

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 28, 2015 at 3:00 p.m.

1. **12-33903-E-13** JOHN MOORE MOTION TO MODIFY PLAN
SJS-5 Scott Johnson 6-22-15 [[83](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [15-21711](#)-E-13 CHARLES/AMBER ARNEY
DAO-1 Dale Orthner

MOTION TO CONFIRM PLAN
6-5-15 [21]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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 Amended Plan.

Charles and Amber Arney ("Debtor") filed the instant Motion to Confirm First Amended Plan on June 5, 2015. Dckt. 21. Debtor states that the Amended Plan will reflect Debtor's intention to surrender their Toyota Sequoia, which

they can no longer afford.

TRUSTEE'S OBJECTION

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtors' Amended Plan fails to authorize payments made by the Trustee. Under the Amended Plan, Debtors propose to surrender their 2007 Toyota Sequoia to USE Credit Union. Under the previous Plan, the Debtors provided for that claim in Class 2, and the Trustee has already paid \$615.80 to USE Credit Union.
2. The Debtors' Amended Plan fails to provide for Allegro Acceptance Group's secured claim in the amount of \$5,182.00 (the collateral for which is a hearing aid), filed on April 17, 2015. Proof of Claim No. 9. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide treatment could indicate that the Debtor cannot afford the payments needed, or wants to conceal the proposed treatment of a creditor.

DISCUSSION

The Trustee's objections are well-taken. While the first objection may have been able to be corrected in an order confirming, the Trustee's second objection is problematic.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- (1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
- (2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
- (3) surrender the collateral for the claim to the secured creditor,

11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Therefore, 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.

3. [15-22811](#)-E-13 DENNIS/KIM CAMPBELL MOTION TO CONFIRM PLAN
 TJW-2 Timothy Walsh 6-4-15 [[40](#)]

DEBTOR DISMISSED: 06/25/15
JOINT DEBTOR DISMISSED:
6/25/15

Final Ruling: No appearance at the July 28, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

4. [13-33721](#)-E-13 MICHAEL/SHAUNIE BRIGGS MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 6-17-15 [[39](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on September 22, 2015. The Debtor shall file any supplemental papers on or before September 1, 2015. Any replies or responses shall be filed on or before September 15, 2015.

Michael and Shaunie Briggs ("Debtor") filed the instant Motion to Modify Plan on June 17, 2015. Dckt. 39. Debtor states that the Modified Plan will increase payments to \$10,640.00 in order to account for the claim of George Berrettoni, which Debtor had previously been contesting. Debtor further states that they are seeking a loan modification or restructure of the loan with the aforementioned creditor, which could result in a lower monthly plan payment.

TRUSTEE'S RESPONSE

David P. Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on July 14, 2015. Dckt. 48. The Trustee requests the Debtor to explain how an increase to the plan payment, if it is necessary, can be afforded. The Trustee asserts that the claim of George Berrettoni is \$100,000.00 higher than Debtors had estimated. While Debtor can afford their current monthly payment of \$7,500.00, the Berrettoni claim makes the case overextended, and calculates to complete in 75 months. Further, if the Debtors cannot obtain a loan modification or restructure, it is not clear how the Debtors will afford the increased plan payment of \$10,640.00.

DEBTOR'S REPLY

The Debtor filed a reply on July 20, 2015. Dckt. 51. The Debtor requests a continuance of sixty days in order to address the concerns arising from the higher than anticipated claim.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

In light of the recent claim filed by George Berrettoni coming in at a higher than anticipated and the Trustee and Debtor both requesting more information, the court continues the hearing to 3:00 p.m. on September 22, 2015. The Debtor shall file any supplemental papers on or before September 1, 2015. Any replies or responses shall be filed on or before September 15, 2015.

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 continued to 3:00 p.m. on September 22, 2015. The Debtor shall file any supplemental papers on or before September 1, 2015. Any replies or responses shall be filed on or before September 15, 2015.

5. [10-42830](#)-E-13 MATTHEW/VERONICA LUDWIG MOTION TO RECONSIDER DISMISSAL
DPC-1 Nekeesha Batty OF CASE
7-10-15 [[51](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2015. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Reconsider Dismissal of Case is granted.

Matthew and Veronica Ludwig ("Debtor") filed the instant Motion for Reconsideration of Order on July 10, 2015. Dckt. 51.

On May 19, 2015, the Trustee filed a Motion to Dismiss Case, stating that the Debtor is in material default of the plan because the Debtor was delinquent \$3,039.00. The hearing on the Motion to Dismiss was set for 10:00 a.m. on June 24, 2015.

The Debtor filed a response on June 19, 2015 stating that the Debtor has the funds to make the payments but was unable to take the payment into the Trustee's office during business hours. Dckt. 44. The Debtor stated that they were going to overnight the payment on June 19, 2015 so the Trustee would have

the funds prior to the hearing. The court issued a final ruling on July 24, 2015 dismissing the case for cause due to the delinquency. Dckt. 46. Neither the Debtor's counsel nor Trustee noted that a payment was received or sent at the hearing or requested for the matter to be called even though it was posted as a final ruling, a practice that is not uncommon when new information comes to light prior to the hearing. FN.1.

FN.1. The court will note that the civil minutes do not reflect that the Debtor filed a response. However, the response was untimely under Local Bankr. R. 9014-1(f)(1), which requires written opposition 14 days prior to the hearing. The Debtor only provided 5 days notice.

The Debtor requests that the court reconsider the order granting the Trustee's Motion to Dismiss Case. In support, the Debtor states that the delinquency in the Debtor's payments into the plan was cured by the Debtor just before the hearing on June 24, 2014. The court entered a final ruling on its pre-hearing disposition on the matter. Debtor's attorney was not able to notify the court that Debtor had cured the delinquency prior to the hearing. Debtor has substantially performed their Chapter 13 plan and have only two months of plan payments left.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on July 14, 2015. Dckt. 56. The Trustee states that on June 19, 2015, one of the employees at the Trustee's office received an email from a paralegal at Debtor's counsel's office stating that attempts were made to contact the Debtor prior to the deadline to file a response to the Trustee's Motion to Dismiss but the Debtor did not respond until June 19, 2015. The email also indicated that the Debtor had the funds to bring the payments current but they will be able to make it to the Trustee's office during business hours and will overnight the payment.

