

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

July 21, 2015 at 2:00 P.M.

1. [15-23108](#)-C-13 ERIKA DAVIS OBJECTION TO DEBTORS 11 U.S.C.
DPC-1 Peter Macaluso SEC. 1328 CERTIFICATION BY
DAVID P. CUSICK
6-1-15 [[18](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 1, 2015. Twenty-eight days' notice is required.

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

The court's decision is to sustain the Objection.

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on August 13, 2012 (Case No. 12-28065). Debtor filed this Chapter 13 case on April 16, 2015.

DEBTOR'S STATEMENT OF NON-OPPOSITION

Debtor does not oppose the Objection to Discharge.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-23108.

Tentative Ruling: The Motion to Avoid Judicial Lien 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, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. 28 days' notice is required. That requirement was met

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of Ronny Dhaliwal, Creditor, for the sum of \$285,000. An abstract of judgment was recorded with Sacramento County on December 12, 2013. That lien attached to the Debtor's residential real property commonly known as 9646 Rivage Way, Elk Grove, California.

OPPOSITION

Creditor opposes the motion on the basis that (1) the Debtor's schedules understate the value of the subject property; and (2) the motion mistates the Debtor's exemption as \$100,000 when the Schedules list the exemption amount as \$75,000.

REPLY

Debtor states that Creditor has submitted no admissible evidence with the Opposition that rebuts the Debtor's scheduled value of \$350,000. Further, Creditor has failed to request a continuance for an evidentiary hearing as required by the Local Rules.

DISCUSSION

Because Creditor has not submitted admissible evidence with the Opposition to rebut Debtor's valuation, Debtor has met his burden of proof in establishing the value of the subject property. Accordingly, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$350,000 as of the date of the petition. The unavoidable consensual liens total \$315,661.13 on that same date according to Debtor's Schedule D.

The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant
to 11 U.S.C. § 522(f) filed by the 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 judgment lien of
Ronny Dhaliwal, Sacramento County Court Case No.
34-2011-00103167, recorded in Sacramento County
on December 12, 2013 against the real property
commonly known 9646 Rivage Way, Elk Grove,
California, is avoided pursuant to 11 U.S.C.
§ 522(f)(1), subject to the provisions of 11
U.S.C. § 349 if this bankruptcy case is
dismissed.

3. [15-21912](#)-C-13 ENOCH MARSH
DEF-3 David Foyil

MOTION TO VALUE COLLATERAL OF
NEWPORT BEACH HOLDINGS
CORPORATION
6-2-15 [[44](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 2, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Newport Beach Holdings Corporation, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 14702 Hobnob Way, Nevada City, California. The Debtor seeks to value the property at a fair market value of \$410,000 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 \$459,685. Newport Beach Holdings Corporation's second deed of trust secures a loan with a balance of approximately \$45,000. 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 Newport Beach Holdings Corporation's secured by a second deed of trust recorded against the real property commonly known as 14702 Hobnob Way, Nevada City, 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 \$410,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on May 22, 2015
is confirmed, and counsel for the Debtor shall
prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order
to the Chapter 13 Trustee for approval as to

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

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

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

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

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

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

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

The court's decision is to is continue the hearing on the Objection to August 11, 2015 at 2:00 p.m..

The Chapter 13 Trustee and the Debtor filed a stipulation to continue the hearing on the Objection to is continued to August 11, 2015 at 2:00 p.m. Dckt. 25.

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 continued to August 11, 2015 at 2:00 p.m.

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on May 29, 2015
is confirmed, and counsel for the Debtor shall
prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order
to the Chapter 13 Trustee for approval as to

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

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

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

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

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

1. The plan fails to provide for priority tax debt of the IRS in the amount of \$1,204.16. (See court claim #2-1).
2. The plan fails to provide for the secured debt of Wells Fargo Bank, N.A. on a 2008 Dodge Truck Nitro in the amount of \$3,610.33. (See court claim #1-1).
3. Debtor may not be able to make the plan payments. At the first meeting of creditors, Debtor stated that he pays child support of \$98.00 per week deducted from his paychecks. Schedule I fails to list this deduction.

