

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 26, 2016 at 2:00 P.M.

1. [15-28300](#)-C-13 TERESA GLESSING CONTINUED MOTION TO CONFIRM
MET-2 Mary Ellen Terranella PLAN
4-6-16 [[42](#)]
DEBTOR DISMISSED: 06/14/2016

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan exceeds the maximum time of 60 months - caused by an unsecured claim filed for \$10,183.93 by Cavalry SPV II, LLC.

2. It is uncertain whether the declaration filed by Debtor's partner is sufficient evidence to demonstrate that the partner will contribute the significant amount needed to fund the plan.
3. Debtor has failed to properly disclose assets such as itemizing household goods and furniture.
4. Debtor has failed to properly disclose expenses.

Discussion

The Debtor was dismissed on June 14, 2016. Therefore, the Motion is denied as moot.

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

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

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

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

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 29, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. The plan exceeds 60 months - the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

3. [11-48305](#)-C-13 JOHN/DARLENE DOERR
PGM-9 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY
6-22-16 [[285](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 22, 2016. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney for Debtors, ("Applicant") for John and Darlene Louise Doerr, ("Clients"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period April, 2012 through November, 2015. Applicant requests fees in the amount of \$2,500.00 and costs in the amount of \$0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

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 \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. 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 loadstar 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.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant seeks compensation for unanticipated work performed in connection with Adversary Proceeding No. 12-02153 including various motions, declarations, trial preparation, and appearances. Applicant provides a task billing analysis and supporting evidence for the services provided at the hourly rate of \$300.00/hour.

Total Hours: 29.35 hours in attorney services and 3.45 in legal assistant services.

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

Fees	\$2,500.00
Costs	\$0.00

The Chapter 13 Trustee filed a statement of nonopposition. Dkt 291.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing, Peter Macaluso is allowed the fees in the amount of \$2,500.00 and costs in the amount of \$0.00 as a professional of the Estate.

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 9, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan fails to provide for claim #5-1 filed by the El Dorado County Tax Collector in the amount of \$3,826.78.

Discussion

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

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

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

The Motion to Confirm the Chapter 13 Plan filed

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

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

Tentative Ruling: The 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 29, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. Section 2011 lists Mohela/Dept of Education/Student Loans as a Class 4 direct pay. The additional provisions in Section 6 of the plan indicate that, "There will be no return through the plan to Class 4 unsecured creditor Mohela/Dept of Education/Student Loans." This is ambiguous. Also, Class 4 is for secured debts, and student loan are not secured debts.
2. Debtor may be unfairly discriminating against unsecured creditor Navient. Debtor fails to mention Navient with the creditor discussed above, but Navient is also an educational loan creditor.

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

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

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

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

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

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

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on June 15, 2016 is
confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. Debtor is delinquent \$3,391.00 under the terms of the proposed modified plan.
2. The plan exceeds 60 months - the maximum amount of time allowed under 11 U.S.C. § 1322(d).
3. The plan modifies the post-petition arrears of a Class 2 creditor.

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.

8. [12-33314](#)-C-13 DALE/FRANCES ODOM
PGM-8 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY
6-23-16 [[131](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 23, 2016. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney for Debtors, ("Applicant") for Dale and Frances Odom, ("Clients"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period April, 2012 through January, 2014. Applicant requests fees in the amount of \$1,950.00 and costs in the amount of \$0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

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 \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. 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 loadstar 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.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant seeks compensation for unanticipated work involving a modified plan, a motion for trial loan modification, and a motion for permanent loan modification. Applicant provides a task billing analysis and supporting evidence for the services provided at the hourly rate of \$300.00/hour.

Total Hours: 6.5 hours in attorney services.

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

Fees	\$1,950.00
Costs	\$0.00

The Chapter 13 Trustee filed a statement of nonopposition. Dkt 136.

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

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

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

The Motion for Allowance of Fees and Expenses filed by

Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing, Peter Macaluso is allowed the fees in the amount of \$1,950.00 and costs in the amount of \$0.00 as a professional of the Estate.

