

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 5, 2014 at 2:00 p.m.

1. [13-22603](#)-C-13 DANNY/PRISCILLA LADINES MOTION TO MODIFY PLAN
 DCN-4 Eric J. Gravel 6-26-14 [[99](#)]

Final Ruling: The Debtor having filed a "Notice of Withdrawal" for the pending Motion to Modify Plan, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Modify, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Modify Plan.**

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

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

A Motion to Modify Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

August 5, 2014 at 2:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. Thirty-five days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to continue the Motion to Confirm to September 2, 2014 at 2:00 p.m. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtors' plan does not reflect their best efforts under 11 U.S.C. § 1325(b).

Debtors' Schedule B discloses three (3) additional adults, ages 81, 26, and 22 living in the household. Debtors report no income deriving from these three adult and did not provide Trustee with evidence of income for these family members.

On June 19, 2014, Debtors filed an Amended Schedule I and increased their combined net disposable income of \$6,005.39 to \$7,107.39 by adding income employment for Debtor Charlie Balangue.

On Schedule J, Debtor's increased their expenses from \$2,805.39 to \$5,407.39. Debtors explain the changes by stating that they first omitted a garbage expense of \$96, underestimated their food expenses by \$200, underestimated their electricity expenses by \$100, and that their driving costs have increased by \$1,000 due to their adult son. Debtors did not provide copies of recent utility bills, grocery receipts, or bank statements to support the significant changes in expenses, particularly in transportation.

Debtors' Response

Debtors request additional time to supplement the record with the requested documents. In particular, Debtors request a 30-day continuance.

The court will grant Debtors' request and continue the hearing on the Motion to Confirm the Plan to September 2, 2014 at 2:00 p.m. Specifically, the court is anticipating Debtors to provide more thorough declaration(s) discussing why no income is reported from the three adults living with Debtors and explaining the increases in expenses highlighted by the Trustee. The Court expects the declaration(s) to be supported with exhibits directly corroborating the increased expenses.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to September 2, 2014 at 2:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. Forty-two days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Confirm the Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan based on the following:

1. Debtor's declaration states that plan payments at \$5,504.08 for 26 months; however, Section 6.1.01 of the Plan calls for payments of \$5,504.08 for 25 months, \$3,284.40 for one (1) month, and one (1) lump sum payment in month one (1) of \$6,500, where the plan length in Section 1.03 is 26 months. The Trustee requests that Debtor confirm that the payments are: \$12,004.08 for one (1) month, \$5,504.08 for 24 months, and then \$3,284.40 for one (1) month.
2. Section 2.06 indicates that \$1,750 in attorneys' fees have been paid prior to filing and that a balance of \$1,750 is to be paid through the plan. In Section 2.07, Debtor proposes a \$0.00 per month dividend to be paid toward those fees. The Trustee requests that Debtor be allowed to propose a monthly payment of \$302.50 per month to be paid toward the attorneys' fees, until paid in full. This amount is sufficient to allow the proposed monthly dividends to be paid to all creditors.
3. On June 19, 2014, Debtor filed Declaration of Laurie Marie Stefanelli (Dkt. 52), and various Proofs of Service (Dkts. 53, 54, and 56). The Trustee cannot locate on the docket where Debtor has filed a proof of service of this declaration.

**Amended Declaration of Laurie Stefanelli in Support of Motion to Confirm
Second Amended Chapter 13 Plan**

On July 25, 2014, Debtor cause to be filed an Amended Declaration of Laurie Stefanelli in support of her Motion to Confirm with proof of service attached (Dkt. 64). In the Amended plan, Debtor confirms that the payments under the plan are as follows: \$5,504.08 for 25 months, \$3,284.40 for one (1) month; plus one lump sum payment of \$6,500 in month one (1).

Discussion

The court's decision is to grant the Motion to Confirm the plan. Debtor corrected the service issue with the Amended Declaration and adjusted the plan payments stated in her Declaration so to match the payment schedule reflected in the plan. The court will permit the monthly dividend of \$302.50 per month requested by the Trustee to compensate Debtor's counsel until counsel is paid in full.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor admitted at the First Meeting of Creditors that he had not filed all of his tax returns due during the four-year period preceding the filing of the petition. 11 U.S.C. §§ 1308 & 1325(a)(9).
3. Debtor has listed the Employment Development Department on Schedule E; however, Debtor has not provided for this debt in the plan.