The Trustee's office received the following payments:

6/24/15	43724	Nationwide TFS Receipt	\$1,000.00
6/22/15	43711	Money Order	\$1,000.00
6/22/15	43711	Money Order	\$17.00
6/17/15	43680	Nationwide TFS Receipt	\$1,000.00
6/1/15	43585	Nationwide TFS Receipt	\$1,000.00
		TOTAL	\$3,917.00

The Trustee believes that the payment took so long to post because of the intervening weekend. The Trustee supports the instant Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

DISCUSSION

The facts of the instant case provide for a prime example of the need for parties to comply with local rules concerning opposition and the need to review pre-hearing tentatives in case there are material changes. Here, the Debtor and Debtor's counsel stated that they would be bringing their

delinquency current but did not provide any evidence of the curing of such. The Debtor nor Debtor's counsel appeared at the hearing to request that the matter, though posted as a final, be called regardless given the evidence that Debtor had sent in the delinquent payments. Instead, the Debtor and Debtor's counsel waited for the court to issue an order dismissing the case and then file the instant Motion. This is not only a waste of judicial economy but fails to utilize the pre-hearing tentative postings that this court provides to prevent such orders being entered.

The Trustee, in his response, explains that an intervening weekend caused a delay in the Debtor's overnight payment from being processed immediately, which is understandable given not only the weekend but also the sheer number of cases the Trustee oversees and processes. The Debtor and Debtor's counsel appear to have believed that the burden shifted to the Trustee to request that the posted final disposition be called due to the payment. This is not correct.

However, for purposes of the instant Motion, and reviewing the request in light of Fed. R. Civ. P. 60(b), the error of Debtor and Debtor's counsel from informing the court of the late payments as well as failing to appear at the hearing in order to correct the posted tentative decision is a sufficient mistake for purposes of Fed. R. Civ. P. 60(b)(1). This finding is further supported by the fact that the Trustee supports the Motion in addition to the fact that the Debtor has only two months remaining in the confirmed plan.

Therefore, the court finding the order dismissing the bankruptcy case was entered in mistake on part of Debtor and Debtor's counsel failing to inform the court that Debtor had cured the delinquency, the Motion is granted and the order dismissing the case (Dckt. 48) is vacated.

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

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

The Motion to Reconsider Dismissal of Case 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 the order dismissing the case (Dckt. 48) is vacated.

The court shall issue a second minute order denying without prejudice the motion to dismiss, in substantially the following form.

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, the Chapter 13 Trustee having confirmed that the grounds for the dismissal (default in plan payments) have been cured, and upon

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

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

6. [12-28434](#)-E-13 JOHN/KARIN WESCOM MOTION TO MODIFY PLAN
RAC-3 Richard Chan 6-23-15 [[51](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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. The 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 Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. 12-34546-E-13 KEITH/ZANETTA ROBINSON MOTION TO MODIFY PLAN
PGM-7 Peter Macaluso 6-22-15 [[144](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on August 18, 2015.

Keith and Zanetta Robinson ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 22, 2015. Dckt. 144.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 14, 2015. Dckt. 155. The Trustee objects on the following grounds:

1. The Debtor cannot make the payments pursuant to 11 U.S.C. § 1325(a)(6). The payments totaling \$150,073.00 have become due under the proposed modified plan. The Debtor has paid a total of \$149,383.00 to the Trustee.

2. The Debtor's plan may not be the Debtor's best effort. The Debtor's supplemental Schedule I indicates that the required repayments of retirement fund loans deductions total \$1,431.34 which is an increase of \$643.85 from the originally filed Schedule I. The Trustee states that he is unable to find any court approval for the further incurrence of debt.

Additionally, the Trustee argues that the Debtor has not adequately explained the difference in expenses on Schedule J from the originally filed to the supplemental. The Trustee provides the following chart outlining the difference:

<u>Expense</u>	<u>Original Schedule J</u>	<u>Supplemental Schedule J</u>	<u>Difference</u>
Rent/Mortgage		\$1,816.76	\$1,816.76
Clothing, laundry, cleaning	\$275.00	\$75.00	(\$200.00)
Personal care products	\$0.00	\$50.00	\$50.00
Medical and Dental	\$64.00	\$120.00	\$56.00
Transportation	\$500.00	\$750.00	\$250.00
Entertainment	\$100.00	\$86.00	(\$14.00)
Charitable Contributions	\$46.00	\$54.00	\$8.00
Vehicle	\$229.58	\$420.00	\$190.42
TOTAL MONTHLY EXPENSES	\$3,747.84	\$8,195.02	\$4,447.18

The Trustee alleges that the Debtor has only addressed the difference in transportation. Further, the Trustee asserts that the Debtor has not proposed a step increase in plan payments from any tax returns.

3. The proposed plan is contingent on the court granting the Debtor's Motion Approving Loan Modification.

DEBTOR'S REPLY

The Debtor filed a reply on July 21, 2015. Dckt. 158. The Debtor states that they will be current with plan payments at the time of hearing. Additionally, the Motion to Approve Loan Modification was granted on July 21, 2015.

As to the difference in expenses, the Debtor requests additional time to supplement the record regarding the changes.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

In light of the request of the Debtor for a continuance to provide supplemental information as to the changes in expenses, the court continues the hearing to 3:00 p.m. on August 18, 2015. The Debtor shall file and serve any supplemental papers on or before August 4, 2015. Any reply shall be filed and served on or before August 11, 2015.

The court notes, however, that the Debtor and Debtor's counsel should have provided the clarification as to the changes in expenses when presenting the Motion. When not so presented, it creates the appearance that a debtor and debtor's counsel might be trying to "slip one by the court," electing to provide truthful, accurate, complete information only when forced to by the Trustee, creditors, or court. If the court were to conclude that such strategy was afoot, it could well lead to a determination that the debtor was prosecuting the case in good faith. If such a determination was made, a debtor might well never be able to confirm a plan in that case. In the future, the court will not be so indulgent in granting continuances for Debtor to provide information that should have been provided for at the time of the supplemental Schedule J.

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 continued to 3:00 p.m. on August 18, 2015. The Debtor shall file and serve any supplemental papers on or before August 4, 2015. Any reply shall be filed and served on or before August 11, 2015.

8. [15-23946](#)-E-13 ANA RODRIGUEZ
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-1-15 [[24](#)]

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, Debtor's Attorney on July 1, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

1. Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). The Debtor's non-exempt assets total \$4,695.00, and the Debtor is proposing a 0% dividend to unsecured creditors. The non-exempt assets listed on Schedules B and C are: Cash on hand \$20.00; Chase Bank \$200.00; Wells Fargo Checking account \$500.00; 2000 Ford Focus \$500.00; and 2004 Ford Expedition \$3,475.00.
2. Debtor may not be able to make all payments under the Plan, as

required by 11 U.S.C. § 1325(a)(6). While Debtor's Plan provides a \$1,050.00 adequate protection payment to Wells Fargo Bank's 1st Deed of Trust, the Plan does not provide for the expense of real property taxes and insurance.