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

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

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

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

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

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 July 2, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-24588) was filed on June 5, 2015 and dismissed on June 23, 2015 for Debtor's failure to timely file required documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

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

1. Why was the previous plan filed?

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

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

Here, the Debtor was less than adequately advised as to the Debtor's rights and responsibilities to the Court and the Trustee in the prosecution of the case. The prior case was filed based on the advice of a petition preparer, not an attorney. This contributed to the Debtor's unknowing and unintentional failure to fulfill the duties of a Debtor in Bankruptcy.

Debtor was not advised of the requirement to complete the credit counseling requirements prior to filing the case. Debtor further was not advised prior to the filing of the case nor did she understand the requirements for filing Schedules, Statements, a chapter 13 Plan or other required documents.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

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

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

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

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

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

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 10, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. The plan will complete in 93 months as opposed to the 60 months proposed. The cause of the overextension is an IRS claim with an unsecured priority amount of \$35,728.78, which Debtor scheduled in the amount of \$15,000.

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

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

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

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

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

10. [15-23632](#)-C-13 ANDREW KNIERIEM
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-16-15 [[24](#)]

DEBTOR DISMISSED: 06/29/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 16, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

This case was dismissed on June 29, 2015. Dckt. 31. Therefore, the Objection is moot.

The court's decision is to overrule the Objection for mootness.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and

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

IT IS ORDERED that Objection to confirmation the Plan
is overruled.

11. [15-25033](#)-C-13 LEONARD LOPEZ
MMM-1 Mohammad Mokarram

MOTION TO AVOID LIEN OF THE
GOLDEN 1 CREDIT UNION
7-7-15 [[14](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien 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, parties requesting special notice, and Office of the United States Trustee on July 7, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of Golden 1 Credit Union for the sum of \$36,515. The abstract of judgment was recorded with Yuba County on July 13, 2012. That lien attached to the Debtor's residential real property commonly known as 519 Chestnut Street, Marysville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$24,000.00 as of the date of the petition. The unavoidable consensual liens total \$36,515.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$5,742.50 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the

Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Golden 1 Credit Union, Yuba County Superior Court Case No. YSCCV 12-0000314, Document No. 2012R-008830, recorded on July 13, 2012, with the Yuba County Recorder, against the real property commonly known 519 Chestnut Street, Marysville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

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

Trustee will submit the proposed order to the court.

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 8, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors are \$7,200 delinquent in plan payments to the Trustee to date and the next scheduled payment is due on July 25, 2015. Debtor has paid \$152,354 into the plan to date.
2. Debtors' proposed plan payment is unclear. Section 6.02 states that Debtors have paid \$149,354 as of February, but the Trustee's records reflects this was paid through April.
3. Section 6 contains numerous inaccurate statements of amounts paid creditors.
4. Section 2.06 proposes attorney's fees of \$0 paid prior to filing and

\$2,000 to be paid through the plan. In contrast, section 6.01 states that \$2,000 was paid prior to filing. Under the confirmed plan, \$1,500 were paid prior to filing with \$2,000 to be paid through the plan. Debtor's motion states that Debtor will file a motion to approve additional attorney's fees of \$2,000. A review of the docket does not indicate that Debtor filed said motion.

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 June 16, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor is \$3,360 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,360 is due on June 25, 201. Debtor has paid \$0.00 into the plan to date.
2. Debtor proposes to value the secured claim of GreenTree, but has not filed a motion to value.
3. Debtor's counsel, Brandon Scott Johnston, failed to appear at the first meeting of creditors. The meeting was continued, and the Trustee does not have sufficient information to determine where the case is suitable for confirmation.
4. The plan fails to provide for USAA Federal Savings Bank's secured

lien against real property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Previously

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

1. Debtors cannot afford to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of PNC Bank. If the motion is not granted, Debtors do not have sufficient monies to pay the claim in full and should be denied confirmation.
2. Debtors are delinquent in plan payments, and all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtors are \$2,821 delinquent in plan payments to the Trustee to date and the

next scheduled payment of \$2,821 is due on May 25, 2015. Debtors have paid \$0 into the plan to date.

