

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 28, 2016 at 2:00 P.M.

1. [15-28902](#)-C-13 GREGORY SIMS CONTINUED MOTION FOR SANCTIONS
SJS-1 Scott Sagaria FOR VIOLATION OF THE AUTOMATIC
STAY
3-16-16 [[32](#)]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 16, 2016. Twenty-eight days' notice is required.

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

The Motion for Sanctions for Violation of the Automatic Stay is denied.

Debtor moves for order holding The Golden 1 Credit Union (Creditor) in contempt of violating the automatic stay.

The docket reflects that the dispute has been settled by stipulation of the parties. Dkt. 51. The court's decision is to deny the motion 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 for Sanctions for Violation of the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments

of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Sanctions for
Violation of the Automatic Stay is denied as moot.
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Final Ruling: No appearance at the June 28, 2016 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, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.). That requirement was met

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 8 of the Employment Development Department is sustained, and the claim is allowed in its entirety as unsecured.

Gwendolyn White, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of the Employment Development Department ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$3,702.85. Objector asserts that Creditor based its secured status on an abstract of judgment recorded in Santa Clara County. Debtor filed a declaration stating that she listed all of her property on her schedules and all property is located in Sacramento County. Dkt. 38.

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).

Discussion

Because the debtor does not have property located in Santa Clara County, the county in which Creditor recorded an abstract of judgment to obtain a security interest in Debtor's property, Creditor's debt is determined to be wholly unsecured. Based on the evidence before the court, the creditor's claim is allowed in its entirety and determined to be unsecured. 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 the Employment Development Department, Creditor filed in this case by Gwendolyn White, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 8 of the Employment Development Department is sustained, and the claim is allowed in its entirety as unsecured.

3. [16-23703](#)-C-13 ANGELA WALRATH AND
ET-1 KENNETH KRAMLICH
Matthew Eason

MOTION TO EXTEND AUTOMATIC STAY
6-8-16 [[9](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 8, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is denied as moot.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtors' first bankruptcy case (No. 11-23637) was filed on February 14, 2011 and was closed without discharge on December 22, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtors thirty days after filing.

Debtors assert that the chapter 13 plan was completed under the prior case. Debtors misunderstood that their on-going property taxes would be included in the monthly obligations to the trustee when they were not. Consequently, when the Plan was completed, the pre-petition taxes had not been paid. The plan proposes to pay all creditors 100% within three years.

Trustee's Opposition

The Debtors did not have a case dismissed within thin one year prior to filing this case. In December, 2015, Debtors completed their plan, received a discharge, and the case was closed.

Legal Standard

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Discussion

As the Trustee points out, Debtors have not had a case dismissed within one year prior to the filing of this case. Therefore, this motion is unnecessary and is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion is denied as moot.

4. [16-21304](#)-C-13 EDUARDO/MARIE ORTEGA
MDE-1 Peter Macaluso

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

WELLS FARGO BANK, N.A. VS.

Also #5

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

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

Below is the court's tentative ruling.

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

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

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

The Motion Confirmation of Termination of Stay is granted.

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

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

Debtors' Opposition

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

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

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

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

Discussion

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

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

No other or additional relief is granted by the court.

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

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

The Motion Confirmation of Termination of Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

No other or additional relief is granted.

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 10, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee seeks to clarify the record regarding Debtors' amended SoFA and Schedules:

1. Debtors filed a supplemental Schedule D removing all secured creditors listed on the original Schedule (dkt. 45, p. 4). Trustee believes the omission was unintentional.
2. Debtors filed a supplemental SoFA, which Trustee believes is incorrect as to the Debtors' total 2015 income (dkt. 45, p. 12-18). Trustee seeks to clarify the record.

Creditor's Opposition

Wells Fargo Bank, N.A. holds a claim secured by real property. The plan understates the arrearage amount by \$8,332.39 in violation of 11 U.S.C. § 1325(b)(5).

Debtors' Reply

1. The Debtors' First Amended Plan projected \$60,000, rather than that in

the newly filed proof of claim, in the amount of \$68,332.39, a difference of \$8,332.29, or an increase to the plan payment by \$150.00. Debtors have amended their schedules to allow for feasibility of the plan. Debtors filed an amended schedule J on June 21, 2016 to decrease the expenses by \$150.00, (less than 10% of the payment) which can be clarified in the Order Confirming.

2. The Debtors have corrected the software error by amending Schedule D and the Statement of Affairs. See docket #61.

Discussion

Debtors have resolved the Trustee's concerns. 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.

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 May 10, 2016 is
confirmed, and counsel for the Debtor shall
prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to
the Chapter 13 Trustee for approval as to form,
and if so approved, the Chapter 13 Trustee will
submit the proposed order to the court.

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 June 1, 2016. Fourteen days' notice is required. That requirement was met.

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

1. 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).
2. Debtor is \$45.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$45.00 is due on June 25, 2016. Debtor has paid \$0.00 into the plan to date.
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11

U.S.C. § 521(a)(1)(B)(iv).

4. The plan fails the chapter 7 liquidation analysis.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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 25, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. The plan does not provide for the priority claim of the IRS (Claim #2-2 in the amount of \$18,215.39).
2. Based on the priority claim of the IRS, the plan exceeds the statutory cap of 60 months.
3. Debtor has failed to attach gross receipts evidencing Debtor's net rental income.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 25, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Larry Parrott Jr. ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage from the current \$282,216.00 to \$274,287.13.

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

The Chapter 13 Trustee filed a statement of nonopposition.

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

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

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

The Motion to Approve the Loan Modification filed by Larry Parrott Jr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Larry Parrott Jr. ("Debtor") to amend the terms of the loan with JPMorgan Chase Bank, N.A. which is secured by the real property commonly known as 9612 Herron Point Court, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 115.

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 13, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is \$1,255.00 delinquent in plan payments under the proposed modified plan to the Trustee to date and the next scheduled payment of \$1,255.00 is due before the hearing date.
2. The plan exceeds the statutory cap of 60 months.
3. The most recent Schedule I was filed on 11/7/14, and the most recent Schedule J was filed on 2/3/15.

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

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

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

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

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

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 25, 2016. Fourteen days' notice is required. That requirement was met.

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

1. 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).
2. The plan calls for adequate protection payments of \$1,900 paid to mortgage holder Seterus. The Trustee has not received this payment, and Debtors have failed to provide proof that any such payment has been made directly to Seterus.
3. Debtors list many "unknown" amounts on Schedule F and therefore may be

over the unsecured debt limit and not entitled to chapter 13 relief.

4. Debtor lists income as contribution from adult children but has provided no evidence of the contribution.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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 11, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Due to discrepancies in Debtor's court filings, it appears that Debtor may have additional disposable income that could be paid into the plan for the benefit of creditors. Debtor moved in with her daughter and is no longer paying rent.