The Trustee's objections are well-taken. The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Debtor has reported non-exempt assets in the amount of \$4,695.00, while proposing a 0% dividend to unsecured creditors. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there is upwards of \$4,695.00 in non-exempt assets.

Furthermore, Debtor has not provided for any real property taxes or insurance. The additional provisions only provide for the adequate protection payment as to the first deed of trust without taking into consideration the other necessary expenses, like property taxes and insurance, which is not provided for in Schedule J or the plan. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether Debtor will be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Therefore, the objection is sustained.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 13, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted

Donald Mah ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-23721) was dismissed on May 26, 2015, after Debtor failed to timely file all required documents. See Order, Bankr. E.D. Cal. No. 15-23721, Dckt. 17, May 26, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor

failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor may not have understood all his rights and responsibilities, and Debtor was unable to formulate a confirmable plan. Debtor states that following the dismissal he has made efforts to resolve issues with the first mortgage holder to no avail. Debtor also states that, with the help of new counsel, he will be able to create a confirmable plan.

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

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

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

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

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

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

10. [15-20149](#)-E-13 ANNA PETERSON
RAH-2 Richard Hall

OBJECTION TO CLAIM OF DIAMOND
COURT REPORTERS, CLAIM NUMBER 6
6-9-15 [[71](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on June 9, 2015. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 6-1 of Diamond Court Reporter is sustained and the claim is disallowed in its entirety.

Anna Peterson ("Debtor") filed the instant Objection to Claim on June 9, 2015. Dckt. 71. The Debtor objects to Proof of Claim No. 6-1 filed by Diamond Court Reporters ("Creditor") in the amount of \$692.89. The Creditor filed Proof of Claim No. 6-1 as a priority unsecured claim pursuant to 11 U.S.C. § 507(a)(7). The Debtor argues that the claim does not meet the requirements for priority treatment and should be treated as a general unsecured.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed,

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

For priority claims, 11 U.S.C. § 507(a)(7) provides the following:

(7) Seventh, allowed unsecured claims of individuals, to the extent of \$2,7751 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7) refers to claims of individuals and courts have "routinely refused to allow priority to a claim held by a partnership or a corporation." 4 COLLIER ON BANKRUPTCY ¶507.09[2][c] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). In fact, the priority treatment contemplated by § 507(a)(7) is typically applied to consumers who have made some sort of deposit for the purchase of an asset or for a service to an individual who later files bankruptcy prior to the transaction completing. *Id.*

A review of Proof of Claim No. 6-1 shows that the Creditor claims a priority amount of \$692.89 for "Court reporting fees and transcript fees" under 11 U.S.C. § 507(a)(7). Attached to the Proof of Claim No. 6-1 are two invoice statements. The first invoice is dated September 9, 2014, with a due date of October 9, 2014. The service rendered, according to the first invoice, took place September 5, 2014 for "0 rig & 1 Reporter's Transcript of Proceedings" in the amount of \$38.40, and an "Expedite Fee 24-hour" in the amount of \$38.49, for a total of \$76.89.

The second invoice is dated September 15, 2014, with a due date of October 15, 2014. The service rendered is a "Reporter's Appearance Fee" on September 10, 2014 in the amount of \$200.00.

At the bottom of both invoice is the following:

In addition to interest, all costs of collection and attorney fees incurred in collections will be added to invoice. Subject to applicable law, all past due accounts will be subject to monthly service charges of 1.5% on the unpaid balance after 30 days. The monthly service charge of 1.5% on unpaid balance amounts to 18% annually.

Nowhere in the Proof of Claim 6-1 is information that explains how the total of \$276.89 reflected in the two invoices has increased to \$692.89.

Here, the Creditor has failed to establish that its claim in the amount of \$692.89 deserves priority treatment under 11 U.S.C. § 507(a)(7). The Creditor is a corporation and does not allege any partial deposit for the

services rendered. Facially, Proof of Claim No. 6-1 does not meet the priority standard of § 507(a)(7).

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

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

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

The Objection to Claim of Diamond Court Reporters, Creditor filed in this case by Anna Peterson, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6-1 of Diamond Court Reporters is sustained and the claim is disallowed in its entirety.

11. [15-20149](#)-E-13 ANNA PETERSON
RAH-3 Richard Hall

OBJECTION TO CLAIM OF PLACER
COUNTY DEPARTMENT OF CHILD
SUPPORT SERVICES, CLAIM NUMBER
4
6-9-15 [[76](#)]

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

**The Objection to Proof of Claim Number 4 of Placer County
Department of Child Support Services is overruled.**

Anna Peterson ("Debtor") filed the instant Objection to Claim on June 9, 2015. Dckt. 76. The Debtor objects to Proof of Claim No. 4 filed by Placer County Department of Child Support Services ("Creditor") in the amount of \$7,845.35. The Creditor filed Proof of Claim No. 4 as a priority claim pursuant to 11 U.S.C. § 507(a)(1)(A) or (B). The Debtor asserts that the classification of this claim should be priority in the amount of \$3,445.35 because the Proof of Claim No. 4 does not provide for the off-set of the intercepted 2014 tax refund in the amount of \$4,400.00

DISCUSSION

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

Here, the Debtor is asserting that the Creditor is overstating the priority claim amount since the Proof of Claim No. 4 does not take into consideration the Debtor's 2014 tax refund which the Debtor asserts was intercepted to pay for the claim in the amount of \$4,400.00.

However, a review of the Proof of Claim No. 4 shows that no such off-set has taken place. The Debtor has not provided any evidence of the off-set or testimony of when the off-set took place. Instead, the Debtor merely states that the Proof of Claim No. 4 does not take into consideration this alleged "interception" of the \$4,400.00 from the Debtor's tax refund. The mere accusation with no evidence does not raise to the level of overcoming the prima facie validity of the Proof of Claim No. 4.

Therefore, based on the lack of evidence before the court, the Objection to the Proof of Claim is overruled.

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 Placer County Department of Child Support Services, Creditor filed in this case by Anna Peterson, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 4 of Placer County Department of Child Support Services is overruled.