3. Debtors did not provide for all priority tax claims required under 11 U.S.C. §§ 1325(a)(9) and 1322(a)(2), and not all tax returns have been filed under 11 U.S.C. §§ 1325(a)(9) & 1308. On April 6, 2015, IRS filed court claim #9, indicating that Debtors owe \$16,176 in priority tax for the 2014 tax year with returns not filed. This should be filed under Class 5 of the plan.
4. Debtors provided Trustee with a copy of only their 2012 tax return. Trustee is unable to determine if Debtors have filed all required returns, and based on claim #9, Debtors appear to not have filed 2014 and may have filed 2013. Debtors have not provided the Trustee a copy of the 2013 tax return if it was filed, contrary to 11 U.S.C. § 521(e)(2)(A).
5. Debtors do not appear to have provided for all of their disposable income for the applicable commitment period of the plan, under 11 U.S.C. § 1325(b). Debtors have not reported on their tax return amount for 2013 and have not yet filed their 2014 income tax return.
6. Debtors' plan may fail the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$0 and Debtors are proposing a 0% dividend to unsecured creditors.

Currently

While some of the Trustee's concerns have been resolved, others remain:

1. The plan fails to allow for the priority claim of the IRS totaling \$16,176.
2. Debtors have failed to provide copies of their 2014 and 2013 tax returns. The IRS claim (#9) indicates that Debtors have not yet filed these returns.
3. Debtors fail to propose to pay in to the plan any tax refunds received during the life of the plan.
4. Debtors failed to list and exempt any 2014 Tax Refund they may be entitled to.

Discussion

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

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

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

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

counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 4, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [15-24061](#)-C-13 RANDY RICHARDSON AND OBJECTION TO CONFIRMATION OF
DPC-1 JACQUELYN RAMIREZ-RICHARDSON PLAN BY DAVID P. CUSICK
W. Steven Shumway 6-23-15 [[27](#)]

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

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

The court's decision is to continue the Objection to July 28, 2015 at 2:00 p.m.
--

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Creditor OWB REO LLC has filed a Motion for Relief from Automatic Stay, set for hearing on June 30, 2015, moving for stay relief with regard to real property commonly known as 7925 Rock Springs Road, Penryn, California. Dckt. 14. Trustee has opposed that motion. Although Trustee does not oppose confirmation of the Debtors' plan, the Motion for Relief from Automatic Stay before the court may render the plan not feasible.

June 30, 2015 Hearing

At the hearing on Motion for Relief from Automatic Stay referenced by Trustee above on June 30, 2015, Dckt. 14, the court noted the opposition presented by the Debtors and Trustee. Dckt. 34. The court then set a briefing schedule and set the final hearing on July 28, 2015 at 1:30 p.m. Because the present Objection to Confirmation is contingent upon whether the

court will grant Creditor OWB REO LLC's motion for stay relief on July 28, 2015, the court will continue the instant motion to take place concurrently with it on the same date of 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 continued to July 28, 2015 at 2:00 p.m.

18. [13-25062](#)-C-13 DAVID/DEBORAH STROSNIDER
DRM-2 D. Randall Ensminger

MOTION TO RECONSIDER DISMISSAL
OF CASE
6-19-15 [[43](#)]

DEBTOR DISMISSED:
06/04/2015
JOINT DEBTOR DISMISSED:
06/04/2015

Tentative Ruling: The Motion to Reconsider Dismissal 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, and Office of the United States Trustee on June 19, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Reconsider Dismissal of Case is denied

The Debtors move the court to reconsider dismissal of the instant case. Debtors filed the bankruptcy petition on April 12, 2013. On June 4, 2015, the case was dismissed for Debtors' failure to make plan payments. Dckt. 37. Debtors provides that on June 5, 2015, Debtor filed an ex parte Motion to Convert the Case. Dckt. 40. However, because the case was dismissed one day prior, Debtors provide that the court took no action on Debtors' Motion to Convert Case. Debtors state that the court should reconsider dismissal because since the filing of their Chapter 13 case, Debtors' financial matters have changed. Specifically, Debtors provide that their second deed of trust holder has forgiven their debt, and their first deed of trust holder has agreed to a loan modification. Thus, pursuant to the provisions of chapter 7 and 11 U.S.C. § 1307(a), Debtors are eligible to convert this case to chapter 7.