9. [16-23118](#)-C-13 LE AIRHEART
DPC-1 Peter Macaluso
6-29-16 [[30](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK

Also #10

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 29, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$680.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$680.00 is due on July 25, 2016. Debtor has paid \$0.00 into the plan to date.
2. The plan relies on a the motion to value collateral of Nissan Motor Acceptance. (See matter below).
3. The plan exceeds 60 months - the maximum amount of time allowed under 11 U.S.C. § 1322(d).
4. Debtor testified at the 341 meeting that she no longer receives

social security income of \$927.00 per month.

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

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

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

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

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

10. [16-23118](#)-C-13 LE AIRHEART
PGM-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
NISSAN MOTOR ACCEPTANCE
CORPORATION
6-24-16 [[25](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

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

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

The Motion to Value secured claim of Nissan Motor Acceptance Corporation, "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Nissan Armada The Debtor seeks to value the property at a replacement value of \$12,514.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$35,750.54. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$12,514.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nissan Motor Acceptance Corporation secured by a purchase-money loan recorded against a 2010 Nissan Armada is determined to be a secured claim in the amount of \$12,514.00, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$12,514.00.

11. [14-23836](#)-C-13 DOLORES KOUBA
RAC-1 Richard Chan

MOTION TO INCUR DEBT
6-28-16 [[23](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 28, 2016. Twenty-eight days' notice is required.

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

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2013 Honda Civic at the end of Debtor's leasing period. The lease rate was \$267.62. The total purchase price is \$13,499.00, with monthly payments of \$245.54.

The Chapter 13 Trustee filed a statement of nonopposition on July 1, 2016.

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

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

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

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

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

IT IS ORDERED that the Motion is granted and Dolores Kouba, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 26.

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

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

The Motion to Avoid 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of American Express Bank, FSB for the sum of \$20,877.98. The abstract of judgment was recorded with Sutter County on May 10, 2016. That lien attached to the Debtor's residential real property commonly known as 1815 Butte Vista Lane, Yuba City, 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 \$397,548.00 as of the date of the petition. The unavoidable consensual liens total \$318,872.78 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 \$100,000.00 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 American Express Bank, FSB, Sutter County Superior Court Case No. CVCM-14-1317, recorded on June 6, 2011, with the Sutter County Recorder, Document No. 2016-0006435, against the real property commonly known as 1815 Butte Vista Lane, Yuba City, 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.

13. [16-22945](#)-C-13 DENNIS JACOPETTI
ASW-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF NEW YORK MELLON
6-9-16 [[24](#)]

Thru #15

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 6, 2016. Twenty-eight days' notice is required.

The Objection to Plan 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.

Bank of New York Mellon opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

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

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

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

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

The Objection to the Chapter 13 Plan filed
by the Bank of New York Mellon 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 29, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor has submitted incomplete documents/schedules. Proposed plan payments are \$0.00. Debtor lists himself as a creditor.
2. Debtor has filed 7 bankruptcies since 2012 without a change in circumstances.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

4. Debtor did not appear at the First Meeting of Creditors held on June 23, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

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

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

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

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

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

15. [16-22945](#)-C-13 DENNIS JACOPETTI
JB-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY CALIFORNIA FRANCHISE
TAX BOARD
6-24-16 [[29](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 6, 2016. Twenty-eight days' notice is required.

The Objection to Plan 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.

California Franchise Tax Board, the holder of a secured claim in the amount of \$77,621.96, a priority claim in the amount of \$70,723.55, and a general unsecured claim in the amount of \$88,404.43, opposes confirmation of the Plan on the basis that the plan fails to provide for the payment in full of FTB's priority tax claim and secured claim.

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

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

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

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

Correct Notice Not 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 July 11, 2016. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 9041 Rocky Trail Court, Sacramento, California (hereinafter "Real Property"). The sales price is \$250,000.00 to Dustin Mulhern and Kylie Knobbe. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 34.