Debtor's Reply

The Debtor has temporarily moved in with her daughter's family because without her job the rent was too much. However, the Debtor's income of \$1,417.00 being comprised of social security (In re Welch) has allotted to keep a budget of \$1,500.00 for the next few months so that they will be able to move out of the daughter's home and back into their own in short order.

This \$1,417.00 being social security, the Debtor is requesting a waiver of this expense over the (5) five remaining months of the plan.

Discussion

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

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

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

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

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

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 16, 2016. Thirty-five days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

1. The plan fails to propose to pay in all future tax returns.
2. The amended Schedule I shows medical insurance deductions for both Debtors, but co-Debtor's pay stubs reveal no deduction for medical insurance.

Debtor's Reply

Debtors' intention, although not skillfully explained was to include a surrender of all future tax refunds.

Debtor, Todd Burns' After Tax Deductions equal \$23.81, while the

Pre-Tax Deductions equal \$388.66. See attached Exhibit #1; April 2016 statements.

Discussion

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. Debtors' Reply appears to resolve Trustee's concerns regarding plan confirmation.

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 16, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on May 23, 2016 is
confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

14. [16-21428](#)-C-13 KRISTEN JOHNSON
DPC-1 Peter Macaluso

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 4, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

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

Debtor's Opposition

Debtor's new job is for 40 hours per week at \$16.00 per hour, plus 2 Saturdays per month, at \$24.00 per hour, less taxes and benefits, which she believes will be about \$1908.05 per month.

She will continue remitting payments of \$305 per month starting 5/25/16

and continuing for the balance of the Plan.

The primary source of Debtor's income for our household is from her new job as a property manager (which includes an apt).

Debtor will amend her schedules.

Discussion

The court has considered the Trustee's concerns and finds them legitimate. Due to Debtor's change in income and expenses, it is not clear if Debtor can make the payments under the Plan or comply with the Plan. 11 U.S.C. § 1325(a)(6). The docket does not reflect that Debtor has filed updated schedules.

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

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

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

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

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

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on March 18,
2016 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval

as to form, and if so approved, the Chapter 13
Trustee will submit the proposed order to the
court.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on April 19,
2016 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval
as to form, and if so approved, the Chapter 13
Trustee will submit the proposed order to the

court.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2016. 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 May 6, 2016
is confirmed, and counsel for the Debtor shall
prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order
to the Chapter 13 Trustee for approval as to
form, and if so approved, the Chapter 13

Trustee will submit the proposed order to the court.

Also #19

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 11, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

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1. Debtor is \$125.00 delinquent in plan payments to the Trustee to date. Debtor has paid \$28,750.00 into to the Trustee to date.

Debtor's Reply

Debtor states that she will be current by the hearing.

Discussion

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

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

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

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

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

19. [12-25539](#)-C-13 CATHERINE BODINE
PGM-3 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
5-23-16 [[48](#)]

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney for Debtor, ("Applicant") for Catherine Bodine ("Clients"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October, 2015 through May, 2016. Applicant requests fees in the amount of \$1,200.00 and costs in the amount of \$0.00, for an aggregate of \$1,200.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the

administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

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

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant seeks reasonable, necessary, and unanticipated legal fees. Counsel and Debtor contracted the rate of \$200.00/hour.

Applicant seeks payment for 6.80 hours related to obtaining a loan modification, opposing a motion to dismiss, and modifying the chapter 13 plan.

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

Fees	\$1,200.00
Costs	\$0.000

The Chapter 13 Trustee filed a statement of nonopposition.

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

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

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

IT IS ORDERED that Peter G. Macaluso is allowed the fees in the amount of \$1,200.00 and costs in the amount of \$0.00 as a professional of the Estate.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 7, 2016. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

The Motion to Sell Property is granted.

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

- a. 7965 Diamond Rock Drive, Sacramento, California

The proposed purchaser of the Property is Catalina Estates, LLC by David Lu and the terms of the sale are a short sale with a purchase price of \$293,000.00.

The Chapter 13 Trustee filed a statement of nonopposition.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present

them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Kenneth and Virginia Howie, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Kenneth and Virginia Howie, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Catalina Estates, LLC by David Lu or nominee ("Buyer"), the Property commonly known as 7965 Diamond Rock Drive, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$293,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. xx, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Chapter 13 Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Chapter 13 Debtors be and hereby are authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Chapter 13 Debtors' broker.

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 23, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan fails to provide for the class 5 priority claim filed by the State Board of Equalization in the amount of \$9,650.20 (Claim #2).
2. The amount of mortgage arrears proposed in class 1 is not legible.
3. The Trustee is uncertain if Debtor has incurred a new debt associated with the purchase of a dry cleaning business without court permission.

Debtor's Reply

1. Debtor will amend the plan to provide for the claim of the State Board of Equalization.
2. The mortgage claim is \$3,054.00 to be paid in monthly payments of \$59.00.
3. Debtor and her sister purchased a dry cleaning business.

Discussion

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

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

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

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

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

Also #23

Final Ruling: No appearance at the June 28, 2016 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 May 23, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.). That requirement was met

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 3-2 of the Internal Revenue Service is sustained, and the claim is disallowed in its entirety.

Douglas and Diem Woodward, the Chapter 13 Debtors, ("Objector") request that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 3-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$5,201.20.

Objector asserts that Claim 3-2 filed May 5, 2015 alleges that the Debtors owe \$4,239.00 in taxes and \$114.40 in interest as of the date of the filing of the petition for tax period 2013 income taxes that were "pending examination" as of the date of the filing of Claim 3-2.

Debtors' counsel has made several written and oral requests to have the Proof of Claim amended again to accurately reflect the balance due, if any, so Debtors may file a confirmable Chapter 13 Plan. Debtors are informed and believe, and thereon allege that the IRS has completed their examination of the subject income tax returns and that no amount is due and owing to the IRS.

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).

Discussion

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 the Internal Revenue Service, Creditor filed in this case by Douglas and Diem Woodward, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 3-2 of the Internal Revenue Service is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

The Trustee filed a limited opposition stating that the plan payments as stated in the plan were inaccurate. Debtors and the Trustee agreed to correct the inaccuracy in the order confirming. The plan payment is to be \$3,690 starting June, 2016.