The court's decision to deny confirmation. 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. Forty-two days' notice is required. That requirement was met.

Final Ruling: 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 Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition to the court granting the motion on July 22, 2014.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Objection to September 16, 2014 at 2:00 p.m. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' plan relies on a Motion to Value the secured claim of Specialized Loan Servicing in Class 2; however, Debtor has not filed a Motion to Value that secured claim. Therefore, Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a) (6).
2. The plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$179.00 for 60 months with a 0.00% dividend to unsecured creditors. Based on Trustee's review of Form B22C lines 30, 31, 50, 37, and 47 require revision. See Objection to Confirmation (Dkt. 20).

The court's decision is to continue the hearing on the Objection to September 16, 2014 at 2:00 p.m. Debtor filed a Motion to Value the secured claim of Specialized Loan Servicing on July 11, 2014. At the hearing on July 29, 2014 and the court continued the hearing to September 16, 2014 at 2:00 p.m. to allow time for parties to submit a report from an appraiser as to the collateral's value. Therefore, the court will continue the hearing on the Objection to the same date with the expectation that before September 16, 2014, Debtor will resolve the Best Efforts Objection raised by Trustee

in anticipation of confirming a plan at the next hearing.

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

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

The Objection to the Chapter 13 Plan filed by the 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 September 16, 2014 at 2:00 p.m.

7. [14-25814](#)-C-13 DANIEL/ADRIANA NEVES
MDE-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.
6-27-14 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on June 27, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Objection to September 16, 2014 at 2:00 p.m. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bank of New York Mellon Trust Company, N.A., as serviced by Specialized Loan Servicing, LLC, objects to confirmation of Debtors' plan on the following grounds:

1. Pursuant to 11 U.S.C. § 1322(b)(5), the plan does not provide for the curing of the default on Creditor's claim.
2. Pursuant to 11 U.S.C. § 1325(a)(6), the plan does not provide how Debtors will be able to make all payments under the plan and to comply with the plan.

The court recognizes that Debtor is in the process of prosecuting a Motion to Value the secured claim of movant. A continued hearing on the Motion to Value is scheduled for September 16, 2014 at 2:00 p.m. It is likely that a resolution of the Motion to Value will resolve the pending Objection by movant and; therefore, the court will continue the Objection to the same date as the Motion to Value.

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

IT IS ORDERED that Objection to confirmation the Plan is continued to September 16, 2014 at 2:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Counsel for Debtor did not attend the First Meeting of Creditors held on July 3, 2014. The Meeting was continued to July 31, 2014. The Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. All sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtor is \$1,449 delinquent in plan payments to the Trustee to date and the next scheduled payments of \$1,449.00 is due on August 25, 2014. Debtors have paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 2, 2014. Twenty-eight notice is required. That requirement was met.

Final Ruling: The Motion for Compensation 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 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 court's decision is to grant the motion for compensation. No appearance required. The court makes the following findings of fact and conclusions of law:

FEES REQUESTED

Peter Macaluso, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. Counsel seeks \$1,155.00 in attorneys' fees and costs incurred in this case for services performed from May 10, 2014 through August 5, 2014.

Counsel substituted into the case with no retainer and agreeing to bill the case on an hourly basis. The FRBP 2016(b) Disclosure provides that Debtor and Counsel agreed that fees for legal services would be set at a rate of \$300.00 per hour.

Description of Services for Which Fees are Requested

Counsel broke-down his tasks in the following categories:

Task	Hours	Fees
Consultation	.5	N/C
Substitution of Attorney	.2	\$60.00
Rights and Responsibilities	.15	\$45.00

Opposition to Motion to Dismiss	.25	\$75.00
Motion to Modify	1.5	\$450.00
Appearance on Motion to Dismiss	.6	\$180.00
Opposition to Motion to Modify Review	.3	\$90.00
Response to Opposition	.25	\$75.00
Appearance on Motion to Modify	.6	\$180.00
TOTALS	3.85	\$1,550

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).