TRUSTEE'S OPPOSITION

Chapter 13 Trustee opposes Debtors' Motion for Reconsideration of Dismissal on three bases.

First, Debtors have failed to cite to any legal authority on which the motion is based.

Second, Trustee objects because the Notice of Default and Application to Dismiss was filed on April 16, 2015 based on Debtors' delinquency. Debtors did not take the appropriate steps to avoid dismissal of the case. Approximately 50 days later, Debtors filed the motion to convert the case on June 5, 2015, after the order dismissing the case was entered by the court on June 4, 2015. Further, Trustee provides that the instant motion fails to explain why there was a delay in filing the Motion to Convert Case, and the subsequent delay in filing the Motion to Reconsider.

Finally, Trustee states that Debtors have failed to file a declaration in support of the Motion to Reconsider.

DISCUSSION

The court agrees with Trustee's opposition, and the three bases for objection are well-taken. The proper recourse for Debtors is to file another bankruptcy case if they still desire bankruptcy relief.

Debtors are advised that upon the filing of a new bankruptcy case, the automatic stay provisions of 11 U.S.C. § 362(a) will expire within thirty days of filing the petition for the new case pursuant to 11 U.S.C. § 362(c)(3)(A), which provides that if a bankruptcy case of a debtor was pending within the preceding 1-year period but was dismissed, the stay shall terminate with respect to debtor on the 30th day after the filing of the later case. Under 11 U.S.C. § 362(c)(3)(B), Debtors may apply to the court upon notice and hearing to extend the stay beyond thirty days.

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 Reconsider Dismissal filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Reconsider Dismissal is denied.

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

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

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor may not have filed all prepetition tax returns required for the four years preceding the filing of the petition to 11 U.S.C. §§ 1308 and 1325(a)(9). According to Proof of Claim No. 1-1 filed by the Internal Revenue Service on June 5, 2015, federal tax returns have not been filed for tax years 2009, 2010, 2011, 2012, 2013, 2014, and 2015.

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 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).

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 holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. 28 days' notice is required. This 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). The defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is continued to August 18 at 2:00 p.m.

David M. Alden, the Attorney ("Applicant") for Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 2014 through the current day, with services anticipated to continue through the consummation of Debtor's plan. Applicant provides that the aggregate sum of this first interim fee application for attorney and paralegal services are fees of \$13,285 plus costs of \$96.23. Further, the court allowed no-looks fees in the order Confirming Plan of \$3,000; Debtor paid an initial retainer of \$1,300, and the remaining \$1,700 is to be paid through the plan. Of the \$1,700, \$708.30 has been paid by Trustee. Thus, Applicant here requests additional fees in the amount of \$10,285.00 and costs in the amount of \$96.23.

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 [or other professional] 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 must take into consideration the objections of the Chapter 13 Trustee (see below) and Creditor (see below) to determine whether the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Group A: "No-Look" Fees following "Rights and Responsibilities" Guidelines: Meeting with client and work done in connection with filing bankruptcy and initiating bankruptcy proceedings. Attorney-6.3 hours at \$250 per hour for subtotal of \$1,575; Paralegal-7 hours at \$100 per hour for subtotal of \$700.

Group A: "No-Look" Post-Petition Services: Working with Client, creditors, and Trustee in connection with post-petition bankruptcy work. Attorney-12.3 hours at \$250 per hour; Paralegal-0 hours.

Group B-Substantial and Unanticipated Post-Confirmation Work: Work done in connection with adversary proceeding, Case No. 14-02140, including answer, discover, status conferences, motion to dismiss, etc. Attorney-30.3 hours at \$250 per hour; Paralegal-3.6 hours at \$100 per hour.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
David Alden, Attorney	48.9	\$250.00	\$12,225.00
Sally Alden, Paralegal	10.6	\$100.00	\$1,060.00

Total Fees For Period of Application	\$13,285.00*
---	---------------------

*As noted above, the court allowed no-looks fees in the order Confirming Plan of \$3,000, and this motion thus seeks \$10,285 in fees.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$96.23 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies for motions and responses (b+w copies)	\$0.12	\$22.68
3 sets for initial disclosures (color copies)	\$0.29	\$60.90
Postage Priority Mail		\$12.65
Total Costs Requested in Application		\$96.23