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

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

The 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 May 17, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA
DPC-2 ALMANZA
Joseph Canning

CONTINUED MOTION TO DISMISS
CASE
4-20-16 [[87](#)]

Also #25

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. 28 days' notice is required. That requirement was met.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$64,660 to date with the last payment received on February 29, 2016. Trustee shows a total of \$67,365 is due, thus Debtor is delinquent \$2,705 in plan payments. Prior to the hearing on this matter, a payment of \$2,705 will come due. As a result, Debtor will need to pay \$5,410 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtors oppose Trustee's motion, stating that Debtors made a monthly payment of \$2,705 to Trustee, however they will not be making another payment of \$2,705 before the hearing date because they have recently filed a motion to confirm their modified chapter 13 plan, Dckt. 91. Under their current plan, Debtors are paying pre-petition arrearage to Wells Fargo. However Wells Fargo has preliminarily approved the Debtors' request a loan modification accounting for the arrearage, Dckt. 93. Before the date of hearing, Debtors will make another plan payment to Trustee under the terms outlined in the proposed plan to avoid

overpayment to Wells Fargo.

DISCUSSION

The docket reflects that Debtors have filed a modified plan and a motion to modify plan, set for hearing on June 28, 2016. Debtors state that they have made one payment of \$2,705 under the terms of the confirmed plan, and that they intend to make another plan payment under the terms of the modified plan prior to the date of hearing.

Debtors have provided proof that they are current under the proposed modified plan. Dkt. 106. However, the court has not approved their modified plan. See matter #25 below.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

25. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA
JMC-4 ALMANZA
Joseph Canning

MOTION TO MODIFY PLAN
5-4-16 [[91](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The months paid in stated in the proposed plan payments differ from the Trustee's records.
2. The supporting declaration to the proposed modified plan states that Debtors seek court approval of a loan modification, but the Trustee has no record of a loan modification being requested by the Debtors or being granted by the court.

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.

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

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

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

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

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

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

The Motion to Incur Debt is granted.

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted and POUNG FOUA Melanie Yang, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 24.

27. [16-21352](#)-C-13 LINDSAY CRAWFORD AND JOHN CONTINUED MOTION TO CONFIRM
MS-1 BLACKBURN PLAN
Mark Shmorgon 4-12-16 [[53](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the basis that:

1. Debtors did not appear at the first meeting of creditors on April 28, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The next meeting was continued to 05/26/16.
2. Debtor is \$925 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$925 is due May 25, 2016. The case was filed on March 4, 2016, and Debtor has paid \$0 into the plan to date.

Discussion

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

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

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

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

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

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 12, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the basis that:

1. Debtors are \$6,630.00 delinquent in proposed plan payments to the Trustee. Debtor has paid a total of \$194,362.00 to the Trustee.
2. Debtors' plan payments are not consistent between the Plan, Motion, and Declaration.
3. The mortgage payment to be paid under the plan may not be sufficient.
4. The most recent Schedules state that Debtor is now employed and that Debtor took out a retirement loan. Debtor did not provided details regarding the payment terms of the loan.
5. Debtors may be over-withholding tax return funds.

Debtors' Reply

1. Debtors will be current by the date of this motion.

2. Debtors can correct errors in the order modifying.
3. Debtors will provide proof that the plan accurately reflects the mortgage payment.
4. Debtors were unaware that court permission was needed to obtain a retirement loan.
5. Debtors have provided tax returns and pay stubs to the Trustee.

Discussion

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Chase Auto Finance, "Creditor," is denied without prejudice.
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The Motion filed by Benecia Elaine Gulley ("Debtor") to value the secured claim of Chase Auto Finance ("Creditor"). This is Debtor's second motion asserting to value the collateral of Chase Auto Finance. The first-filed motion to value the secured claim of Chase Auto Finance, Dckt. 15, was denied without prejudice due to failing to accurately identify the Creditor whose right Debtor was seeking to alter. The court again finds the service in the instant motion to be deficient.

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

The Proof of Service filed on the court docket, Dckt. 23, reflects that Debtor served the following address with certified mail:

Chase Auto Finance
PO Box 9010736
Fort Worth, TX 76101

However, as stated in the Federal Rules of Bankruptcy Procedure, regardless of whether service must be made by certified mail or not, entities must be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bankr. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h). As reflected in the proof of service, Debtor has served a Fort Worth, Texas address but has failed to identify that the service is on an officer, partner, managing member or other designated agent for service of process. The service is thus deficient.

As such, the court will again deny the motion without prejudice.

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

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

The Motion for Valuation of Collateral filed by 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 denied without prejudice.

Thru #32

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 24, 2016. Twenty-eight days' notice is required. That requirement was met.

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

<p>The Motion to Value secured claim of Community Trust Self Help Credit Union, "Creditor," is granted.</p>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2010 Rowe Drive, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$367,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$391,652. Community Trust Self Help Credit Union's second deed of trust secures a loan with a balance of approximately \$12,300. 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 Community Trust Self Help Credit Union secured by a second deed of trust recorded against the real property commonly known as 5010 Rowe Drive, Fairfield, 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 \$367,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [16-22359](#)-C-13 DENNIS/KIM CAMPBELL
JAA-1 Timothy Walsh

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 4, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to overrule the Objection.

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

A look at the plan reflects that Debtors have provided arrears on

Creditor's claim of \$45,179.15, and not the \$59,217.88 asserted by Creditor. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

JUNE 14, 2016 HEARING

At the hearing, Debtors' counsel opposed that Creditor had not filed a claim, nor any evidence of the amount due and the arrearage.

Debtor's counsel requested that it be continued to allow Creditor to get a proof of claim on file or evidence of the alleged arrearage. The court continued the hearing in order to allow Creditor to file a proof of claim or evidence of the arrearages alleged.

DISCUSSION

The docket reflect that Creditor has not filed a claim or any further evidence of the arrearages owed.

There is no evidence on the docket by way of Creditor declaration or proof of claim upon which the court may rely, suggesting that the amount of arrears owed is not what Debtor have provided for in the plan. Creditor asserts arrears owed of \$59,217.88. Debtor has provided for arrears of \$45,179.15. At the last hearing, the Debtors and court identified that no proof of claim has been filed by the Creditor to reflect the higher amount of arrears owed, and indeed the court continued this motion for the specific purpose of permitting Creditor additional time to file a proof of claim. That Creditor has failed to do so suggests to the court that they no longer assert that the arrears owed is higher than what Debtors have provided for in the plan. The court will thus overrule the Objection.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 14, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 25, 2016. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Community Trust Self Help Credit Union, set for hearing on June 28, 2016.
2. According to Trustee's calculations the plan may complete in 67 months and not 60 months proposed. Creditor of the Class 1 mortgage has filed an objection stating that arrears are anticipated at \$59,217.88 and not \$45,179.15. No claim has yet been filed.

DEBTORS' OPPOSITION

Debtors oppose this motion, stating that the moving party has not

accompanied its opposition with any supporting documentary evidence, declarations, records, or claims, and that because of these missing records, the objection is incoherent and not presented in good faith.

DISCUSSION

The court notes Debtors' vehement opposition, which asserts that chapter 13 trustee objection is incoherent and not presented in good faith, pointing to a lack of declaration or missing records. The court, quite to the contrary, finds trustee's objection to be entirely clear in describing its basis for objection, and further notes that chapter 13 trustee did indeed file a declaration in support of its motion despite Debtors' assertions otherwise, Dckt. 24. Nonetheless, in addressing the merits of Trustee's objection, the court must overrule Trustee's basis for objection.