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged as services, the professional 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). A professional must exercise good billing judgment with regard to the services undertaken as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [legal fee] tab 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 professional is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

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

FEES ALLOWED

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:

Peter Macaluso: \$300.00 per hour

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate counsel and rates for the services provided. Additional fees and costs in the amount of \$1,155.00 are approved to be paid through the Debtor's Chapter 13 Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter Macaluso , Counsel for the Estate
Applicant's Fees and Expenses Allowed in the
amount of \$1,155.00,

which amount may be paid Counsel by the
Chapter 13 Trustee from unencumbered assets,
after full credit applied for any retainers or
prior amounts paid to Counsel.

10. [14-25918](#)-C-13 JERRY/SHARON CALL
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-10-14 [[36](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on July 10, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2014. Thirty-five days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

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

1. Debtor states the incorrect amount for total plan payments. In Section 6.01 of Debtor's modified plan, Debtor proposes a plan payment of \$61,650 total paid through month twelve (12) and then \$5,200 per month for the remainder of the sixty (60) month plan. To date, Debtor has actually paid a total of \$61,642.50 with the last payment of \$3,000 having posted July 1, 2014. Trustee would have no objection if this were corrected in the order confirming.
2. The amounts disbursed for pre-petition arrears is incorrect. Section 6.02 of the modified plan states, in part, "Wells Fargo Home Mortgage shall receive a total of \$3,161.79 through month twelve (12) of the plan" Trustee has actually disbursed a total of \$3,177.04 to Wells Fargo, with the last payment of \$15.25 being disbursed on June 30, 2014. Trustee would have no objection if this were corrected in the order confirming.

Debtor's Response

Debtors agree with the Trustee's objections and request the court grant the Motion to confirm with the proposed changes included in the order confirming the Chapter 13 plan.

Discussion

The court's decision is to grant the motion to confirm the chapter 13 plan with the expectation that the changes suggested by Trustee and agreed to by Debtor are incorporated into the language for the order confirming the plan.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtor did not appear at the First Meeting of Creditors held on June 26, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The Trustee lacks sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

Trustee's Supplemental Declaration

On July 25, 2014, the Trustee filed a supplemental declaration stating that the continued Meeting of Creditors has taken place and that Debtor appeared at the meeting. Trustee questioned whether Debtor had filed her last four years of taxes, to which she allegedly testified that she had not filed for 2013 and that she does not have an extension to file them. 11 U.S.C. §§ 1308 & 1325(a)(9).

Discussion

The court's decision is to deny confirmation. Debtor is not in compliance with 11 U.S.C. §§ 1308 & 1325(a)(9). 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.

13. [14-25622](#)-C-13 PETER/LUDA MELNIKOV
APN-1 Mark Shmorgon
Thru #15

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-17-14 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on June 17, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Objection to October XX, 2014 at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Secured Creditor, Wells Fargo Bank, N.A., objects to confirmation of Debtors' Chapter 13 plan. Debtor entered into a Home Equity Account Agreement with Secured Creditor in 2007 for a credit extension of \$200,600. The Agreement was secured by a Deed of Trust in 5929 Shirley Ave., Carmichael, California.

Secured Creditor objects to Debtors' Plan in that Debtors have listed the monthly payment amount to Secured Creditor as \$0.00 and have attempted to avoid paying Secured Creditor on their loan account. Debtors have also attempted to avoid paying Secured Creditor interest on its claims.

Secured Creditor further objects to Debtors' plan in that it lists Secured Creditor as a Class 2C claim without properly effectuating a valuation of secured creditor's secured claim.

Discussion

On July 1, 2014, the court heard Debtors' Motion to Value the secured claim of Wells Fargo Bank, N.A. The hearing on the Motion was continued to August 5, 2014 at 2:00 p.m. for creditor to complete an appraisal of the property. As of August 1, 2014, no appraisal has been uploaded to the docket and the court is tentatively prepared to set the

Motion to Value for an evidentiary hearing on **October XX, 2014** at **[time]**. Therefore, the court will continue the hearing on the Objection to the same date.

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 **October XX, 2014** at **[time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Objection to October XX, 2014 at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it relies on a Motion to Value the secured claim of Wells Fargo Bank, N.A. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

On July 1, 2014, the court heard Debtors' Motion to Value the secured claim of Wells Fargo Bank, N.A. The hearing on the Motion was continued to August 5, 2014 at 2:00 p.m. for creditor to complete an appraisal of the property. As of August 1, 2014, no appraisal has been uploaded to the docket and the court is tentatively prepared to set the Motion to Value for an evidentiary hearing on **October XX, 2014 at [time]**. Therefore, the court will continue the hearing on the Objection to the same date.