NOTICE ISSUE

However, Debtors have not provided proper notice on the parties as required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Federal Rule of Bankruptcy Procedure 2002(a)(2) requires 21 days notice and Local Bankruptcy Rule 9014-1(f)(2)

requires a 14-day notice. Therefore, 21 days' notice is required. Only 15 days notice was provided.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee responds, stating that while Trustee does not oppose the motion, Debtor did not provide 21 days' notice as required under the local rules. However, Trustee states that Debtors meet the parameters for an ex parte motion, Local Bankruptcy Rule 3015-1(i)(2).

DISCUSSION

Local Bankruptcy Rule 3015-1(i)(2)(A) (Ex Parte Motion) provides that:

The debtor may request by *ex parte* motion that the court authorize the debtor to sell or transfer property or to incur debt, without regard to the limitations provided in Subpart (i)(1), if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the court that:

(i) All payments required by the chapter 13 plan have been paid to the trustee;

(ii) Debtor has completed and filed the certificate for the required post-petition education [11 U.S.C. § 1328(g)] or such requirement has been waived by order of the court,

(iii) Debtor has filed the certifications required in 11 U.S.C. § 1328(a) or such requirement has been waived by order of the court.

Local Bankruptcy Rule 3015-1(i)(2)(B) (Notice Motion) goes on to provide that:

If the trustee does not provide approval for an *ex parte* motion under Subpart (i)(2)(A), the debtor may file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

Although Trustee states that Debtor has met the requirements for a *ex parte* motion to sell, Debtors did not obtain Trustee's approval certification and file such certification "with or as part of the motion," as required by the local rules. While Trustee has noted that Debtor meets the three requirements to obtain *ex parte* permission from the court to sell their property, Debtor here has not done so and instead must notice all appropriate parties and set for hearing with notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

The court will deny the motion without prejudice.

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

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

Thru #19

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2016. 14 days' notice is required. This requirement was met.

The Motion to Approve Loan Modification 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 ny other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Approve Loan Modification is granted.
--

The Motion to Approve Loan Modification filed by Arnulfo Chavez and Maria Almanza ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,867.01 a month to \$1,576.17 a month. The modification will reduce the interest rate on the loan from 6.180% to 3.125%. The arrearages will be cured, and Debtors will not receive any cash settlement.

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

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

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

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

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

IT IS ORDERED that the court authorizes Arnulfo Chavez Chavez and Maria De Jesus Almanza ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 248 Millbrook Way, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 115.

18. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA
JMC-4 ALMANZA
Joseph Canning

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

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

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

JUNE 28, 2016 HEARING

At the hearing on June 28, 2016, the court continued the instant motion in order to permit Debtors additional time to obtain a loan modification.

CHAPTER 13 TRUSTEE

On July 7, 2016, Chapter 13 Trustee filed a status update with the court, stating that:

1. There is no recent document on file to show Debtors are seeking a loan modification.
2. The total paid in stated in Debtors' proposed plan payments differ from the Trustee's records. Debtor has listed the proposed plan payments as "As of the date of this filing, Debtors have paid a sum totaling \$67,365 into their plan, then "Payment under this modified plan shall be \$1,993 per month for the remaining 29 months of the 60 month plan" in the additional provisions of the modified plan. The Debtors have submitted a plan payment of \$1,993 on 06/22/16 and is current under the proposed modified plan. According to Trustee's records, Debtor has paid in \$69,358.00 through month 32, which is May 2016. This case was filed September 24, 2013. The first payment was due on October 25, 2013. If this is granted Trustee will not oppose plan payments be clarified as "\$69,358 total amount paid in through May 2016 then \$1,993 per month for the remaining 28 months of the plan" in the order confirming.

DISCUSSION

The court has granted Debtors' motion for loan modification, Dckt Control No. JMC-5, resolving Trustee's first basis for objection. As to Trustee's second objection, the court will order clarifying language in the order confirming plan.