To trustee's first point, the court notes that the Motion to Value the Collateral of Community Trust Self Help Credit Union has been set for hearing on the same date of this objection. The court has granted Debtors' Motion to Value the Collateral of Community Trust Self Help Credit Union, resolving the Trustee's first basis for objection.

Second, the Creditor's Objection to Plan, initially heard June 14, 2016 and continued to June 28, 2016, suggests that the arrears on the Class 1 mortgage is \$59,217.88 and not \$45,179.15. The court continued the Creditor's objection to permit Creditor time to file on the court docket a proof of claim reflecting this higher arrearage amount. The Creditor has failed to do so, suggesting to the court that \$45,179.15 is the correct amount of arrears owed, which the plan provides for. The court has overruled Creditor's objection due to Creditor's failure to aver that the arrearages owed are \$59,217.88. Thus, Trustee's second basis for opposition is resolved.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 14, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 (pro se) on May 25, 2016. Fourteen days' notice is required. That requirement was met.

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor did not appear at the first meeting of creditors on May 19, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

4. The plan does not provide a dividend to unsecured creditors.
5. The plan does not list a duration for plan payments.
6. The plan does not provide any debts in class 1, 2, 3, 4, 5, 6, or 7.

The court has reviewed Trustee's objections and a quick look at Debtor's proposed chapter 13 plan reflects that Debtor's plan is indeed deficient, failing to provides certain key terms such as the debts owed, the dividend to unsecured creditors, and the duration of plan payments. Further, as trustee has pointed out, Debtor has not provided required documents or attended the mandatory 341 meeting. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2016. 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. However, Chapter 13 Trustee filed a motion to inform the court that Debtor and Creditor Fidelity National law Group have entered into a stipulation for compromise and reduction of judgment lien as to Debtor only, though no order has been entered to date. Trustee does not oppose the terms of the stipulation though no separate motion for compromise was filed under FRBP 9019.

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 May 4, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [16-23268](#)-C-13 ALLAN/JENNIFER GARCIA
SNM-1 Stephen Murphy

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
5-23-16 [[8](#)]

Also #36

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 23, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Internal Revenue Service, "Creditor," is granted.

The Motion filed by Allan E. Garcia, Debtor, seeks to value the secured claim of the Internal Revenue Service ("Creditor"), and is accompanied by the Debtor's declaration.

On June 1, 2016, the Creditor IRS filed a proof of claim no. 1 asserting a secured claim of \$33,157.00 and an unsecured debt of \$30,527.54, of which unsecured amount \$13,413.09 is said to be entitled to priority treatment.

Debtor asserts that the Internal Revenue Service is holder of three federal tax liens described as follows:

1. Solano County Recorder's Document #201100005610 filed on January 19, 2011, unpaid balance on the date of filing of \$37,439.61.
2. Solano County Recorder's Document #201200067165 filed on July 5, 2012, unpaid balance on the date of filing of \$2,878.39.
3. Solano County Recorder's Document #201400081473 filed on October 21, 2014, unpaid balance on the date of filing of \$3,393.16.

Debtor is owner of certain pieces of personal property described below,

and asserts the fair market value of that personal property below. Further, Debtor asserts that the above-described federal tax liens encumber all property owned by Debtors in the county of Solano. The personal property is described as follows:

Description	FMV	Sec. Claim	Equity Available
2013 Mercedes-Benz	\$23,230	\$23,230	\$0
2014 Mazda 5	\$17,918	\$17,918	\$0
Household Goods	\$1,800	\$0	\$1,800
Electronics	\$200	\$0	\$200
Clothes	\$200	\$0	\$200
Jewelry	\$1,200	\$0	\$1,200
Bank Deposits	\$100	\$0	\$100
Business Interest	\$27,357	\$0	\$27,357
Security Deposit	\$2,300	\$0	\$2,300

Total:	\$33,157
Equity to Secure IRS Federal Tax Liens:	\$33,157

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). Debtor asserts that the total replacement value of all the above-described property is \$74,305.00. The total amount of senior unavoidable liens is \$41,148. Thus, the equity available to secure the claim of the Internal Revenue Service is \$33,157.00.

Debtor thus asserts that the value of the collateral securing the Creditor IRS's claim is \$33,157.00. The court further notes that there appears to be no dispute between Debtor and the Internal Revenue Service as to the secured amount of \$33,157, as Creditor IRS in Proof of Claim No. 1 states the secured amount of debt to be in the amount of \$33,157, reflecting with the amount presented here.

The creditor's secured claim is determined to be in the amount of \$33,157. 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 the Internal Revenue Service secured by Debtor's interest in a various pieces of personal property described in the Declaration of Allan E. Garcia, Dckt. 10, is determined to be a secured claim in the amount of \$33,157.00, and the balance of the claim is a general unsecured claim, to be paid through the confirmed bankruptcy plan.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 23, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Franchise Tax Board, "Creditor," is granted.
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The Motion filed by Allan E. Garcia, Debtor, seeks to value the secured claim of the Franchise Tax Board ("Creditor"), and is accompanied by the Debtor's declaration.

On June 14, 2016, the Creditor FTB filed a proof of claim no. 3 asserting a secured claim of \$0.00 and an unsecured debt of \$3,451.90, of which unsecured amount \$3,451.90 is said to be entitled to priority treatment.

Debtor asserts that FTB is holder of a state tax lien described as follows:

1. Solano County Recorder's Document #201100037537 filed on April 29, 2011, unpaid balance on the date of filing of \$10,000.

Debtor is owner of certain pieces of personal property described below, and asserts the fair market value of that personal property below. Further, Debtor asserts that the above-described state tax lien encumbers all property owned by Debtors in the county of Solano. The personal property is described as follows:

Description	FMV	Sec. Claim	Equity Available
2013 Mercedes-Benz	\$23,230	\$23,230	\$0
2014 Mazda 5	\$17,918	\$17,918	\$0

Household Goods	\$1,800	\$0	\$1,800
Electronics	\$200	\$0	\$200
Clothes	\$200	\$0	\$200
Jewelry	\$1,200	\$0	\$1,200
Bank Deposits	\$100	\$0	\$100
Business Interest	\$27,357	\$0	\$27,357
Security Deposit	\$2,300	\$0	\$2,300

Total: \$33,157
Equity to Secure IRS Federal Tax Liens: \$33,157

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). Debtor asserts that the total replacement value of all the above-described property is \$74,305.00. The total amount of senior unavoidable liens is \$91,148.00. Therefore, the Creditor's claim secured by a state tax lien is under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00. 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 the Franchise Tax Board secured by Debtor's interest in a various pieces of personal property described in the Declaration of Allan E. Garcia, Dckt. 10, 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.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 11, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 17, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. [11-43271](#)-C-13 CORINNE SAUVE
[15-2248](#) JNW-2
SAUVE V. U.S. BANK, N.A. ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
5-16-16 [[35](#)]

Also #40

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on May 16, 2016. 28 days' notice is required. This requirement was met.