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 **October XX, 2014** at **[time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 29, 2014. Twenty-eight days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is set the Motion to Value Collateral for an evidentiary hearing on October XX, 2014 at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 5929 Shirley Avenue, Carmichael, California. The Debtors seeks to value the property at a fair market value of \$310,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$325,444.16. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$156,297.70.

Secured Creditor filed an objection to Debtor's Motion (Dkt. 23), asserting that the proper value should be \$545,000 for the purposes of valuing its secured claim. Debtor responded with a Broker's Price Opinion asserting a value of \$325,000 (Dkt. 27).

The court held a hearing on the matter on July 1, 2014 and continued the Motion for Secured Creditor to appraise the property. The court stated the matter would be set for trial in October if it was not resolved by the continued hearing date. As of August 1, 2014, neither party has uploaded a verified appraisal.

As there remains an outstanding issue of fact, the court's decision is to set the matter for an evidentiary hearing on October **XX**, 2014 at **[time]**.

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

holding that:

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

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

IT IS ORDERED that the Motion is to be set for an evidentiary hearing on **October XX, 2014** at **[time]**.

17. [14-25726](#)-C-13 TODD/DEBRA BURNS
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-8-14 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 8, 2014. Twenty-eight days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2355 Mormon Island Drive, El Dorado Hills, California. The Debtor seeks to value the property at a fair market value of \$572,643 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$648,197.73. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$130,468.15. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2355 Mormon Island Drive, El Dorado Hills, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$572,643 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2014. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modification was filed by Creditor, Wells Fargo Bank, N.A. and the Chapter 13 Trustee.

Prior Hearing

The court held a previous hearing on the Motion on May 20, 2014. At that hearing the court decided to continue the Motion as the two Objections related to a pending loan modification workout.

Wells Fargo Bank, N.A. was provided for in the plan as a Class 1 claim, with \$0.00 in arrears due. Debtor alleged she had "negotiated a loan modification of her first mortgage which reduces her ongoing payments and recapitalizes the arrearages, removing them from the plan." Wells Fargo objected to this treatment as there was no permanent loan modification in place approved by the court. (Dkt. 45).

The Chapter 13 Trustee filed a feasibility objection because Debtor's modified plan was reliant on Debtor receiving a permanent loan modification and Debtor has yet to receive the permanent offer. (Dkt. 49).

Motion for Approval of Loan Modification

On July 29, 2014, the court entered an order permitting Debtor to amend the terms of her loan with Wells Fargo Bank, N.A. pursuant to the Loan Modification Agreement attached as Exhibit C, Dkt. 66, in support of the

Motion.

As a result of the court approving Debtor's loan modification, the Chapter 13 Trustee withdrew its objection to Debtor's Motion to Modify the Plan. (Dkt. 75).

The court's decision is to grant the Motion to Modify the Chapter 13 Plan. The previous Objections arose out of the contingent nature of Debtor's loan modification. Debtor completed the trial period and receive approval to modify her loan with Wells Fargo Bank, N.A. via an order entered July 29, 2014 (Dkt. 74).

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 31, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [14-25927](#)-C-13 JEANINE HIGGINS CONTINUED MOTION TO VALUE
MMM-1 Mohammad M. Mokarram COLLATERAL OF SAFE CREDIT UNION
6-9-14 [[12](#)]

Final Ruling: The Motion to Value having been resolved via stipulation entered into between the parties and approved by the court on July 29, 2014 in an order granting (Dkt. 27), no appearance at the August 5, 2014 hearing at 2:00 p.m. is necessary.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor has not filed taxes for the four-year period preceding the filing of the petition. Specifically, returns were not filed for 2011, 2012, and 2013. See 11 U.S.C. §§ 1308 & 1325(a)(9).
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor is \$400.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$400.00 is due on August 25, 2014. Debtor has paid \$0.00 into the plan to date.

The court's decision to deny confirmation. 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2014. Forty-two days' notice is required. That requirement was met.