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

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

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

The Motion to Confirm the 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 granted, and the Plan filed May 4, 2016 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the clarifying language that "\$69,358 total amount paid in through May 2016 then \$1,993 per month for the remaining 28 months of the plan."

19. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA
DPC-2 ALMANZA
Joseph Canning

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

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is to deny the Motion to Dismiss and the case is not dismissed.

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

DEBTOR'S OPPOSITION

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

JUNE 28, 2016 HEARING

At the hearing on June 28, 2016 hearing, the court continued the instant motion to permit Debtors additional time to confirm a modified plan.

DISCUSSION

The court has granted Debtors' motion to approve loan modification, Dckt. Control No. JMC-5, and the court has granted Debtors' motion to confirm the modified plan, Dckt. Control No. JMC-4. The court will dismiss the instant motion to dismiss.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied, and the case is not dismissed.

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on June 21 2016 confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [15-27153](#)-C-13 D JACK
[15-2241](#)
HOLLOWAY ET AL V. CUSICK ET AL

MOTION TO DISMISS D. BRENT JACK
OR MOTION TO PROVIDE
ALTERNATIVE RELIEF
6-24-16 [[26](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, chapter 13 trustee, and Office of the United States Trustee on June 24, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required. This requirement was met.

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

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

Defendant and Debtor in the above-captioned chapter 13 case moves for an order dismissing him from Plaintiff's adversary proceeding, Case No. 15-02241, with prejudice. Defendant seeks this relief on three grounds:

1. Plaintiff has failed to comply with rules and requests for discovery.
 - a. Plaintiff has failed to comply with his own discovery plan for this adversary proceeding. The Joint Discovery Plan set a date for initial disclosures of February 29, 2016. Since that time, Plaintiff has continually and repeatedly extended the due date unilaterally of his own volition and without notice to Defendant. Finally on April 13, 2016, Defendant demanded disclosures during a status conference where Plaintiff stated compliance. Plaintiff has yet to comply. This has severely impacted and interferes with Defendant's ability to prepare a defense in this adversary and is ground for voluntary dismissal under FRCP 41(b).
 - b. Plaintiff has failed to provide any initial disclosures for this adversary proceeding. The deliberate omission by Plaintiff is in violation of FRCP 26(a)(1)(A)(i)-(iv) and

FRCP 26(a)(1)(C) and FRCP 26(a)(1)(E).

- c. Plaintiff's joint discovery plan violated FRCP 26(a)(1)(E), which makes clear that a party is not excused from making its disclosures because it has not fully investigated the case.
 - d. Plaintiff has refused to provide any documents for the adversary proceeding. As of the filing of this motion, Plaintiff has not provide any documents. Thiss deliberate omission is in violation of FRCP 34(b)(2)(E)(I). On April 13, 2016, Defendant served discovery requests upon Plaintiffs and their counsel. To date, no documents have been provided.
2. Second, Plaintiff's failure to comply with rules for alleging fraud listed in Plaintiff's complaint are grounds for Involuntary Dismissal under FRCP 419b).
- a. Plaintiff fails to provide any particularity in his allegation of fraud in this adversary proceeding.
 - b. Plaintiff fails to accept arbitrator's final decision regarding fraud and seeks a different ruling from the court in this adversary proceeding. Plaintiff's case-in-chief filed in Sacramento County, Case No. 34-2013-00145538, which laid out the same allegations of fraud against Defendant. ON December 12, 2014, the Honorable Brian R. Van Camp issued his Final Arbtration Award, wherein he indicated no act of fraud had occurred by Defendant.
3. Third, Plaintiff's failure to comply with rules for discovery requests in this adversary proceeding, along with a failure to state with particularity any circumstances constituting fraud or mistake, make it impossible for Defendant to prepare a defense in this adversary proceeding.

As such, Defendant moves the court to adopt the arbitrator's finding of no fraud and second, dismiss Defendant from this adversary proceeding with prejudice.