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

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

Defendants, Select Portfolio Servicing, Inc. and HSBC Bank USA, N.A., as Trustee of the First NLC Trust 2005-4, Mortgage-Backed Certificates, Series 2005-4, moves the court to dismiss the third amended adversary complaint filed by Plaintiff Corinne Sauve pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 2012 of the Federal Rules of Bankruptcy Procedure, for failing to state a claim upon which relief can be granted.

Plaintiff's third amended complaint seeks declaratory relief based upon an alleged dispute between Plaintiff and Defendants as to the enforceability of a loan modification agreement.

Defendants assert that no controversy regarding the loan modification exists, as Defendants do not dispute the enforceability of the modification. Plaintiff's claim for declaratory relief fails because it is not a cause of action, but instead is a remedy. However, Plaintiff has wholly failed to allege the requisite elements of a claim for declaratory relief. Because Plaintiff has not asserted any cognizable claim for relief, her complaint should be dismissed with prejudice in its entirety.

PLAINTIFF'S RESPONSE

Plaintiffs assert that a substantial controversy does exist, and that Defendants admit that they have implemented and honored the terms of a loan modification but that a written loan modification agreement was not signed. Plaintiff contends that she does not have a written loan agreement that she can enforce if a later dispute arises, and therefore a dispute exists as to whether the plaintiff has the ability to enforce the loan later.

DISCUSSION

The court will resolve the instant motion upon hearing the oral arguments of the parties at hearing.

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

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 January 6, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the plan on the following basis:

1. Debtor's plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. It appears that the tax deductions reported on schedule J may be unnecessary. Debtor deducts on schedule J \$1,250 per month for self-employment income tax. Debtor also deducts \$650 per month for past due tax payment. Debtor fails to provide any documentation supporting the payments of \$650 per month to tax authorities, no evidence of need to save \$1,250 per month for self-employment tax or bank statements showing the setting aside and saving of tax funds. Debtors also offer no evidence of past due tax liabilities owed or the balance owed by non-filing spouse.
 - a. Debtor files as exhibit L and exhibit M 2013 and 2012 tax returns. The 2013 return shows that Debtors overpaid their federal taxes by \$3,732 and their state taxes by \$781. Debtor provides a second copy of the 2013 tax return for an unknown

reason. Th 2012 return shows debtors overpaid federal taxes by \$7,573. No state return is provided. There was a federal overpayment of \$1,615 and state overpayment of \$436.

- b. Trustee questions what if any balance is owed on past tax debt considering after filing 2012, 2013, and 2014 returns the IRS would have kept a combined about of \$12,920 in refund the Debtor would have otherwise been entitled to and FTB would have kept at least \$1217 for the same reason.
2. In section 6.01 - 6.02, Debtor appears to be reducing the previous term of 60 months to a plan term ending in August 2016 however the plan is not clearly designated. It may be 44 months.
3. Debtor's motion to approve loan modification was heard and denied on February 25, 2014 and denied, PJR-9. Debtor's plan proposes to pay ongoing mortgage in class 4. Debtor currently has a pending adversary proceeding attempting to get the mortgage lender to enter a loan modification. Until Debtor gets a loan modification, she has no proposal to cure the arrears, which are owing of \$47,791.
4. Debtor's plan may not comply with 11 U.S.C. § 1325(a)(1). Debtor's plan proposes to pay interest on arrears to Legacy Lan HOA in Class 1. However this creditor may not be entitled to interest unless the not provides for interest on late payments or non-applicable bankruptcy law requires it.
5. Trustee is unable to determine whether Debtor is able to make plan payments under 11 U.S.C. § 1325(a)(6). No income statements or profit/loss statements, paystubs, corporate tax returns, etc., have been provided to Trustee.
6. Debtor has not provided copies of the corporate tax returns to show what Debtor's non-filing spouse's corporation has earned in 2013, 2014, or 2015.
7. Debtor's plan was not filed in good faith. In section 6.04 of the plan, Debtor indicates that prior to reconverting to chapter 13, Debtor paid off her 07 GMC Yukon and sold the property. A representative of the Trustee's office has searched the court docket and cannot find authorization from the court authorizing the sale. Debtor has manipulated the bankruptcy process for her benefit, converting the case to sell property of th estate without any payments to chapter 7 trustee or the estate.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL OPPOSITION

On June 21, 2016, Chapter 13 trustee filed an amended response to Debtor's motion to confirm amended plan. Trustee states:

1. The matter was previously continued from May 24, 2016 based on Debtor's motion, stating that "Until the debtor can resolve this adversary proceeding . . . the debtor cannot confirm her chapter 13 plan." A motion to dismiss the adversary is pending on the same calendar and opposed by Debtor. As such, unless Debtor changes her position, if the adversary proceeding is dismissed, the motion to confirm should be denied.

2. Trustee has previously objected to confirmation on the basis that the plan is not Debtor's best efforts based on tax expenses. Trustee no longer asserts this objection.
3. Debtor may be attempting to reduce the previous term of the 60 months to a plan term ending August 2016. However the specific number of months in the plan is not clearly designated. The 60th month of the plan appears to be September 2016 and Trustee objects to verify this plan length.

DISCUSSION

As the confirmability of this plan is contingent upon the resolution of adversary proceeding case no. 15-2248, upon which a motion to dismiss is coming on calendar the same day of the hearing on this motion, the court will render its decision at the hearing.

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 . . .

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The Motion to Confirm Plan may not comply with Fed. R. Bankr. P. 9013 because it does not plead with particularity the grounds upon which relief is based. Here, the motion merely states "the financial circumstances of Debtor and/or the legal circumstances of the Plan have changed," and refers to other pleadings.
2. Trustee is uncertain if Debtor has the ability to make plan payments as proposed. Debtor has not filed amended schedules I and J in support of the proposed plan. Debtor is \$4,104 delinquent under the confirmed plan where \$5,904 has become due. Trustee has no way of knowing if Debtor can afford the payments as proposed.
3. Debtor has not proposed a plan payment for May 2016. Section 6.02 states "As of April 25, 2016, Debtor has paid a total of \$1,800 into

the plan. Beginning on June 25, 2016, Debtor shall make payments of \$997 per month for the remainder of the plan." Debtor does not specify a payment for May. Debtor may have meant for the total paid in through May 2016 to be \$1,800 and not April 25, 2016 as stated. Trustee would not object if this were to be corrected in the order confriming.