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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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.
--

Anna Peterson ("Debtor") filed the instant Motion to Confirm the Amended Plan on May 5, 2015. Dckt. 58.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 2, 2015. Dckt. 68. The Trustee objects on the following grounds:

1. The Debtor is \$167.00 delinquent in plan payments to date. The Debtor has paid \$334.00 into the plan to date.
2. The plan will complete in 73 months as opposed to 60 months. The cause of the over-extension is due to the priority claim of Placer County Department of child Support in Section 2.13 \$3,445.35. In Section 6 of the plan, Debtor provides that Debtor's tax refund of \$4,400.00 will offset the claim amount and that the claim should be paid \$3,445.35.

3. The Debtor may not be able to make the payments because the Debtor fails to provide for the priority claim of Diamond Court Reporters, Proof of Claim No. 6, in the amount of \$692.89.

DEBTOR'S RESPONSE

The Debtor filed a response on June 9, 2015. Dckt. 81. The Debtor responds in order of the Trustee's objections as follows:

1. Debtor has paid a total of \$674.00, in the form of two cashier's checks for \$167.00 each on May 5, 2015, and on May 29, 2015. Debtor made a payment in the amount of \$340.00 via TFS. The Debtor is now current.
2. The Debtor has filed an Objection to Claim of the Placer County Department of Child Support Services. The objection is based upon a tax refund of \$4,400.00 being redirected by the Internal Revenue Service to the Creditor. The Objection is set of hearing on July 28, 2015.
3. The Debtor has filed an objection to the claim filed by Diamond Court Reporters was filed on June 9, 2015 due to the debt being unsecured and not qualified as a priority claim. The Objection is set for hearing on July 28, 2015.

The Debtor requests that the court continue the instant Motion to July 28, 2015 to be heard in conjunction with the two Objection to Claim. FN.1.

JUNE 16, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on July 28, 2015 so the matters can be heard concurrently with the two Objections to Claim.

DEBTOR'S SUPPLEMENTAL DOCUMENT

On July 7, 2015, the Debtor filed a supplement to the Motion which further outlined the grounds to confirm the proposed plan and provided a liquidation analysis. A review of the attached plan shows that the only difference between the original proposed plan and the newly attached one is that the Debtor indicates in Section 2.06 that Debtor's counsel will be seeking fees as "no look" pursuant to Local Bankr. R. 2016-1(c).

PLACER COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES OBJECTION

Placer County Department of Child Support Services ("Creditor") filed an objection to the instant Motion on July 16, 2015. Dckt. 100. The Creditor states that the proposed plan does not fully provide for total priority claim for child support for \$7,845.35. The Creditor states that there is no evidence of a 2014 Internal Revenue Service 1040 tax filing by Debtor and that no credit should be given to the Debtor as outlined in the Debtor's additional provisions.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's and Creditor's objections are well-taken. The Trustee's first and third objection are overruled, seeing that the Debtor has provided evidence of the delinquency being cured and the court sustaining the Debtor's Objection to Diamond Court Reporter Proof of Claim No. 6-1.

However, the Trustee's second objection and the Creditor's objection are troublesome. Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 73 months due to the failure of the Debtor to provide for the full amount of the Creditor's priority claim. The court overruled the Debtor's Objection to Creditor's Claim because the Debtor failed to provide any evidence as to the alleged \$4,400.00 payment from the Debtor's tax refund. With the priority of the Creditor's claim in the full amount still valid, the plan does not properly provide for the full amount which results in a plan that would take 73 months to complete. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d) and also is evidence of the Debtor being unable to comply with the plan under 11 U.S.C. § 1325(a)(6). Therefore, the objection is sustained.

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.

13. [15-24150](#)-E-13 TAEVONA MONTGOMERY
DPC-1 Seth Thompson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-1-15 [[14](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on July 1, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The court's decision is to continue the Objection to 3:00 p.m. on August 11, 2015 to be heard in conjunction with the Motion to Value Collateral of Real Time Resolutions, Inc.</p>

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to file a Motion to Value collateral of Real Time Resolutions and, therefore, cannot comply with the plan pursuant to 11 U.S.C. § 1325(a)(6).

A review of the docket shows that the Debtor has filed a Motion to Value Collateral of Real Time Resolutions, Inc. on July 1, 2015. The Motion to Value is set for hearing at 3:00 p.m. on August 11, 2015.

Due to the interconnectedness of the Objection and the Motion to Value, the Objection to the Plan is continued to 3:00 p.m. on August 11, 2015.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to 3:00 p.m. on August 11, 2015 to be heard in conjunction with Motion to Value Collateral of Real Time Resolutions, Inc.

14. [12-24857](#)-E-13 DONALD/JULIANA EMUKPOERUO MOTION TO MODIFY PLAN
MS-1 Mark Shmorgan 6-22-15 [[76](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.
--

Donald and Juliana Emukpoeruo ("Debtors") filed the instant Motion to Modify Plan on June 22, 2015. Dckt. 76. Debtors state that they are filing this Motion so that they can catch up on their plan arrears, which they fell behind on after adopting a child in February 2015. The Debtors have also modified their plan to reflect the current amounts claimed by all Class 2 and Class 7 creditors, thereby lowering their plan payments and increasing the percentage paid to unsecured creditors. Debtors still propose to pay all disposable income, as required under 11 U.S.C. § 1325(b)(2).

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on July 14, 2015. Dckt. 93. The Trustee opposes confirmation of the Modified Plan on the basis that the payments under the proposed Modified Plan are unclear. Specifically, the Modified Plan states that "Debtors propose to pay \$2,600.00 for months 39-60." The Trustee is concerned that the wording of the Plan may be interpreted as meaning either "payments of \$2,600.00 each month, from months 39-60," or "\$2,600 to be paid, total, over the 39-60 month period."

DEBTORS' RESPONSE

Debtors filed a response on July 14, 2015. Dckt. 96. Debtors concede that there is an ambiguity in the proposed Modified Plan, and requests that the order confirming include amended language to state: "Debtors propose to pay \$2,600.00 per month for months 39-60."

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. Fortunately, the ambiguity pointed out by the Trustee can be corrected in the order confirming the plan.

After the Debtors correct the Additional Provisions to state that "Debtors propose to pay \$2,600.00 per month for months 39-60," 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the Additional Provisions to state that "Debtors propose to pay \$2,600.00 per month for months 39-60," transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [12-24857](#)-E-13 DONALD/JULIANA EMUKPOERUO MOTION FOR COMPENSATION FOR
MS-2 Mark Shmorgon MARK SHMORGON, DEBTORS'
ATTORNEY
6-22-15 [[82](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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.