TRUSTEE'S OPPOSITION

Trustee notes that Applicant seeks a total of \$5,350 for attorney and paralegal fees in "No-Look" fees for both pre-petition and post-petition services. No-look fees charged by Applicant totaled \$3,000, and Applicant is now seeking \$2,350 in additional no-look fees. Counsel could have added a provision to the Order Confirming Plan electing to opt out of the no-look fee, but did not do so. Trustee requests the court to consider whether an extra \$2,350 beyond the "no look" fee should be allowed for pre-confirmation work.

CREDITOR'S OPPOSITION

Creditor, Schools Financial Credit Union, is one of three creditors on the case. Creditor opposes the fee application on two grounds: (1) first, Creditor contends that no additional fees should be paid for services covered by the "no-look" fee and as such \$2,350 should be disallowed, and (2) second, the expenses and fees in Group B should be reduced to an amount that is reasonable and necessary, and Applicant should be required to submit further proof.

First, Creditor notes that counsel agreed to accept a sum of \$3,000 for representing Debtor in the chapter 13 case. The agreement to accept a no-look fee of \$3,000 is set forth in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, Dckt. 9, Exhibit D. Moreover, none of the post-petition work is actually unanticipated. The case is simple-there are only three creditors and one motion to value. \$2,350 should be subtracted from the

additional fees requested by counsel.

Second, Creditor disputes the reasonableness of the Group B fees and costs sought. As to costs, creditor asserts that only copies of motions and responses mailed to Trustee and creditors at a rate of \$0.10 should be allowed. Documents are filed online in black and white. As to the fees claim for Group B, Creditor contests that the fees are unreasonable since the fees of the attorney in the state court litigation are not before this court. It is unknown what services of counsel may duplicate the work of the state court litigation and what services are unnecessary. Moreover, Applicant has charged 1.5 hours and 2 hours for appearances at status conferences for short cause matters where he could have appeared by phone. Exhibit A, Dckt. 70. Debtor also charged 4 hours to oppose Plaintiff's request to decrease the prayer in the adversary complaint to \$25,000 from \$500,000 to reflect the amount of the state court settlement. The opposition and time for the court appearance appear not to be warranted on a Motion to Dismiss.

FEES AND COSTS & EXPENSES ALLOWED

"No-Look" Fees

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

"(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$3,000.00 in attorneys fees. Dckt. 61. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

Applicant's declaration admits that the decision to accept the set fee was improvident because the prosecution of the case within the scope of the set fee was more complicated than he projected at the start of the case. Such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he

or she spends more time than projected. However, in cases when the set fee works to be a bonus (Applicant spending less time than equal to the set fee), Applicant does not state that the rules require him to give the extra amount back. The set fee exists to allow Applicant to elect to accept such fees, taking the bonus in some cases and spending more time in other cases - but in the end the over and under amounts balance out.

It may be that Applicant could, consistent with Local Bankruptcy Rule 2016-1(c)(3), seek the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. But Counsel must seek such additional fees, not ignore the agreed set fee and Local Bankruptcy Rule 2016-1. In seeking such additional fees, Counsel shall provide the court with the standard lodestar analysis (even if from reconstructed records), which will include a statement as to the benefit of the services to the Debtor and estate.

DISCUSSION

Given the objections of the Trustee and Creditor, the court finds it prudent to continue the matter to permit additional briefing justifying the fees requested.

Here, as to the "Group A" no-look fee, the court is concerned the actual work done in connection with the parent chapter 13 bankruptcy, classified as "Group A" by Applicant, is not excessive beyond that of a typical chapter 13 case. Specifically, the David Alden Declaration states that he quoted only the \$3,000 to \$4,000 permitted for a consumer case, but beyond the anticipated work, "the filing of an adversary proceeding to determine dischargeability by an unsecured creditor resulted in substantial unanticipated work in this case." Alden Declaration, Dckt. 69. However, the docket reflects only one Motion to Value Collateral, Dckt. 18, prior to confirmation of the plan. The adversary proceeding to which the Applicant is referring has been accounted for in Group B. The court requires further explanation from the Applicant, justifying why an additional \$2,350 in no-look fees are warranted in the chapter 13 bankruptcy case.