PLAINTIFF'S OPPOSITION

Plaintiffs oppose this motion, stating that Defendant's allegations a hypocritical as he has failed to produce any documents himself and has not made any disclosures. Plaintiffs take issue with Defendant holding them to one standard and himself to another. Defendant has failed to meet and confer as to any of the issues raised in this motion before filing it. For example, at no time sinnce the court's April 2016 pre-hearing conference through the date of the filing of this motion has Defendant attempted to meet and confer on the production of Plaintiffs' initial disclosures. Moreover, at not time since Plaintiffs filed their adversary complaint has Jack raised any complaints or challenges either formally via a Rule 12(b) motion or in any other way.

The court should find that Defendant has not justified the extreme relief requested. Defendant has not demonstrated how he has been prejudiced.

DISCUSSION

The court will render its decision upon hearing the oral arguments of the parties at hearing.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2016. 14 days' notice is required. This requirement was met.

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

The Motion to Incur Debt is continued to August 16, 2016 at 2:00 p.m.

The motion seeks permission to purchase a 2016 Honda Civic EX, which the total purchase price is \$24,086.33, with monthly payments of \$522.34 for 6 years, at an interest rate is 15.99%. Debtor provides that he was previously provided with a company vehicle, and the company vehicle is no longer available to Debtor.

Debtor asserts he can afford the payments under the current plan in that the loan modification provided by creditor Wells Fargo, approved by minute order on April 1, 2016, Dckt. Control No. PLC-12, lowered the monthly obligation by \$1,172.25 per month thereby giving us the ability to make the payment.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1

(Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

CHAPTER 13 TRUSTEE

Chapter 13 Trustee opposes this motion on the basis that:

1. Debtor has failed to explain in their motion as to what efforts they have made to find a dealer to purchase a car, whether they went only to the first dealer, whether they "shopped around," and whether they went to at least three dealers. Debtor has not explained whether the 15.99% interest rate for a new car, a 2016 Honda Civic EX, is the only offer they looked at or one of several offers and vehicles. The proposed purchase may not be in the best interest of the Debtors or the estate.
2. Debtors propose to commit \$522.34 almost half of the \$1,172.25 of the funds they have available as additional disposable income due to their loan modification to their own use with none of the savings committed to the plan.

DISCUSSION

The court agrees that Debtor has not shown that best efforts were taken to secure a vehicle in the best interest of the estate or Debtors. The Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor points to an approved loan modification, Dckt. 73, which leaves available \$1,172.25 to fund \$522.34 per month in car payments. Rather than using the proceeds to purchase an affordable vehicle, the Debtor seeks to pay a principal amount of \$24,086.33 at a 15.99% interest rate.

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge – 15.99%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a brand new car and attempt to borrow money at a 16% interest rate.

STIPULATION

On July 22, 2016, parties filed a stipulation to continue the hearing on the instant motion to August 23, 2016 at 2:00 p.m.

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to August 16, 2016 at 2:00 p.m.

23. [14-26961](#)-C-13 GLENN/VELORES PURDY
CYB-4 Candace Brooks

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BROOKS AND
CARPENTER FOR CANDACE Y.
BROOKS, DEBTORS' ATTORNEY
7-12-16 [[83](#)]

Final Ruling: No appearance at the July 26, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees 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.

<p>The Motion for Allowance of Professional Fees is continued to August 2, 2016 at 2:00 p.m.</p>

Candace Y. Brooks, the Attorney for Debtor, ("Applicant") for Glenn Thomas Purrdy and Velores Sain Purdy, ("Client"), makes a request for additional fees. Applicant requests fees in the amount of \$3,025 for unanticipated work done in connection with this case, including a motion for loan modification, motion to modify plan, and Trustee's motion to dismiss.

CHAPTER 13 TRUSTEE

Although the Chapter 13 Trustee is not opposed to the fees requested, Federal Rules of Bankruptcy Procedure 2002(a)(6) requires 21 days of notice of a motion for compensation, not 14 days. Trustee requests that the matter be continued for at least one week.