Mark Shmorgon, the Attorney ("Applicant") for Donald O. Emukpoeruo and Juliana A. Emukpoeruo the Chapter 13 Debtors ("Clients"), makes a First Interim Request for the Allowance of Fees in this case. The period for which the fees are requested is for the period of June 1, 2015 through June 22, 2015. The order of the court approving Applicant's substitution of attorney, and consequently employment approval, was entered on June 23, 2015. Dckt. 89. Applicant requests fees in the amount of \$1,500.00.

FN.1. The court notes that on page 2 of the instant Motion, Applicant suggests that this is the first and "likely [] last" fee application to be submitted. The court does not issue final orders on "potential" final applications. As such, the court will consider this as Applicant's First Interim Request for the Allowance of Fees in this case.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work

in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including corresponding with clients, drafting a Motion to Modify the Chapter 13 Plan, reviewing and analyzing relevant documents, amending Debtor's schedules, preparing for a Motion to Dismiss hearing, and drafting this instant Motion. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

...

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

(1) The maximum fee that may be charged is \$4,000.00 in

nonbusiness cases, and \$6,000.00 in business cases.

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Debtor's previous counsel, James L. Keenan is allowed \$3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation.

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 REQUESTED

Fees

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

Case Administration: Applicant spent 1.0 hour in this category. Applicant corresponded with client to discuss their Chapter 13 matter, .

Motion to Modify: Applicant spent 1.5 hours in this category. Applicant drafted a motion to Modify the Debtors' Chapter 13 Plan.

Modified Chapter 13 Plan: Applicant spent 1.5 hours in this category. Applicant reviewed all claims and classes in an effort to draft a modified Chapter 13 Plan.

Amendments and Responses: Applicant spent 1.0 hour in this category. Applicant reviewed relevant documents on the docket, amended the schedules as necessary, and prepared for a Motion to Dismiss Hearing.

Applications for Compensation: Applicant spent 1.0 hour in this category. Applicant drafted the instant Motion for Compensation.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mark Schmorgon	6	\$250.00	\$1,500.00
Total Fees For Period of Application			\$1,500.00

FEES ALLOWED

Fees

The court notes that Debtor's previous counsel, James L. Keenan, opted for a "no look fee". Debtor's have paid the agreed upon \$3,500.00 in full to their first attorney, Mr. Keenan. The court finds that, since the substitution of representation, the legal services provided by Applicant, are substantial and unanticipated. As such, the court finds Applicants instant Motion appropriate and reasonable. The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$1,500.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Debtor from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan. FN.2.

FN.2. To the extent that Debtor's current counsel will be providing services which are included in the \$3,500.00 no-look fee allowed in this case, current counsel, prior counsel, and the Chapter 13 Trustee should determine what portion of such fees should be paid to current counsel. If the Trustee has already disbursed the full amount, then the parties to this case need to determine how such overpayment for services not to be provided by former counsel should be recovered.

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

Fees	\$1,500.00
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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 Mark Schmorgon ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mark Schmorgon is allowed the following fees and expenses as a professional of the Estate:

Mark Schmorgon, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$ 1,500.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

16. [15-22957](#)-E-13 ROBERT BOUGHTON
TLA-1 Thomas Amberg

MOTION TO CONFIRM PLAN
6-16-15 [[29](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

17. [15-24065-E-13](#) MAURICE CARR
DPC-2 Pro se

OBJECTION TO DISCHARGE BY DAVID
Pro Se. CUSICK
6-29-15 [[20](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditor Maurice Taran Carr, and Office of the United States Trustee on June 29, 2015. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Discharge 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.

David Cusick, the Chapter 13 Debtor, ("Objector"), filed the instant Objection to Debtor's Discharge on June 29, 2015. Dckt. 20.

The Objector argues that Maurice Carr ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on November 10, 2014. Case No. 14-31079. The Debtor received a discharge on March 3, 2015. Case No. 14-

31079, Dckt. 29.

The instant case was filed under Chapter 13 on May 19, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on March 3, 2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 14-31079, Dckt. 29. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-24065), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.]

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-24065, the case shall be closed without the entry of a discharge.

18. [15-23469](#)-E-13 TERESA/WELDON PILLOW
NSV-2 Nima Vokshori

MOTION TO CONFIRM PLAN
6-10-15 [[32](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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 continue the Motion to Confirm the Amended Plan to 3:00 p.m. on August 18, 2015.
--

Teresa and Weldon Pillow ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 10, 2015. Dckt. 32.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed the objection to the instant Motion on July 14, 2015. Dckt. 59. The Trustee objects on the following grounds:

1. Plan relied on pending Motion to Value Collateral of US Bank.
2. The Debtor failed to file declarations in support of the Motion, as required by Local Bankr. R. 9014-1(d)(6).
3. The Motion does not comply with Fed. R. Bankr. P. 9013 because it gives only a brief summary of the plan and alleges no significant factual matters under 11 U.S.C. § 1325(a).
4. The Trustee is uncertain that the fees reported in the plan are all due to counsel since it appears that the Debtor may have paid some fees in advance.

JULY 21, 2015 HEARING

At the hearing, the court continued the instant hearing to 3:00 p.m. on August 18, 2015. The Debtor was ordered to file declarations and other evidence in support of confirmation, and any other supplemental pleadings Debtor believes necessary, on or before July 31, 2015. Responses to the Supplemental Pleadings shall be filed and served on or before August 7, 2015.

TRUSTEE'S SUPPLEMENTAL FILINGS

On July 22, 2015, the Debtor filed an Amended Notice of Hearing, Declaration Teresa Pillow, Declaration of Weldon Pillow, a copy of the Amended Plan, and certificate of Service. Dckts. 62, 63, 64, 65, and 68.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

A review of the newly filed declarations of the Debtor appear to provide for the testimony in support of the proposed plan.

However, the Trustee's objection as to Fed. R. Bankr. P. 9013 is well-taken.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The First Modified Chapter 13 Plan is being proposed to provide for payment of the first deed of trust through the Chapter 13 plan.
- B. The First Modified Chapter 13 Plan is also being proposed to provide for the motion to value the second deed of trust as wholly unsecured.
- C. The First Modified Chapter 13 Plan commits the Debtors' disposable income to the Chapter 13 Plan for the period of sixty (60) months and otherwise conforms to the requirements of Title 11.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the plan satisfies "Title 11." This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief

that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

By prior order of the court, the hearing has been continued to 3:00 p.m. on August 18, 2015.