Next, the court will address the "Group B" adversary proceeding fees. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

The court notes that Applicant has provided a raw time and billings record in connection with the adversary proceeding. However, given the objections of the Trustee and Creditor, a more detailed account of the work done, addressing the specific concerns of the Trustee and Creditor, is necessary.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, Chapter 13 Trustee, Creditor, and other parties in interest requesting the information with the necessary task billing analysis.

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 Allowance of Fees and Expenses filed by David Alden ("Applicant"), Attorney, having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Application for Fees and Expenses is continued to August 18, 2015, at 2:00 p.m. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis which specifically groups the time and charges by the various task areas for such services.

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 June 8, 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.

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

1. Debtor proposes to provide for the treatment of First NLC Trust 2005-4 MB Certs. Series 2005-4 to be paid as a Class 4 claim in the amount of \$2,010.25 incl. escrow, and that the claim of J.P. Morgan Mortgage Trust 2005-A8, Mortgage Pass-Through Certificates shall be modified and paid directly pursuant to the terms of the loan modification attached to the plan (Additional Provisions § 6.02).

Trustee believes the plan is referring to the same debt, the first deed of trust on the residence, and that the plan calls for it to be paid directly by Debtor based on the claim in the name of JP Morgan Chase Bank, Proof of Claim No. 7, and Transfer of Claim, Dckt. 327.

Debtor filed a motion to approve loan modification, heard and denied on February 25, 2014. No subsequent motion to approve loan modification has been filed, and Debtor has testified to being current on the agreement.

Debtor may not be able to make plan payments and the plan may

not provide for the surrender or for a cure of the default on the principle residence.

2. Debtor's proposed plan currently provides for the Trustee to pay interest on arrears owed to Legacy Lane HOA and to pay the regular \$40 payment in Class 1.

No claim has been filed and Trustee has been paying the regular payment to creditor as a Class 1 claim and has paid the Creditor \$480 to date. The plan may be improperly providing for the ongoing payment as Class 1 where no long term debt exists to the HOA, but debt occurs if Debtor owns the property when the HOA payments become due.

3. Debtor is currently in default under the terms off the amended plan. In section 6.02 of the plan, Debtor proposes to turn over any tax refunds due to Debtor and non-filing spouse during the terms of the plan. To date, Debtor has not done so.
4. Debtor's plan may not be in Debtor's best efforts under 11 U.S.C. § 1325(b) .
5. Debtor has not provided copies of corporate returns to show what Debtor's non0-filing spouse's corporation has earned in 2014 or 2013. This objection was previously raised on February 10, 2015 and on July 7, 2014. The previous objection filed on March 18, 2015 raised concerns about the lack of updated income and expense information.
6. Trustee is unable to determine whether Debtor is able to make payments under the plan or comply with terms of the plan, 11 U.S.C. § 1325(a)(6) .

The Plan complies 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 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 11, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Deutsche Bank National Trust Company as Trustee for Residential Asset Securitization Trust Series 2002-A15, Mortgage Pass-Through Certificates Series 2002-0, opposes confirmation of the Plan on the basis that:

1. Debtor's proposed plan does not provide for Creditor's pre-petition arrears. As of May 4, 2015, the filing of the petition, the pre-petition arrears amount to \$37,068.40. Debtor has not provided treatment for the total arrears amount, and to do so, Debtor would need to increase monthly plan payments by a minimum of \$730 per month.
2. Debtor is unable to fund a feasible plan. Debtor's schedule I indicates that Debtor's monthly income is \$1,923. Debtor's schedule J shows that Debtor's monthly expenses are \$1,600 thereby leaving a

net income of \$323 to go towards the chapter 13 plan. Debtor's plan calls for \$300 in plan payments. However, to cure Creditor's pre-petition arrears, his monthly plan payments must be at least \$1,030.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor, Deutsche Bank National Trust Company as Trustee for Residential Asset Securitization Trust Series 2002-A15, Mortgage Pass-Through Certificates Series 2002-0, 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 June 10, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor cannot make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6).
 - a. Numerous sections of Debtor's plan are incomplete, including: Section 2.15; the Statement of Financial Affairs.
 - b. Debtor admitted at the First Meeting of Creditors that creditor Ocwen is not current in is in fact a year behind in payments.
 - c. Debtor has admitted his mortgage payments are \$1,700, however his plan calls for payments of \$300.
 - d. Section 1.02 calls for the sale of real property, 479 Eucine