Tentative Ruling: 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 Trustee and a creditor having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to deny the Motion to Confirm the Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee and Creditor, Deutsche Bank National Trust Company, oppose confirmation of Debtor's plan.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes confirmation of Debtor's plan on the following grounds:

1. Debtor is \$1,210.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,710.00 is due on July 25, 2014. Debtor has paid \$44,485.77 into the plan to date.
2. Debtor may not have proposed the plan in good faith. 11 U.S.C. § 1325(a)(3).

Debtor did not list her social security income on Schedule I, despite having listed social security income of \$3,112.10 on the Statement of Financial Affairs.

Debtor's Original Plan provided for Select Portfolio Servicing, LLC's Class 1 mortgage arrears in the amount of \$58,000. Debtor has amended the Plan and change the amount owed to SPS, LLC for mortgage arrears to \$0.00. Debtor has not addressed this issue in the Motion or Declaration.

Debtor's original plan and the first amended plan provided

for Butte County's claim in Class 5 at \$1,960.00 and the Moretti Family Trust in Class 2 at \$80,000.00. Debtor has amended the plan and removed both of these debts without explanation.

3. Debtor's plan does not pass Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor has claimed no exemption in the funds paid to the Trustee, where \$42,985.57 appears to have been scheduled as Item 35 on Schedule B. Debtor is proposing a 0.00% dividend to unsecured creditors.

Creditor's Opposition

Creditor opposes confirmation of Debtor's modified plan based on the following:

1. Creditor is entitled to receive payments pursuant to a promissory note secured by a deed of trust on 2875 Marigold Avenue, Chico, California. As of March 7, 2014, the amount in default totaled \$57,339.60.
2. The proposed plan does not provide for the arrearage owed to Creditor. Pursuant to 11 U.S.C. §§ 1322(b)(2), (b)(5), and 11 U.S.C. § 1325(a)(5)(B), the proposed plan must provide for the full payment of the arrearage as well as ongoing monthly payments pursuant to the Note and Deed of Trust.

As outlined by the Trustee and objecting creditor, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

22. [14-24246](#)-C-13 CARL ASMUS AND JODI
DPC-1 CAMPISI ASMUS
Thru #23 Scott A. CoBen

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-5-14 [[36](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 5, 2014. By the court's calculation, days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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 having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Continuance

The hearing on this matter was continued from July 1, 2014 to this hearing date. Civil Minutes, Dckt. No. 51.

REVIEW OF MOTION

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons. First, the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 29, 2014. The Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. The meeting has been continued to June 26, 2014, at 10:30 am. Prior to the Meeting, Debtors' counsel contacted the Trustee's office indicating that Debtor could not attend, due to graduations scheduled for the same day. The Trustee does not oppose continuing this hearing on the Motion until after June 26, 2014.

Second, Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the Motion to Value the Secured Claim of JP Morgan Chase Bank, which is set for hearing on June 10, 2014. On that hearing date, the court continued the matter to permit Creditor JP Morgan Chase Bank, N.A. to obtain a full appraisal of the property. The Motion was continued to August 5, 2014 at 2:00 pm. Currently, the Debtor's plan does not have sufficient monies to pay the claims in full.

Third, Debtors' Plan does not provide for the secured debt of the Internal Revenue Service. Debtor lists this debt as a priority claim on

Schedule E, and provides for it as a Class 5 debt through the plan. The Internal Revenue Service filed a secured claim, Court Claim No. 1, and amended the claim on May 22, 2014, with an amount of \$8,869.47 as the amount of the secured claim. While the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtors either cannot afford the payments called for under the Plan because they have additional debts, or that Debtors want to conceal the proposed treatment of a creditor.

RESPONSE BY DEBTORS

Debtors respond by stating that they will attend the continued hearing on June 26, 2014. Debtors also state that they anticipate the Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A. being granted.

Because of a factual dispute over the value of the Debtor's real property, however, the Motion has been continued to August 5, 2014 to permit Creditor to obtain a residential appraisal and present its own evidence of value. Civil Minutes, Dckt. No. 44.

The Debtors state that they are "willing" to provide for the secured claim of the Internal Revenue Service by adding the following language to their plan in the order confirming:

The secured claim of the Internal Revenue Service shall be provide for as a Class 2 claim to be paid in full after payment of attorney fees.