DISCUSSION

Although Trustee has noted that no objection would be made to correcting what the May 2016 payment should in the order confirming, the docket reflects that no amended schedules have been filed in order for the court and trustee to determine whether Debtor is able to make the modified plan payments. Furthermore, Trustee is correct in pointing out that the Motion to Confirm Plan does not meet the requirements of FRBP 9013. 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.
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Daniel Ayala Ceja ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-22922) was dismissed on May 23, 2016, after Debtor failed to timely file the schedules and chapter 13 plan. See Order, Bankr. E.D. Cal. No. xxxx, Dckt. Xx, May 23, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor provides that the instant case was filed in order for debtor to save his residence from foreclosure. Debtor is resuming his self-employment in concrete plumbing. Debtor has a gross monthly income of \$3,000, and also has a rental income of \$1,400. In the prior case, Debtor filed his chapter 13 case in pro per. He paid attorneys in Southern California \$1,330 to obtain a loan modification, and when that failed, those attorneys instructed him to file chapter 13 bankruptcy a couple of days prior to a scheduled foreclosure. They provided him with the paperwork but Debtor was unaware of his responsibilities to file schedules and a plan within 14 days. Debtor has changed counsel, but by the time he obtained new counsel his case had been dismissed. Debtor is more fully able to follow through with this bankruptcy filing, and wishes still to save his house from foreclosure.

On June 21, 2016, chapter 13 trustee filed a statement of no opposition to this motion.

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

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

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

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

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

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this

court.

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 12, 2016. Fourteen days' notice is required. This requirement was met.

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

1. Debtor appears to be over median income. Debtor lists ordinary and necessary business expenses of \$2,034. This deduction would be appropriately be used on form 122C-2. If Debtor completed the form properly, his household income of \$101,164.44 causes him to be over median income. Median income for household of 5 is \$89,840.
2. Debtor's plan is not his best efforts under 11 U.S.C. § 1325(b). Debtor is above median income proposing to pay \$1,995 per month for 60 months. Debtors fails to propose all disposable income into the plan. Debtor has a history of receiving large tax refunds, and he and spouse are to receive \$9,942 in combined refunds for 2015. In 2014, Debtor received \$11,459 in refunds. Debtor fails to propose these payments into the plan.

3. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Jared Galleria of Jewelry, set for hearing on the same date of this motion.
4. Debtor's plan may fail chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).
 - a. Debtor has failed to report all assets. Debtor admitted at his 341 meeting on April 7, 2016 that his wife owns 2 horse trailers that are not reported on schedule B.
 - b. On Schedule C, Debtor exempts his non-filing spouse's bank account and his mechanics tools and toolbox under CCP 703.140(b)(5) but fails to exempt an amount. Instead Debtor claims 100% fair market value. It appears Debtor may not be able to use the claimed exemption as 100% of fair market value, fails to designate an amount and the Debtor is only allowed a certain amount under the exemption code.

MAY 10, 2016 HEARING

At the hearing on May 10, 2016, the court continued the hearing on June 28, 2016 to permit time for Debtor to resolve Trustee's concerns.

CHAPTER 13 TRUSTEE STATUS UPDATE

On June 14, 2016, chapter 13 trustee filed a status update providing that Debtor has taken no steps to resolve trustee's concerns. Trustee reiterated his basis for concern:

1. Trustee objects that Debtor deducts business expenses on line 5, and determined the debtor would be over median income if form 122C-1 was filled out improperly. Debtor has not resolved this concern.
2. Trustee's objects to debtor's plan payments concerned that the debtor has additional disposable income not included in his disposable income calculation. Debtor has a history of receiving large tax refunds, and Trustee suggests that debtor pay in all tax refunds over the life of the plan. This concern has not been resolved.
3. Debtor's plan relies on a motion to value the collateral of Sterling Jewelers Inc., which was continued to June 21, 2016 at 2:00 p.m. This is unresolved.
4. Trustee's objection based on two liquidation matters remain unresolved-Debtor failed to list all assets, and debtor's spouse owns 2 horse trailers not disclosed on schedule B.

DEBTOR'S RESPONSE

Debtor responds to Trustee's status update as follows:

1. Debtor has amended the form 122C-1, and completed form 122C-2, both having been filed prior to this hearing.

2. Debtor acknowledges that it is appropriate for the trustee to receive all sums over \$2,000 in tax refunds, for the term of the plan, and paid to Trustee within (15) days of receipt.
3. The Motion to Value has been resolved by stipulation, Dckt. 49, requiring monthly payments of \$93 per month. The plan has allotted \$50 per month, and a dividend increase of \$43 per month is required in the order confirming.
4. The Debtor has amended to exempt the horse trailer.

DISCUSSION

The court notes that Debtors have filed the motion to value the collateral of Jared Galleria Jewelry, resolving one of Trustee's basis for objection, as that motion was resolved by stipulation of the parties, Dckt. 49; Dckt. 51. Moreover, Debtor has attempted to resolve other issues identified by the Trustee, including amending frm 122C-1, which the docket reflects was filed, and amending the exemption for the horse trailer, which the docket reflects was also filed. However, the court will determine the appropriateness of Debtor's resolution to Trustee's tax refund issue at the hearing.

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

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 10, 2016. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to . . . 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. Trustee notes the service to the IRS did not include the United States Department of Justice, Civil Trial Section, Western Region, Box 683, Ben Franklin Station, Washington, DC 20044. The IRS and the US Attorney were served. Trustee has paid the \$9,141.71 priority claim of the IRS in full. Trustee has paid \$692.66 of the \$841.06 unsecured portion of the claim. The remaining \$148.40 will be paid through the 100% plan.
2. The Debtor has offered no explanation for the lapse in time of filing the motion to modify. The Trustee notes the plan and declaration were signed by Debtors February 15, 2016, but not filed until May 10, 2016. Debtors have made the payments as stated in the modified plan.

DISCUSSION

The court notes the concerns of Trustee and the deficiency in service to the IRS. The court will render its decision at hearing to permit Debtors an opportunity to explain the deficient service as well as offer an explanation for the delayed filing of the motion to modify.

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 . . .

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain of the plan payment proposed. Section 1.01 of Debtors proposed modified plan refers to an attachment and section 6 indicates additional provisions are appended to the plan, but they are not. Debtor's declaration states "My total plan payment will be \$1,275.17 each month in my modified plan beginning with the payment due May 25, 2016, and I think I can make those payments." Under the confirmed plan, Debtor's plan payments are \$982.83 and Debtor is currently \$553.20 delinquent. Based on the payment as proposed in Debtor's Declaration, Debtor is delinquent \$845.54 under the proposed modified plan. Paymanets due under the confirmed plan through April 2016 were \$38,330.37. To date, Debtor has paid to Trustee a total of \$38,760 with the last payment posted on May 9, 2016 in the amount of \$910. Debtor's declaration states payments beginning in May were to be \$1,275.17, therefore a delinquency

exists of \$845.54.