19. [14-30070-E-13](#) LEAH CHERRY
MRL-3 Jeremy Heebner

MOTION TO CONFIRM PLAN
6-15-15 [[83](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 15, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

20. [15-24476](#)-E-13 KENNETH/STACEY ACKMAN
TLA-3 Thomas Amberg

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
6-30-15 [[24](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 30, 2015. By the court's calculation, 28 days' notice was provided. 28 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 Real Time Resolutions, Inc. ("Creditor") is continued to 3:00 p.m. on August 18, 2015. The Debtor shall file and serve supplemental papers on or before August 11, 2015.

The Motion to Value filed by Kenneth Ackman and Stacey Ackman ("Debtors") to value the secured claim of Real Time Resolutions, Inc. (as Agent for The Bank of New York Mellon FKA The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G) ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5700 20th Street, Rio Lindo, California ("Property"). Debtor seeks to value the Property at a fair market value of \$410,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 2 filed by Real Time Resolutions, Inc. is the claim which may be the subject of the present Motion.

OPPOSITION

Creditor has not filed an opposition.

PROOF OF CLAIM NO. 2

A review of the claim registry for the instant case shows that Creditor filed Proof of Claim No. 2 on June 25, 2015. The Proof of Claim lists the creditor as "Real Time Resolutions, Inc. as Agent for The Bank of New York Mellon FKA The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G." The Proof of Claim indicates that payments should be directly sent to Real Time Resolutions, Inc.

Attached to the Proof of Claim is a Home Equity Credit Line Agreement and Disclosure Statement, dated August 15, 2006. The creditor listed on the Agreement is Countrywide Home Loans, Inc. The next document attached to the Proof of Claim is a Deed of Trust and Assignment of Rents, recorded by the Sacramento County Recorder on August 24, 2006, which lists Countrywide Home Loans, Inc. as the lender. The Beneficiary on the Deed of Trust is listed as Mortgage Electronic Registration Systems, Inc.

DISCUSSION

Debtor seeks to value the collateral of "Real Time Resolutions, Inc. as Agent for The Bank of New York Mellon FKA The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G." However, the court cannot determine from the evidence presented what, if any, the identified entity the

Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion is actually the real party in interest. The court will not issue orders on incorrect or partial parties that are ineffective.

From the Motion, the Debtor appears to be seeking to value the collateral of Real Time Resolutions, Inc. in its agency capacity. The court is concerned that in granting a motion that seeks to value the collateral of an agent, rather than the actual creditor, would result in an "maybe-effective order." If the court were to grant such order, it would possibly be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well - most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

Rather than denying the Motion, the court continues the hearing to allow the Debtor the opportunity to address whether the real party in interest has been listed and whether relief has been requested against a creditor who has a claim in this case. Therefore, the hearing is continued to 3:00 p.m. on August 18, 2015. The Debtor shall file and serve supplemental papers on or before August 11, 2015.

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 Kenneth Ackman and Stacey Ackman("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 3:00 p.m. on August 18, 2015. The Debtor shall file and serve supplemental papers on or before August 11, 2015.

21. [15-20077](#)-E-13 CARL/CAROLYN FORE
TJW-3 Timothy Walsh

CONTINUED MOTION TO CONFIRM
PLAN
3-12-15 [[40](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2015. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

Carl and Carolyn Fore ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 17, 2015. Dckt. 40.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 17, 2015. Dckt. 53. The Trustee objects stating that it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's plan proposes to increase plan payments from \$3,785.00 to \$4,050.00 beginning in month 2 through 59. However, the Debtors have failed to indicate how they can increase the plan payments when the monthly projected income listed on Schedule J reflects \$3,785.00.

MAY 5, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 9, 2015. Dckt. 56. The court ordered that the Debtor shall file and serve supplemental pleadings on or before May 22, 2015, and Response, if any, shall be filed and served on or before May 29, 2015.

TRUSTEE'S STATUS REPORT

The Trustee filed a status report on May 27, 2015. Dckt. 59. The Trustee states that the Debtor has failed to file any supplemental pleadings and the Trustee's objections remain unresolved. The Trustee states that the Debtor has

failed to indicate how he can increase the plan payments by \$265.00 per month from \$3,785.00 to \$4,050.00.

DEBTOR'S SUPPLEMENTAL DECLARATION

On June 4, 2015, the Debtor filed a supplemental declaration to the instant Motion. Dckt. 63. The Debtor states that they have filed a new projected budget as well as more current billing adjustments. The Debtor highlights the following changes in budget:

1. Water bill is now \$150.00 per month which is reduced due to forced reduction and that the prior bill reflected the Debtor filling up their pool.
2. Phone and cable is now \$194.00 due to the Debtor canceling a large portion of the package.
3. The food and household supplies were increased to \$600.00 to be a realistic reflection of the household.
4. Transportation expense is being reduced to \$350.00 per month due to the purchase of a more economical vehicle and reducing unnecessary use.
5. Recreation is reduced to \$75.00.
6. On Schedule I, the Debtor states that the new pay stub reflects a "bonus" in the amount of \$94.88. However, the Debtor states that this change is intended as a reimbursement directly to the employee on account of increase in medical costs or medical insurance costs. This amount raises the income by \$56.66 per month.

JUNE 9, 2015 HEARING

At the hearing, continued the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. July 28, 2015. Dckt. 65.

TRUSTEE'S WITHDRAWAL OF OBJECTION

The Trustee filed a withdrawal of his objection based on the Debtor's supplemental declaration. Dckt. 66

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Following the supplemental declaration, the Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the creditors and the Trustee has withdrawn his objection based on the Debtor's supplemental filing. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

holding that:

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [14-32084](#)-E-13 STEVEN/SHARON COLLINS
FF-1 Brian Turner

MOTION TO CONFIRM PLAN
6-10-15 [[34](#)]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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 Amended Plan without prejudice.
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Steven R. Collins and Sharon L. Collins ("Debtors") filed the instant Motion to Confirm the Amended Plan on June 10, 2015. Dckt. 34.

TRUSTEE'S OBJECTION

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 14, 2015. Dckt. 46. The Trustee objects on the following grounds:

1. Debtor will complete the Plan in 82 months, thus exceeding the permitted maximum time of 60 months. Furthermore, the Trustee asserts that the Proof of Claim No. 8, filed by Wells Fargo Bank, indicates that arrearages total \$125,190.89, yet the Debtor has proposed to pay only \$73,723.88.