Debtors acknowledge that the plan payment will need to be increased to \$5025 or \$35, which represents an increase of less than one percent of the plan payment, but do not propose that this revision be made in the order confirming. Because Debtors do not provide for this plan increase, and the Motion to Value the Secured Claim of JP Morgan Chase has not yet been resolved, the plan is not sufficiently funded, and 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.

23. [14-24246](#)-C-13 CARL ASMUS AND JODI CONTINUED MOTION TO VALUE
SAC-2 CAMPISI ASMUS COLLATERAL OF JPMORGAN CHASE
Scott A. CoBen BANK, N.A.
5-14-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 14, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to set the Motion to Value Collateral for an evidentiary hearing on [date] at [time]. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JUNE 10, 2014 HEARING

The court continued the hearing on the Motion to Value Collateral from the original date of June 10, 2014 to this hearing date, ordering that all discovery to be completed by August 5, 2014. Dckt. No. 44.

REVIEW OF MOTION

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 837 Morton Way, Folsom, California. The Debtors seek to value the property at a fair market value of \$510,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$135,807.00. Debtor requests the court to enter an order valuing the secured claim of J.P. Morgan Chase Bank, N.A. at \$0.00 based on the proposed valuation.

In response, J.P. Morgan Chase Bank, N.A. argues that its claim cannot be bifurcated under 11 U.S.C. § 506 because it believes the fair market value of the property exceeds that which Debtor reports. Creditor is in the process of retaining a Residential Appraiser to provide a full interior and exterior appraisal of the property.

Although the Motion was continued to allow the Creditor to present further evidence of its higher valuation of the subject property, nothing further on this matter has been filed on the court docket. The court will proceed to consider the Motion with the evidence presented.

The Debtors seek to value the property at a fair market value of \$510,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$135,807.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of J.P. Morgan Chase Bank, N.A.
secured by a second deed of trust recorded
against the real property commonly known as
837 Morton Way, Folsom, California, is
determined to be a secured claim in the amount
of \$0.00, and the balance of the claim is a
general unsecured claim to be paid through the
confirmed bankruptcy plan. The value of the
Property is \$510,000.00 and is encumbered by
senior liens securing claims which exceed the
value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

No Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JUNE 24, 2014 HEARING

The courts continued the hearing on this matter from June 24, 2014 to this hearing date. The court planned to address with Wells Fargo Bank, N.A. its loan modification practices and documentation provided to the court when requesting court approval of such modifications.

REVIEW OF THE MOTION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of Debtors' modified plan on the basis that it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and because the Plan may not be feasible. Debtor is delinquent \$265.00 under the terms of the proposed modified plan.

Additionally, the modified plan is based upon Debtors receiving a permanent loan modification. Trustee states that Debtor has not received a permanent loan modification offer, but rather, a trial loan modification which was filed as Dckt. No. 37. The Class 1 creditor has filed a claim, Court Claim No. 1, indicating \$6,366.52 in mortgage arrears, which are included in the confirmed plan. \$5,091.52 remains to be paid to the arrears claim. The terms of any permanent loan modification are not known at this time, including whether arrears will be capitalized. FN.1.

FN.1. The court filed its order on June 16, 2014, authorizing the Debtor to enter into a trial loan modification. Dckt. 65. That trial modification program requires payments to be made May 1, June 1, and July 1, 2014. Trial Loan Modification Agreement, Exhibit A, Dckt. 37. Clearly the time for the trial modification has not expired.

In her Reply filed on June 17, 2014, the Debtor has her counsel state, A permanent loan modification has been received by Counsel and will be set for hearing once Debtor has reviewed and signed the loan. Dckt. 60. As discussed below, no evidence of such permanent loan modification agreement has been provided to the court. Given that the trial period has not yet expired, it seems highly unlikely that the permanent loan modification documents have been drafted and are being executed. Though the Debtor may believe that by not providing testimony under penalty of perjury for a factual allegation give her an out to being truthful, it does not. Misrepresentations in all pleadings are subject to Federal Rule of Bankruptcy Procedure 9011, render the future statements of the party and arguments of counsel not credible, and may indicate that the Debtor is prosecuting this case in bad faith.