DISCUSSION

The court agrees that service has not been properly rendered to the parties, and as such, the court will continue the compensation motion for one week to August 2, 2016 at 2:00 p.m.

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

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

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

cause appearing,

IT IS ORDERED that motion is continued to August 2, 2016
at 2:00 p.m.

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 28, 2016. 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.
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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. 44 Lacam Circle, Sacramento, California.

The proposed purchaser of the Property is Violet Raw Anderson Pizarro and David J. Pizarro and the terms of the sale are for the purchase price of \$150,000.00 in a short sale transaction. Court approval shall be conditioned upon approval by first mortgage Wells Fargo Bank, N.A. as Trustee for the Certificate Holders of Asset-Backed Pass Through Certificates Series 2004-WCW2, as serviced by Select Portfolio Servicing, Inc. and the second mortgage lender Wells Fargo Financial California, Inc. Debtors state they will not receive any proceeds from the sale, the sale is all cash, Debtors will not relinquish title to or possession of property prior to payment in full of the purchase price.

CHAPTER 13 TRUSTEE

Trustee states no opposition to the sale, but provides the following. Debtors state the proposed short saale is contingent upon the approval by

lienholder of the first deed of trust, Wells Fargo Bank, N.A. as serviced by Select Portfolio Servicing, Inc. and the second lienholder Wells Fargo Financial California, Inc.

Debtors further state that th they will not receive proceeds from the sale, however the estimated statement provided by Stewart Title of Sacramento shows net proceeds of \$138,236.50 after costs, but does not reflect the loan payoff of the first and second deed of trust. Trustee does not oppose the motion, provided Debtors provide the short sale agreement of both lienholders and Stewart Title of Sacramento amends their estimated settlement statement to reflect such amounts of the payoff for both the first and second deeds of trust.

DISCUSSION

At the time of the hearing the court announced the proposed sale an 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 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 Alfonso Sotelo Cervantes and Esther Cervantes, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Violet Rae Anderson Pizarro and David J. Pizarro or nominee ("Buyer"), the Property commonly known as 44 Lacam Circle, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$150,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 65, 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 [Trustee/Chapter 13 Debtor/Debtor in Possession] be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2016. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to deny the motion to confirm plan.
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CREDITOR OPPOSITION

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

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

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee opposes confirmation on the basis that:

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

MARCH 15, 2016 HEARING

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

APRIL 5, 2016 HEARING

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

VOLUNTARY WITHDRAWAL OF CREDITOR'S OPPOSITION

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

JUNE 14, 2016 HEARING

At the hearing on June 14, 2016, the court determined that the only remaining issues are: (1) documenting the IRS agreement to the treatment, and (2) reserving the determination of whether this is a business or non-business case for the amount of the no-look fees. The court continued this motion to July 26, 2016.

DISCUSSION

The court docket reflects that no new documentation has been submitted to verify whether the IRS agrees to the proposed treatment, or whether the case is a business or non-business case for the amount of the no-look fee. It remains unresolved whether Debtor can afford to make plan payments, 11 U.S.C. § 1325(a)(6). To reiterate the above, Debtor's plan changes treatment of IRS claim from a class 2 creditor to a class 4 creditor with a monthly contract installment of \$75.00. Debtor's motion to confirm states debtor will continue paying the IRS \$75.00 per month directly pursuant to the pre-petition agreement with the IRS. No verification of any pre-petition agreement has been provided to Trustee. It is not clear if the IRS has agreed to receive \$75.00 per month.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

26. [15-26366](#)-C-13 LINDA LOVELACE AND GLORIA OBJECTION TO CLAIM OF HSBC
NBC-3 HOUSTON MORTGAGE SERVICES, INC., CLAIM
Eamonn Foster NUMBER 7
7-12-16 [[53](#)]

Tentative Ruling: The Objection to Claim 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 3007-1 Objection to Claim.

Correct Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 14 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). The Creditors, Debtor, 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 Objection to Proof of Claim Number 7 of HSBC Mortgage Services, Inc., is overruled without prejudice.