2. Debtors' Plan does not propose to pay all priority claims, failing to provide for the Internal Revenue Services secured claim in the proposed Amended Plan. The IRS filed Proof of Claim No. 5, stating \$10,069.49 in priority tax.
3. Debtor proposes to value the secured claim of the IRS, but has not filed a motion to value collateral. Additionally, Trustee asserts that the Debtor's plan does not have sufficient monies to pay the claim in full.
4. Trustee asserts that the Section 2.06 of the Plan calls for the payment of \$1,500.00 in attorney fees, yet fails to propose a monthly dividend to be paid towards those fees.
5. Trustee asserts that Debtor has failed to provide the Trustee with Business Documents, including: a questionnaire, tax returns, profit and loss statements, bank account statements, proof of license and insurance or written statement of no such documentation exists, which are required 7 days before the date set for the first meeting.
6. Trustee alleges that the Debtor has been uncooperative and has failed to provide the last 4 years of tax returns, as requested by the Trustee.
7. Debtors failed to file a Business Budget detailing their business income and expenses. Additionally, Debtors' Schedule I & J lists \$4,278.00 in net business income, yet does not include an attachment breaking down the gross income and expenses.
8. Debtors failed to list their two previous Chapter 13 petitions, filed August 5, 2011 and November 7, 2011.
9. Trustee notes a value discrepancy, stating that Debtors' Declaration indicates a disposable income and plan payment total in the amount of \$3,680.44. However, Section 6.3 of the Amended Plan indicates a total in the amount of \$3,660.00.

CREDITOR'S OBJECTION

Wells Fargo Bank, N.A. ("Creditor") filed an objection to the instant Motion on July 16, 2015. Dckt. 50. The Creditor objects on the grounds that the Debtor fails to fully provide for the arrearages owed. The Creditor states that the plan only provides for \$73,723.88 in pre-petition arrears. However, the Creditor's Proof of Claim No. 8 shows that the pre-petition arrears amount is \$125,190.89. The Creditor also states that based on the Debtor's schedules, the Debtor does not have enough disposable income to cure the pre-petition arrears within 60 months.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's and Creditor's objections are well-taken.

First, to address the objection over the failure of the plan fully providing for the pre-petition arrears of the Creditor, the Creditor holds deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts \$125,190.89 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The failure to provide for the cure of the Creditor's pre-petition arrears leads to the Trustee's objection that the Debtor will complete the plan in more than the permitted 60 months. According to the Trustee, the plan will complete in 82 months. Trustee notes that Claim No. 8, filed by Wells Fargo Bank, N.A., indicates that arrearages total \$125,190.89, yet the Debtor proposes to pay only \$73,723.88. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

As to the Trustee's concern over the Internal Revenue Service's claim, Proof of Claim No. 5, filed by the IRS, includes a \$10,069.49 in priority tax, which is not provided for in the Debtor's Amended Plan. The Amended Plan provides for treatment of this as a Class 2 claim, but (because the Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), propose to pay a \$0.00 monthly dividend on account of the claim. However, the Debtor has failed to file a Motion to Value the Collateral of the Internal Revenue Services. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Additionally, the Trustee alleges that Debtor's Amended Plan does not have sufficient monies to pay the claim in full, pursuant to 11 U.S.C. § 1325(a)(2). Therefore, the Trustee's objection is sustained.

The Trustee asserts that Section 2.06 of Debtor's Amended Plan seeks a payment of \$1,500.00 in attorney's fees. However, the Amended Plan fails to propose a monthly dividend to be paid toward those fees in Section 2.07. While this type of oversight may typically be addressed in the order confirming, the multiple issues with the proposed plan ranging from failure to provide for payment of pre-petition arrears and failing to provide for the priority claim of the Internal Revenue Service, the failure to provide for the proposed dividend makes it impossible for the court to determine if the plan is feasible. The Trustee's objection is sustained.

Additionally, the Debtor has failed to timely provide the Trustee with business documents including: questionnaire; tax returns, profit and loss statements, bank account statements; proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325. This is only further exasperated by the Debtor failing to provide the Trustee the Debtor's last four years of tax returns from the Debtor.

Along similar lines as the previous objection, the Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors failed to file a Business Budget detailing their business income and expenses. The Trustee asserts that Debtors' Schedule I & J list \$4,278.00 in net business income, yet do not provide amounts for the gross income and expenses. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

The court has further concerns whether the Debtor's plan is the Debtor's best efforts and is, in fact, an accurate portrait of the Debtor's finances. The Trustee alerts the court that the Debtor filed two previous Chapter 13 petitions on August 5, 2011 and on November 7, 2011. Both were dismissed on October 14, 2011 and July 3, 2013, respectively. The Debtor failed to disclose these previous bankruptcies, which raise major concerns over the Debtor's candor.

Lastly, the Trustee notes a discrepancy in the disposable income provided in the Debtors' declaration and that stated in the Plan. Debtors' declaration indicates a disposable income and plan payment of \$3,680.44. Whereas Section 6.03 of the Amended Plan accounts for a value in the amount of \$3,660.00. It appears that even the Debtor is getting lost in the inaccurate information in which they are presenting in their papers and proposed plan. Again, this inability to provide consistent and accurate financial information makes it impossible for the court, Trustee, and any other party in interest to determine the feasibility and viability of the proposed plan.

Therefore, based on the aforementioned discussion, the amended Plan complies 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.

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 18, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. [12-26289](#)-E-13 SARA GRACIA
MOH-2 Michael O. Hays

MOTION TO AVOID LIEN OF FORD
MOTOR CREDIT COMPANY
6-22-15 [[48](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Ford Motor Credit Company ("Creditor") against property of Sara Garcia ("Debtor") commonly known as 2427 South Larkin Avenue, Fresno, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,474.27. An abstract of judgment was recorded with Fresno County on March 28, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$110,300.00 as of the date of the petition. The unavoidable consensual liens total \$204,620.51 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000.00 on Schedule C.

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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute 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 Ford Motor Credit Company, California Superior Court for Fresno County Case No. 10-CE-CL-00231, recorded on March 28, 2011, Document No. 2011-0042513 with the Fresno County Recorder, against the real property commonly known as 2427 South Larkin Avenue, Fresno, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [13-24993-E-13](#) DENNIS/SANDRA CUVA
PGM-6 Peter G. Macaluso

MOTION TO MODIFY PLAN
Peter Macaluso6-18-15 [[121](#)]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.
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Dennis L. Cuva and Sandra E. Cuva ("Debtors") filed the instant Motion to Confirm the Modified Plan on June 18, 2015. Dckt. 121.