REPLY OF DEBTOR

Debtor states that they will be current on or before the hearing on this matter. Additionally, Debtor responds by stating that a permanent loan modification has been received by Debtor's Counsel and will be set for hearing once Debtor has reviewed and signed the loan.

SUPPLEMENTAL OBJECTION TO DEBTOR'S MOTION

Trustee states that the debtor is \$265.00 delinquent under the proposed plan. Another payment of \$265.00 will become due July 25, 2014. Debtor has paid \$42,650.00 through April 2014, payments of \$265.00 were to start on May, 2014. The Debtor has made one payment of \$265.00 posted on June 23, 2014. Debtor's reply, Dckt. No. 60 states a permanent loan modification has been received by counsel and will be set for hearing once the Debtor has reviewed and signed the loan.

Additionally, Trustee reiterates his second objection that the final terms of this loan modification have not been disclosed. While Debtor's Counsel has the contract, he has not incorporated or disclosed any of the terms; while the terms may not be different from the trial loan modification, the court has no evidence. Trustee argues that the Debtor cannot make the payments called for under the plan under 11 U.S.C. § 1325(a) (6).

RESPONSE TO SUPPLEMENTAL OBJECTION

Debtor responds by stating that she will be current on or before the hearing, and that she will also be filing the permanent loan modification on July 28, 2014. The motion will be set to be heard on August 26, 2014.

Exhibit A filed in support of the Motion to Approve the Loan Modification, Dckt. No. 75, appears to be a permanent Loan Modification Agreement entered between the Debtor and her husband as "Borrowers," and Bank of America, N.A., identified as the Lender. The loan modification agreement reduces the monthly principal and interest payment amount to

\$1,057.23 for the first three years of the new note period, an amount of \$1,230.24 for Year 4, and a monthly payment of \$1,342.82 for the rest of the note maturation, for Years 5-21. The Agreement was signed by Debtor and her spouse on July 23, 2014, and notarized on that same date. The Motion to Approve this agreement has been set for hearing on August 26, 2014. Dckt. No. 72.

Although the Debtor has now provided documentation showing that Debtor has been offered a permanent loan modification, Debtor has not filed further evidence showing that she is now current in payments under her confirmed plan. Thus, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 plan is not confirmed.

25. [13-34349](#)-C-13 DANNY/RENEE JOHNSON
CA-1 Michael David Croddy

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CRODDY AND
ASSOCIATES FOR MICHAEL D.
CRODDY, DEBTOR'S ATTORNEY(S)
7-12-14 [[55](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2014. By the court's calculation, 24 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Final Application for Fees has been 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Final Application for Fees. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FEES REQUESTED

Michael Croddy, Counsel for the Chapter 13 Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of July 27, 2013 through April 29, 2014.

Description of Services for Which Fees Are Requested

Counsel states that his work included meeting with the Debtors, document preparation and filing, and attendance at the Meeting of Creditors during the pre-confirmation period. Counsel conducted an initial consult for the petition filed on November 18, 2013, with Debtors, and spent 11.40 senior attorney hours on this case. Counsel explains that Debtors wished to file a Chapter 13 bankruptcy due to high income, debt, and to save their home. The applicant has been retained and has served as an attorney for the Debtors since the beginning of the case; prior to the filing of this case, the applicant received \$1,481.00.

DISCUSSION

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).

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 as legal 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 legal services undertaken 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 [legal fee] tab 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 is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services rendered the confirmation of a plan which provides for payments on liens secured by first and second deeds of trust against the Debtors' real property, and state and federal income taxes. The plan was confirmed on May 18, 2014, and provides a 25.00% dividend to unsecured claim holders. The court finds the services performed by the Applicant for the estate were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$375.00/hour for counsel for 11.40 hours and \$125.00/hour for a legal assistant for 7 hours. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$5,150.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of \$391.08 for postage and copying fees. The total costs in the amount of \$391.08 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$5,150.00
Costs and Expenses	\$ 391.00

For a total final allowance of \$5,541.08 in Attorneys' Fees and Costs in this 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 Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon

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

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

Michael Croddy, Attorney for the Chapter 13 Debtors
Applicant's Fees Allowed in the amount of \$ 5,150.00
Applicants Expenses Allowed in the amount of \$ 391.00,

\$4,060.08 (\$5,541.08 minus the \$1,481.00 previous received),
will be paid through the Chapter 13 Plan to the extent
available.

