appearance at the June 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 27, 2015. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 4 of Calvary SPV I, LLC is sustained and the claim is disallowed in its entirety.

Nathan and Melanie Robinson, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Calvary SPC I, LLC, assignee of HSBC Consumer Lending USA Inc./Beneficial ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$12,933.56. Objector asserts that based on California Code of Civil Procedure section 337, the statute of limitations for commencing collections actions of four years has expired. Creditor's proof of claim shows the last payment on the account was on July 13, 2007, which is more than four years prior to the filing of this bankruptcy petition.

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

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

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

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

The Objection to Claim of Calvary SPC I, LLC, Creditor filed in this case by Debtors Nathan and Melanie Robinson, Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 4 of Calvary SPC I, LLC assignee of HSBC Consumer Lending USA Inc./Beneficial is sustained and the claim is disallowed in its entirety.

23. [15-22696](#)-C-13 ARTHUR FINGERLE
C. Anthony Hughes

Thru #24

OBJECTION TO CONFIRMATION OF
PLAN BY VANDERBILT MORTGAGE AND
FINANCE, INC.
5-5-15 [[20](#)]

Tentative Ruling: 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).

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, respondent creditor, and Office of the United States Trustee on May 5, 2015. 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Confirmation is sustained, and the Plan is not confirmed.

Creditor Vanderbilt Mortgage and Finance, Inc. holds a secured interest in personal property described as a 2007 Fleetwood "Waterford" mobile home, and opposes confirmation of the Plan on the basis that Debtor's plan relies on a motion to value the collateral of Creditor, which Debtor has not yet filed. Creditor asserts that the current value of the personal property is \$82,693.74, and Debtor's outstanding balance is \$120,914.17. Moreover, Debtor's chapter 13 plan fails to provide for interest of any kind to be paid to Creditor, and under the terms of the Security Agreement, Creditor is entitled to interest at the contract rate of 8.29% per annum.

The docket reflects that Debtor has not filed a Motion to Value the Collateral of Creditor Vanderbilt Mortgage and Finance, Inc. 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 Vanderbilt Mortgage and Finance, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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 21, 2014. 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's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$403,705 and Debtor is proposing a 5% dividend paying approximately \$3,222 to unsecured creditors. Non-exempt equity consists of \$384,621 in real property located at 11525 Bruceville Road, Elk Grove, California, and \$19,084 in personal property.
2. Debtor has not disclosed all property in which he holds an interest. These assets are not included in the liquidation calculation.
3. Debtor has not disclosed his interest in Irvine Recreation Park. While reviewing Debtor's 2014 Tax Return, the Trustee noticed income from a corporation, which Trustee discovered was income from Irvine Recreation Park. Debtor indicated that Irvine Recreation Park is a

business park he inherited and shares interest in with his three sisters and one niece.

4. Debtor has not disclosed \$850 in business equipment on schedules B and C. Debtor provided Trustee with a business questionnaire which disclosed that Debtor owns \$850 in business equipment.
5. Debtor has not disclosed a storage unit. Debtor admitted that he has a storage unit which he pays for monthly. Debtor indicated that the storage unit contains approximately \$5000 in personal property and costs \$290 a month. This asset is not listed on schedules B and C, and the expense is not listed on schedule J.
6. Debtor's plan relies on a motion to value, which if not granted, Debtor cannot make plan payments. 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Vanderbilt Mortgage, but has not filed a motion to value collateral.
7. Debtor's plan exceed 60 months, and instead will take approximately 119 months to complete.

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.

Tentative Ruling: 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).

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, respondent creditor, and Office of the United States Trustee on May 5, 2015. 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Confirmation is sustained, and the Plan is not confirmed.

Creditor United States Internal Revenue Service has filed a proof of claim in the amount of \$168,065.08, of which \$160,354.66 is a secured claim and \$7,710.42 is a priority claim, and opposes confirmation of the Plan on the basis that:

1. Debtor has not filed his 2013 and 2014 federal income tax returns. Because they have not been filed, Debtor's plan cannot be evaluated to determine whether it provides for the payment of the IRS's claim as required by 11 U.S.C. §§ 1322(a) and 1325. Additionally, as of September 11, 2015 this case may be subject to dismissal pursuant to 11 U.S.C. § 1327(e) for failure to file said returns.
2. Debtor's plan does not correctly list and provide for full payment of the IRS's secured claim required under 11 U.S.C. § 1325(a)(5).
3. Debtor's plan is not feasible under 11 U.S.C. §§ 1322 and 1325. The

IRS's secured and priority \$168,065.08, and to pay the IRS's secured and priority claims in 60 months, the monthly payments must be \$2,801. Debtor's plan proposes monthly payments of \$2,611, which is insufficient.

The docket reflects that Debtor has not filed a Motion to Value the Collateral of Creditor Vanderbilt Mortgage and Finance, Inc. 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 United States Internal Revenue Service 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.