TRUSTEE'S RESPONSE

David P. Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on July 14, 2015. Dckt. 126. The Trustee asserts that Debtors stated they submitted a loan modification application and provided an e-mail and fax confirmation as exhibits to the instant Motion. However, review of the filed exhibits reveals that only copies of the cover sheets were provided. The Trustee thus requests copies of the loan modification documents for review.

DEBTORS' REPLY

The Debtors filed a reply on July 20, 2015. Dckt. 135. Debtors request a sixty day continuance to obtain confirmation that the loan modification package has been received and processed by the lender, Wells Fargo Home Mortgage.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

In reviewing the Section 6 Additional Provisions, it appears that the Debtors are attempting to advance Chapter 13 Plans to include a provision for a possible loan modification. These provisions, which the court has confirmed as part of plans in other cases has several basic points. First, the creditor is paid an adequate protection payment, applied to the post-petition payment amounts which are due. Second, the debtor must diligently pursue a loan modification. Third, if the creditor rejects the loan modification, the creditor is granted relief from the stay 14 days after the rejection unless the debtor has filed a modified plan and motion to confirm which provides for proper payment of the creditor's claim as permitted under the Bankruptcy Code without a voluntary modification by the creditor.

The court does not find a reason to deny or continue the instant Motion when the proposed plan itself complies with 11 U.S.C. §§ 1325 and 1329 and provides for adequate protection payments to Wells Fargo Home Mortgage while awaiting possible loan modification. In light of the Trustee's response, the Debtors' reply requests a continuance in order to "obtain confirmation that the loan modification package has been received and processed by the lender." However, this is not necessary, especially when the Debtors' plan provides for what the court has commonly referred to as "Ensminger Provisions."

Therefore, the Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the creditors and the Trustee's concerns are properly addressed in the Additional Provisions of the proposed 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 18, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. [13-30998-E-13](#) RALPH SETTEMBRINO CONTINUED MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 3-17-15 [[49](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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 March 17, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.
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Ralph Settembrino ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2015. Dckt. 62.

TRUSTEE'S AMENDED OBJECTIONS

The Trustee filed an amended Objection on June 16, 2015. Dckt. 87. The Trustee states that the first two objections have been resolved based on the court granting the Motion to Avoid Lien (Dckt. 81) and the Debtor's supplemental income and expense sheet (Dckt. 85).

However, the Trustee still objects on the grounds that the Debtor's plan is not feasible. The class 1 creditor filed a Notice of Mortgage Payment Change on April 27, 2015 increasing the Class 1 Monthly Contract Installment Amount to \$1,946.94 effective June 1, 2015. The proposed plan payment of \$2,150.00 is not sufficient to pay the Class 1 Arrearage Dividend and Monthly Contract Installment Amount which total \$2,261.08 plus Trustee's fees.

TRUSTEE'S ORIGINAL OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. Debtor has failed to file a Motion to Avoid Lien of Credit Bureau Associates. Credit Bureau Associates is provided in the plan in the amount of \$641.00 at 0% interest and \$0.00 monthly dividend in Class 2C. However, the creditor has filed a secured claim court claim #3-1 in the secured amount of \$640.59. The creditor's claim is not provided for in the plan confirmed October 16, 2013.
2. The Debtor has not filed supplemental Schedules I or J in support of the plan. Trustee notes the proposed Plan includes Class 4, a monthly contract installment of \$1,850.00 for rental property. The Debtor's Schedule I filed on August 21, 2013 reports rental income of \$1,370.00 with a monthly mortgage payment on Schedule J of \$1,370.00. Almost two years has elapsed since the last budget filed by the Debtor. If Debtor's mortgage payment on their rental property has increased \$480.00 and no other expenses have decreased or their income has not increased, Debtor will not be able to afford the Plan payments.

APRIL 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Debtor's Motion to Avoid Lien. Dckt. 73.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on May 12, 2015. Dckt. 76. The Debtor states that he has provided a supplemental Schedule I and J. He states that his income and expenses have remained essentially the same as they were when he initially filed with the exception of the rental property. The Debtor state that he had problems with tenants not paying rent which made it impossible for the Debtor to keep the mortgage payment current. He is attempted to short sell the property. If no offers are received, the Debtor states that the property will go into foreclosure.

MAY 19, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 30, 2015. Dckt. 79.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on June 5, 2015. Dckt. 84. The Debtor attached an additional supplemental Schedule I and J as well as a breakdown of business income and expenses. The Debtor states that after further review, there are further changes in income and expenses that the Debtor did not reflect in the last supplemental declaration.

The Debtor states that while his gross income is slightly lower than what was originally listed and his business expenses slightly higher, the Debtor alleges that he has been able to reduce his living expenses. Debtor states that he has been able to reduce his medical insurance from \$855.00 per month to \$85.00. He has also been able to reduce his car insurance from \$253.00 to \$123.00. The Debtor states he got rid of his personal cell phone and solely uses his business one.

The Debtor states that he is continuing to seek a loan modification. However, the Debtor notes the modification is complicated because the loan is in his mother's name, even though he is on the title. This is only further exasperated by the fact that the Debtor's mother passed away.

TRUSTEE'S AMENDED OBJECTION

The Trustee filed an amended objection on June 16, 2015. Dckt. 87. The Trustee states that the first two objections have been resolved. However, the Trustee states that the Debtor's plan is not feasible because the Class 1 Creditor filed a Notice of Mortgage Payment Change on April 27, 2015 increasing the Class 1 Monthly Contract Installment amount to \$1,946.94, effective June 1, 2015. The proposed plan payment of \$2,150.00 is not sufficient to pay the Class 1 Arrearage Dividend and Monthly Contract Installment Amount which total \$2,261.08 plus Trustee fees.

JUNE 30, 2015 HEARING

At the hearing, the court continued the Motion to Confirm the Modified Plan to 3:00 p.m. on July 28, 2015 to allow Debtor to correct remaining issue(s) re: escrow. Dckt. 90.

TRUSTEE'S WITHDRAWAL

The Trustee filed a withdrawal of his objection on July 8, 2015 based on the creditor withdrawing the notice of Mortgage Payment Change filed on April 27, 2015. Dckt. 91. The Trustee now states that the plan is feasible and no longer has any objection.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Following the withdrawal of the creditor's Notice of Mortgage Payment Change, the Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the creditors and the Trustee has withdrawn his objection based on the creditor's withdrawal of the Notice. The amended Plan complies with 11 U.S.C. §§ 1329 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 17, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.