Debtors Linda Lovelace and Gloria Houston, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of HSBC Mortgage Services, Inc. ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be with arrears in the amount of \$12,507.31. Debtors object on the basis the "Informational Mortgage Statement" provided to Debtors on August 9, 2015, Creditor informed Debtors that the arrears amount was \$5,322.88, Exhibit B, Dckt. . The proof of claim reflects a different arrearage amount. However, Creditors do not provide proof or an explanation as to why or how the \$12,507.31 amount in arrears claimed is justified. Debtors state that just two days prior to Debtors' bankruptcy filing, the amount due was \$7,164.43 less than what the

stated arrearage amount on the proof of claim is. Debtors assert in their declaration that two days prior to the filing of bankruptcy, Debtors contacted and verified with Creditor the amount of arrears owed, which they did to adequately provide for the arrears in the plan, and were at that point informed that to cure the mortgage, Debtors would need to pay \$5,322.88.

SERVICE ISSUE

Bankruptcy Rule 3007(a) (Objections of Claims) states that "[a]n objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claim, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.

Here, Debtors have provided only 14 days' notice and the docket does not reflect that Debtors have secured an order shortening time. The objection will be overruled without prejudice.

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

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

The Objection to Claim of HSBC Mortgage Services, Inc., Creditor filed in this case by Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 7 of HSBC Mortgage Services, Inc. is overruled without prejudice.

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

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

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

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

Correct Notice Not 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 July 6, 2016. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 859 Channing, Benecia, California (hereinafter "Real Property"). The sales price is \$679,000.00 to Annina Puccio. The terms are set forth in the Purchase Agreement, filed as Exhibit B in support of the Motion. Dckt. 68. The sale is subject to a lien held by Wells Fargo for a first deed of trust in the amount of \$505,860.76.

SERVICE

However, Debtors have not provided proper notice on the parties as required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Federal Rule of Bankruptcy Procedure

2002(a)(2) requires 21 days notice and Local Bankruptcy Rule 9014-1(f)(2) requires a 14-day notice. Therefore, 21 days' notice is required. Only 15 days notice was provided.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee responds, pointing out that Debtor did not provide 21 days' notice as required under the local rules.

Moreover, chapter 13 trustee notes that the purchase price is \$679,999, and is subject to lien of Wells Fargo of \$505,860.76. Debtors' motion states that the "net proceeds are claimed as exempt. . . ." Debtors' schedule C provides for an exemption of \$74,427.66. The anticipated net proceeds from the sale are in excess of \$118,868.52. It is not clear to Trustee if all proceeds have been claim exempt. Debtors' motion does not state if remaining proceeds may be paid to Trustee to be applied to their plan payment.

DISCUSSION

The deficient service, in combination with the lack of clarity as whether the entire amount of the net proceeds of the sale (\$118,868.52) is exempt, and whether the remaining proceeds will be paid to Trustee to be applied through the plan, is grounds to deny the instant motion.

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 Chapter 13 Debtors Richard Anthony Brock and Linda Marie Brock having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation.

TRUSTEE'S RESPONSE

Chapter 13 Trustee responds, informing the court that the plan appears feasible, and although Debtor is currently \$800 delinquent in plan payments, a wage order has been approved to pay the monthly plan payment. It appears the payment due June 25, 2016 is late due to timing of the order and processing. The trustee further requests the order confirming plan authorizes interest of \$650.15 paid to creditor CarFinance. The plan does authorize principal payments of \$1,345.72.

DISCUSSION

The court notes Trustee's concerns, and agrees that the interest payment in the amount of \$650.15 to CarFinance may be authorized in the order confirming plan. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is granted, and the Plan filed June 21, 2016 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the clarifying language that where the plan already authorizes principal payment in the amount of \$1,345.72 to CarFinance, interest in the amount of \$650.15 shall further be paid to creditor CarFinance.