Drive, El Dorado Hills, California. However Debtor has not listed any specific information as to the sale, such as when the sale will occur, how much from the sale will be paid into the plan. Debtor has admitted the property is on the market to sell for approximately \$450,000. No permission to sell has been filed with the court.

2. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$85,450 where Debtor proposes to pay an unknown dividend to unsecured creditors, and Debtor's schedule C states "none."

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Sell Property is granted.

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

A. 8232 Montevina Drive, Sacramento, California.

The proposed purchaser of the Property is Buyer James Jones and the terms of the sale are for \$315,000. Debtors value the property at \$220,000 as of the date of the filing of the petition, as seen in their schedule A. There is a first deed of trust held by Ocwen in the amount of \$187,951, Proof of Claim 14. There is a second deed of trust held by First US Community Credit Union in the amount of \$43,319, Proof of Claim 6-1. FN1. Both deeds of trust are provided for in the plan as Class 4 payments and have been paid down since November 2013.

FN.1. In their motion, Debtors state that the secured claim of First US Community Credit Union is in the amount of \$43,630, however an examination of the court docket reveals that First US Community Credit Union has indeed

filed a proof of claim, Proof of Claim 6-1, in the amount of \$43,319.

Debtors seeks court approval to proceed with the sale subject to the Trustee receiving \$33,000 of the sale proceeds to satisfy the plan. Finally, Debtors request that they receive the remaining net proceeds after the costs of sale and satisfaction of the deeds of trust.

TRUSTEE'S RESPONSE

Chapter 13 Trustee provides that he does not oppose the sale, but points out to the court that if Trustee incurs fees during the sale, additional funds will become due to Trustee.

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 Vincent Abila and Lisa Frances Abila, 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 Vincent Abila and Lisa Frances Abila, the Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to James Jones or nominee ("Buyer"), the Property commonly known as 8232 Montevina Drive, Sacramento, California("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$315,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 102, 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.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

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

The Motion to Extend the Automatic Stay is denied.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-23031) was filed on March 25, 2015 and dismissed on May 9, 2015, for Debtor's failure to timely make chapter 13 plan payments. Debtor filed the instant case on May 15, 2015. Debtor filed the Motion to Extend the Automatic Stay on June 19, 2015, Dckt. 17, and served the motion on parties on June 23, 2015, Dckt. 19. The automatic stay expired in this case prior to Debtor's filing of the Motion to Extend the Automatic Stay.

11 U.S.C. § 362(c)(3)(B) states that on the motion for a party in interest for continuation of the automatic stay, "the court may extend the stay after notice **and a hearing** completed before the expiration of the 30-day period" (emphasis added).

As Debtor failed to set this hearing before the expiration of thirty days after May 9, 2015, the court cannot extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3).

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 to Extend the Automatic Stay is denied.

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 21, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors do not appear to be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$1,740 under terms of the proposed modified plan. According too the modified plan, \$51,900 have become due. Debtor has paid a total of \$50,160 to Trustee with the last payment totaling \$1,670 posted June 17, 2015.
2. According to Trustee's calculations, plan payments will complete beyond the 60 months proposed, possibly taking 74 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).
3. Debtors' modified plan proposes to add postpetition mortgage fees of \$2,664 to Class 1, but does not provide a monthly dividend. Wells Fargo Financial California, Inc. filed a Notice of Postpetition Mortgage Fees, Expenses and Charges (Amended) on December 12, 2013,

which includes February 27, 2013 insurance advances of \$1,477 and April 29, 2013 insurance advances of \$1,187, totaling \$2,664. Debtors' confirmed plan does not provide for payment of these fees. Debtors' modified plan proposes to add these fees to Class 1, but does not provide for a monthly dividend.