2. According to Trustee's calculations, the plan will complete in more than 60 months proposed possibly taking 75 months.
3. Trustee is uncertain of the arrearage dividend regarding class 1 mortgage arrears. Debtor's modified plan proposes a monthly dividend of \$132.69 while Debtor's declaration states "My mortgage arrearage will receive \$228 each month under my modified plan and be paid off at the end of my chapter 13 plan."

The court notes Trustee's concerns and agrees that the proposed plan is deficient in that the plan payments proposed are uncertain, the plan appears to exceed the maximum amount of time allowed under 11 U.S.C. § 1322(d), and the arrearage dividend on the class 1 mortgage is uncertain. 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.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 4, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 4, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. Thirty-five days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that there is no current statement of income and expenses on file. Debtor is proposing to increase plan payments from \$1,220 to \$1,406. While the Trustee would normally support a payment increase, according to Trustee's records, the last statement of income and expenses was filed on February 11, 2015 and reflects Debtor can afford to pay monthly plan payments of \$1,220.

The court docket reflects that Chapter 13 Trustee is correct that there appears to be no current statement of income and expenses. The court is not convinced Debtor is able to afford in increase in plan payments.

MAY 24, 2016 HEARING

At the hearing, Debtor requested additional time to file supplemental pleadings, which Debtor believes will resolve the Trustee's opposition. The Trustee did not oppose a continuance and the submission of additional pleadings by the Debtor.

TRUSTEE'S UPDATE

On June 8, 2016, chapter 13 trustee filed a statement withdrawing opposition based on Debtor's supplemental declaration and amended schedule J.

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on April 12, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 June 1, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor lists the Internal Revenue Service on Schedule E for \$1,878 entitled to priority for the 2015 federal income. However this debtor is not provided for in the plan. On May 18, 2016, the creditor filed a priority claim for \$1,763.
2. The boxes in section 2.06 are not checked in the plan filed April 27, 2016. While the rights and responsibilities was filed on April 27, 2016, trustee cannot determine if Debtor's attorney opts into compensation or out of compensation under FRBP 2016-1(c). If attorney has not opted in, attorney must seek a fee by filing a separate motion under LBR 2016-1(a). Trustee does not oppose confirmation on the basis as long as the court determines if attorney fees will be approved in the order confirming or will require a separate motion.

3. The additional provisions of the debtors plan call in part for Dell Financial to receive \$15.00 per month until paid in full. Dell Financial was not listed in the schedules or on the master list.
4. Debtor lists numerous assets under an incorrect exemption code for those assets.

The court has reviewed trustee objections, and agrees that there are numerous deficiencies in Debtor's plan, failure to provide for certain priority debts while inexplicably providing for others, and incorrectly claiming a number of exemptions. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

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

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

The Motion to Value secured claim of Westlake Financial Services, "Creditor," is granted.
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The Motion filed by Debtors to value the secured claim of Westlake Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Dart ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,040 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,844.03. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$10,040. *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 Robert Ford and Louise Ford ("Debtor") having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described 2013 Dodge Dart ("Vehicle") is determined to be a secured claim in the amount of \$10,040, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,040 and is encumbered by liens securing claims which exceed the value of the asset.

Final Ruling: No appearance at the June 28, 2016 hearing is required.

The Movant having filed an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 withdrawing the Motion to Modify Plan, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Motion to Modify Plan.**

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

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

A Motion to Modify Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to withdraw the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Modify Plan is dismissed without prejudice.

Final Ruling: No appearance at the May 24, 2016 hearing is required.

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 14, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's plan is not Debtor's best efforts 11 U.S.C. § 1325(b) or in the alternative the plan has not been proposed in good faith under 11 U.S.C. § 1325(a)(3).
 - a. Debtor's motion states "Attached hereto as Exhibits are updated Scheduled I & J, which reflect the Debtor's current financial situation and the ability to fund the plan." The declaration of the debtor states "4. I changed my exemptions to be able to not owe on my taxes and now have a significant deduction to IRS every paycheck." and "17. I changed my

withholdings at the end of 2015." Schedule I filed in support reports line 4, gross income, as \$7,509.58. Debtor reports on line 5a, Tax, Medicare, and Social Security deductions, \$5,171.83. Debtor reports on line 5e, Insurance, \$887.03. The debtor reports line 5h, parking, as \$34.99. Debtor reports on line 7 take home pay of \$1,415.73. These are the exact same amounts reported on Schedule I at the time of filing, Dckt. 1. Based on Debtor's annual gross income of \$268,872.00, the annual withholding for Medicare and Social Security is \$988.68 per month. This leaves \$4,183 for income taxes. Debtor reports an additional \$9,500 on schedule J as 2016 tax deductions. Thus total tax expense per month is \$13,683 or \$164,196 annually. This represents 61% of Debtor's income. According to Trustee's calculations, the total tax on gross income for federal and state taxes will be approximately \$89,012.44, which would be without any exemption or deductions which is approximately \$75,000 less than tax expenses on schedules I and J.

- b. Debtor does not report on schedule I any income or expense for Debtor's rental property.
 - c. Debtor's declaration and proposed plan reflects the surrender of property at 773 Harvey Way. The debtor has provided no information or expense on schedule J for Debtor's current residence location.
 - d. Trustee requests Debtor provide the last 6 months pay stubs, the last 6 months bank statements and copies of Debtor's 2014 and 2015 tax returns.
- 2. Debtor is \$2,750 delinquent in plan payments to the Trustee to date. The case was filed on December 3, 2015, and Debtor has paid \$51,924 into the plan to date.
 - 3. According to Trustee's calculation, the plan will complete in 71 months and not the 60 proposed.
 - 4. Debtor did not serve the IRS per the Roster of Governmental Agencies. Additionally, Debtor did not serve creditor Ocwen Loan Servicing LLC per the Request for Special Notice.

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition, stating:

- 1. Debtor proposes 100% plan, surrendering the class 1 claim. Debtor states she will update her current residence and provide Trustee with the 6 months pay stubs, bank statements, and 2014 and 2015 tax returns as requested.
- 2. Debtor will be current on or before the date of this hearing.
- 3. Debtor acknowledges that the amount needed to end the plan within the 60 months is \$149,325.52, requiring approximately \$17,325.52 to end timely, and would propose to increase the monthly payment by \$400 to \$3,150 per month.

4. Debtor states that service issues can be remedied if Debtor is allowed to serve notice of a continued hearing on the two creditors inadvertently omitted.