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2016. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 objection to claimed exemptions is

The Trustee objects to the Debtors' claimed exemptions on schedule C for a trust annuity arising from a personal injury settlement. The Debtor has claimed \$26,800 under CCCP § 703.140(b)(11)(D) and \$147,080.32 under CCCP § 703.140(b)(10)(E). The Debtors may not be entitled to those exemptions as:

1. Trust Annuity: Debtor first claims an exemption under CCCP § 703.140(b)(11)(D). CCCP § 703.140(b)(11)(D) provides that "The debtor's right to receive, or property that is traceable to, any of the following: (D) A payment, not to exceed twenty-four thousand sixty dollars (\$24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent."

The property Debtor describes as exempt is: "TRUST ANNUITY-ARISING FROM PERSONAL INJURY SETTLEMENT athene-annuity payments \$867.78 (per month) (per term of life): anti-alienation clause; [\$75,000 due

6/22/20, \$100,000 due 6/22/25].

Debtor does not identify who had the personal injury that resulted in this settlement, and even if the description is accurate, if the personal injury was to another party not the debtor or a dependent—such as a parent—this property would not qualify for the exemption under the statute.

2. Payment Under . . . Similar Plan. Debtor also claims an exemption for the same property under another statute where it is not clear how it could possibly qualify.

CCCP § 703.140(b)(10)(E) states “The debtor’s right to receive any of the following: (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor’s rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The description of the asset should cause the Court to disallow the exemption as it is not “A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract,” and therefore not exempt.

DEBTOR’S RESPONSE

Debtors respond to Trustee’s objection, providing:

1. Debtors filed an amended schedule C on July 11, 2016.
2. The use of CCCP § 703.140(b)(10)(E) is appropriate. If the exemption should be denied, Debtor requests an additional hearing to further supplement the record to show that the exemption is reasonable and necessary.

DISCUSSION

Where a Debtor claims a California exemption, the California burden of proof requires that the party claiming the exemption bears the burden of proving entitlement to that exemption. In re Talerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015). Here, the chapter 13 trustee has raised issue with two claims to exemption.

First, CCCP § 703.140(b)(11)(D) \$24,060 exemption. Trustee objects that Debtors have not affirmed or clarified to who had the personal injury that resulted in this settlement, and even if the description is accurate, if the personal injury was to another party not the debtor or a dependent—such as a parent—this property would not qualify for the exemption under the statute

Presumably as to this objection (it is unclear), Debtors respond that an amended schedule C has been filed on July 11, 2016. However, the amended schedule C provides no further information as to who incurred the personal injury.

Second, CCCP § 704.140(b)(10)(E) \$147,080.32. Trustee objects on the basis that the description of the asset should cause the Court to disallow the exemption as it is not "A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract," and therefore not exempt. Debtor responds only that the use of the exemption is appropriate with no further explanation. However, Debtor requests an additional hearing to further supplement the record to show that the exemption is reasonable and necessary.

On the submitted briefs before the court, the Debtors have not met their burden in showing they may claim the exemptions under CCCP § § 704.140(b)(10)(E) & 704.140(b)(11)(D).

The court will render its decision upon hearing the oral arguments of the parties at hearing.

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

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

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

IT IS ORDERED that Objection is

Final Ruling: No appearance at the July 26, 2016 hearing is required.

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Value secured claim of Citimortgage, Inc., "Creditor," is continued to October 4, 2016 at 2:00 p.m.
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 545 Kimball Street, Red Bluff, California. The Debtors seeks to value the property at a fair market value of \$111,0000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$115,109.00. Citimortgage, Inc.'s second deed of trust secures a loan with a balance of approximately \$21,881. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee has filed a statement of non-opposition.

CREDITOR'S OPPOSITION

Citimortgage, Inc., Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$122,000.00. Creditor requests a continuance for at least 60 days to obtain its own verified appraisal of the subject property.

The court will grant Creditor's request for a 60 days continuance.

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

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

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

IT IS ORDERED that the Motion is continued to October 4, 2016 at 2:00 p.m.