4. Debtors may have additional disposable income not disclosed. Debtors' amended schedule J filed on October 29, 2014, Dckt. 100, budgets \$77 per month for homeowner's insurance, \$100 monthly for property taxes, and reflects a monthly net income of \$1,670. The Notice of Mortgage Payment Change filed by Wells Fargo Financial California, Inc. on May 8, 2015 indicates Debtors' monthly mortgage payment now includes escrow payments. Debtor may have the ability to increase plan payments by \$177.
5. The additional provisions of the plan contain inaccuracies. Debtors' motion states that the Class 1 mortgage payments are increasing to \$933 per month, Dckt. 110, while Debtors' declaration states that the increased amount is \$1,214.13, Dckt. 112. These figures are based on a Notice of Mortgage Payment Change filed November 12, 2014.

However, there have been two new Notice of Mortgage Payment Changes filed since November 12, 2014: first, on March 3, 2015 reflecting mortgage payments of \$1,178 effective April 27, 2015; and second, on May 8, 2015 reflecting mortgage payments of \$1,172.98 effective June 27, 2015.

The additional provisions states that the aggregate amount to be paid into the plan as of May 13, 2015 will be \$48,820. Trustee, however, calculates that the total amount due through May 13, 2015 under the modified plan is \$48,560. The actual amount paid by Debtor through May 13, 2015 was \$46,820.

DEBTORS' RESPONSE

Debtors respond to Trustee's opposition, stating they do not oppose the opposition, and further provide that they will file an amended plan that addresses the issues identified by Trustee.

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)(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 7, 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.

Chapter 13 Trustee opposes Debtor's Motion to Confirm Plan on the basis that Debtor is \$3,544 delinquent in plan payments to Trustee to date, and the next schedule payment of \$1,772 is due to July 25, 2015. The case was filed on January 30, 2015, and the plan in section 1.01 calls for payments to be received by the Trustee no later than the 25th of each month. Debtor has paid \$5,080 into the plan to date.

The Plan complies 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 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 16, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor lists on schedule E, the County of Sacramento, Department of Revenue Recovery and describes the claim as tax debt. Debtor proposes to pay the same claim in Class 2 of the plan where the plan calls for payment of secured claims. When examined at the First Meeting of Creditors, Debtor did not have any knowledge of a claim owed to Sacramento County or tax debt in the amount of \$6,000.
2. Debtor does not appear able to make payments required under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors that he is no longer receiving \$1,146 in disability income reported on his schedule I, and further stated that he is now receiving \$650 per month in rental income, which is not reported on his schedule I.

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

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

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

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

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

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

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

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 19, 2015. Twenty-eight days' notice is required. This requirement was met.

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

<p>The Motion to Value secured claim of Bank of America Home Loans, "Creditor," is granted.</p>
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 66 Lemonwood Way, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$250,000 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 \$255,051.69. Bank of America Home Loans' second deed of trust secures a loan with a balance of approximately \$67,519.72. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America Home Loans secured by a second deed of trust recorded against the real property commonly known as 66 Lemonwood Way, Suisun City, 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 \$250,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3).

Local Rule 9014-1(f)(3) 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 July 9, 2015. While generally at least fourteen days' notice is required, for good cause, the court granted an order shortening time, requiring fewer than fourteen days' notice. Here, Debtor has provided 12 days' notice. Movant has submitted, and the court has granted, an order to shorten time on this matter.

The Motion to Sell Property was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Automatic Stay is granted.
--

Wesley Joe Lauderdale ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-23992) was dismissed on May 26, 2015, after Debtor did not timely file documents. See Order, Bankr. E.D. Cal. No. 15-23992, Dckt. 18, May 26, 2015. 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 due to a "clerical error" at the attorney's office, Debtor did not timely file all necessary documents. The previous plan and the current plan were filed so that Debtor could catch up on the first deed of trust arrears owed on him home and to make ongoing monthly mortgage payments. Debtor states that the filing of the current plan is in good faith, and that he has filed all statements, schedules, and chapter 13 plan in timely manner. Further, this case is in the best interest of all creditors as it is proposing to pay a 100% dividend to general unsecured creditors. The court notes that the docket and filed plan accurately reflect the Debtor's assertions.

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.