MAY 24, 2016 HEARING

At the hearing on May 24, 2016, the court agreed that while Trustee had raised valid concerns, the best course of action at that time was to continue the motion in order to permit Debtor to serve all parties appropriately, and to permit Trustee time to review the requested documents, including pay stubs, bank statements, and 2014 and 2015 tax returns. The court will continue the motion to June 28, 2016 at 2:00 p.m.

DISCUSSION

The docket does not reflect updated service records or certification. Moreover, Trustee not having withdrawn its opposition to this motion, the court may conclude that Trustee's basis for objection have not been resolved.

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 plan is not confirmed.

Final Ruling: No appearance at the June 28, 2016 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2016. 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 1 of Real Time Solutions, Inc. is sustained and the claim is disallowed in its entirety.

Manuel Grant Dowden and Stephanie Joy Dowden, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Real Time Solutions, Inc. ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$53,783.61. Objector asserts that Claim No. 1 is barred by the applicable statute of limitations. Pursuant to California Code of Civil Procedure Section 337, the claimant had 4 years to recover monies due. The claim was from a foreclosed property back in 2010. Further, the claim does not state when the last payment was made on the claim.

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).

Here, the court agrees that Proof of Claim No. 1 is barred by the

applicable statute of limitations.

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 Real Time Solutions, Inc., Creditor filed in this case by 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 1 of Real Time Solutions, Inc. is sustained and the claim is disallowed in its entirety/described portion disallowed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. 28 days' notice is required. This requirement was met.

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

The Motion to Extend the Automatic Stay is denied.

Mark and Debra Hickey ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-30098) was dismissed on January 22, 2016, after Debtor became delinquent in plan payments. See Order, Bankr. E.D. Cal. No. 14-30098, Dckt. 86, January 22, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

In determining if good faith exists, the court considers the totality

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor explains that the instant case was filed in order to cure pre-petition arrears owed on the primary residence and to retain their assets. Debtor is disable and receives \$980.55 per month. Debtor's spouse is now retired and receives \$1,795 per month from her pension. Additionally, they receive \$2,150 in support for a total monthly income of \$4,925.55. Debtors assert their schedules and B22C reflect they are able to afford the proposed plan.

TRUSTEE'S OPPOSITION

Chapter 13 Trustee opposes the instant motion, asserting this is Debtors' third chapter 13 case in since 2013. The first case, 13-22111 was dismissed due to failure to make plan payments, where the payments were \$1,000 per month. The second case, 14-30098 was dismissed again for delinquency, where the plan payments were \$1,400 per month. The current case proposes 12 months of payments of \$2,350 and 48 months of \$3,930 with no explanation of how the increase will be funded. Debtor's schedule I reflects \$2,150 family support payments which were not present in the previous filings. No declaration has been filed supporting these payments from family.

DISCUSSION

The court agrees that Debtor has failed to provide new information to the court explaining what has changed to make the present plan more likely to succeed than the previous plan. Debtors do not explain what cause their previous case to fail, failure to make plan payments, why they couldn't make those payments, and what circumstances have changed that they will now be able to support a substantial increase of payments in this new plan. The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The motion is denied and the automatic stay is not extended.

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

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

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

IT IS ORDERED that the Motion is denied and the automatic stay is not extended pursuant to 11 U.S.C. § 362(c)(3)(B).

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

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

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

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

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

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

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

According to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the interest rate must be the prime-plus or formula rate. In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of*

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

JUNE 14, 2016 HEARING

At the hearing, the parties informed the court that they have filed a stipulation for treatment of this claim, which the Trustee shall review.

DISCUSSION

The court has approved a stipulation of the parties regarding the position of Creditor Exeter Finance under this chapter 13 plan. Dckt. 26. The stipulation renders this objection moot.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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 May 28, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$306 under the terms of the proposed modified plan. Accordingly to the proposed modified plan, payments of \$49,918 have become due. The Debtor has paid a total of \$49,612 to the Trustee with the last payment posted on May 27, 2016 in the amount of \$2,756.

DEBTOR'S RESPONSE

Debtor responds, stating that he is delinquent \$306 because he did not increase his plan payments until April 25, 2016, when he should have done so March 25, 2016. Debtor states he will pay \$306 by the time of hearing.

The court notes that debtor is delinquent in plan payments, and although promises to be current by the date of hearing, and intent to be current is not evidence that Debtor is actually current and able to make

plan payments as proposed by the plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

Final Ruling: No appearance at the June 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2016. 28 days' notice is required. This requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Kenneth Ray Bradford and Ramona Clair Bradford ("Debtor") seeks court approval for Debtor to incur post-petition credit. US Bank National Association, as Trustee for the Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2005-9, serviced by America's Servicing Company ("Creditor"), has agreed to a permanent loan modification. The court approved a trial loan modification on May 24, 2016. Dckt. . Debtor's mortgage payment will be \$2,397.38 a month with an interest rate of 4% with the first payment due June 1, 2016. Debtors will make this payment for a total of 251 months with a maturity date of April 1, 2037, with a modified principal balance of \$334,112.09. The modified principal balance of the Note will include all amounts and arrears that will be past due as of the effective date, less any amounts paid to Lender but not previously credited to Debtor's loan.

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

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

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

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

The Motion to Approve the Loan Modification filed by Debtors Kenneth Ray Bradford and Ramona Clair Bradford having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Kenneth Ray Bradford and Ramona Clair Bradford ("Debtor") to amend the terms of the loan with US Bank National Association, as Trustee for the Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2005-9, serviced by America's Servicing Company, which is secured by the real property commonly known as 3712 Comanche Way, Antelope, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 124.

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[15-2241](#) GLM-1
HOLLOWAY ET AL V. CUSICK ET AL

MOTION TO COMPEL AND/OR MOTION
FOR EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS
6-24-16 [[30](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 24, 2016. 14 days' notice is required.

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

The Motion to Compel is granted.

Plaintiffs ("Movant") seeks an order:

1. Finding Defendant D. Brent Jack's responses to Plaintiff's Interrogatories, Set One (Numbers 3 through 7) to be improper and overruling his objections;
2. Compelling Defendant D. Brent Jack to respond in full to Plaintiff's Interrogatories, Set One (Numbers 3 through 7) and to provide verifications to all interrogatories no later than close of business June 30, 2016;
3. Compelling Defendant D. Brent Jack to respond in full and to produce

documents responsive to Plaintiff's Request for Production of Documents, Set One (Numbers 1 through 3) and to provide verifications of same no later than close of business June 30, 2016;

4. Award attorney's fees and expenses in the amount of \$6,890.00.

June 30, 2016 is the discovery deadline according to the court's scheduling order. On March 21, 2016 Movant propounded and served a set of interrogatory requests and requests for production of documents. Defendant responded with objections and non-responsive answers. He continues to refuse to provide responses despite the attorney for movants repeated attempts to get Defendant to amend his responses.

The court orders that the Motion to Compel is granted.

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

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

The Motion to Compel 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 Compel is granted.