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Permit Debtor to Sell Property without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

Debtor proposes to sell certain property known as a 2006 930G Caterpillar Loader. Debtor states that the buyer has been "in the industry" and has clear knowledge of the value of the property. The buyer is listed as Jairid Depue, who Debtor states is an arms-length purchaser and not related to or an insider to the Debtor. Debtor states that he only knows the buyer because he works with Debtor in a closely related field and has known him from past work interactions. Debtor states that he is confident that funds received from Jared Depue will be the best price that could be achieved in the sale of this kind of property in the current market conditions, and that the offer meets and exceeds the value originally ascribed to the property.

The Motion also states that the Debtor has been involved in the industry for 55 years and has bought and sold numerous pieces of machinery in the process, and believes the offered price to be the best price attainable. The sale will not be obtained through an auction, thereby avoiding auctioneer costs as all of the proceeds will be delivered to the Trustee.

Debtor has not stated the grounds upon which he is requesting relief with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The Motion to Sell does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with

particularity the terms of the sale. Debtor attaches the proposed purchase agreement with Depue as Exhibit "A," Dckt. No. 141, but excludes critical details required to be incorporated into a Motion to Sell, including information regarding, for example,

- The proposed distribution of the proceeds;
- whether the liens secured by loans on the property will be satisfied through the funds received in the sale;
- information about overbidding procedures for potential bidders who may choose to appear at the hearing;
- what connection, if any, the Buyers have to Debtors;
- whether the broker or real estate agent, who appears to be Century 21 Select Real Estate and All Professional Realty in this case, will be paid commission, and if so, what percentage of the actual purchase price Broker will be paid upon consummation of the sale;
- whether Debtors are receiving any proceeds of the sale, or what will happen to any monies not disbursed to creditors holding claims secured by the property or paying the fees and costs allowed, etc.

The Motion does not comply with the requirements of Local Bankruptcy Rule 3015-1. Local Bankruptcy Rule 3015-1(b)(1) states that debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor must comply with LBR 3015-1(i).

Local Bankruptcy Rule 3015-1(i)(4) provides that:

Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

(A) The sale price represents a fair value for the subject property;

(B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;

(C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;

(D) The sale price is all cash;

(E) The debtor will not relinquish title to or possession of the subject property prior to

payment in full of the purchase price; and

(F) The sale is an arm's length transaction.

Debtor's Motion does not state whether the purchase price represents a fair value for the property, whether all creditors with security interests encumbering the property will be paid in full before or concurrently with the transfer of title from Debtors to buyers; the costs of sale; and whether the sale prices is all cash.

Based on the evidence before the court, the court cannot determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

OPPOSITION BY TRUSTEE

Trustee opposes the Debtor's Motion on two grounds. First, Trustee states that the proceeds from the sale must be paid to the Trustee in full based on the plan. Debtor's Declaration states in Paragraph 5, that "I understand and agree that if the net proceeds of the sale of this property exceed the amount claimed as exempt, the court may direct me to turn over all proceeds to this sale are not exempt, and therefore are 100% being turned over to the Chapter 13 Trustee for administration in my accordance with my plan."

The Debtor has claimed an exemption of \$7,625.00 of the \$204,000.00 in business assets listed on Schedule B, however, the Debtor does not indicate which of the assets is exempted.

Second, the Debtor's motion states that he is selling a 2006 930G Caterpillar Loader, however the Trustee is not certain that the asset listed on Schedule B as a 2006 CAT G.V. Loader valued at \$50,000.00 is the asset that is being sold. The Debtor is selling this asset for \$68,000.00, which is \$18,000.00 more than the Debtor's value.

Based on the evidence presented, the court cannot determine whether the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is denied.

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 sell property filed by the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 911 Bidwell Street, Unit J, Folsom, California. The Debtor seeks to value the property at a fair market value of \$150,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$176,866. Creditor Suntrust Mortgage's second deed of trust secures a loan with a balance of approximately \$43,904. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Suntrust Mortgage secured by a second deed of trust recorded against the real property commonly known as 911 Bidwell Street, Unit J, Folsom, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 3007-1(b) (2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 30, 2014. By the court's calculation, 35 days' notice was provided. 30 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection to Proof of Claim number 14 of the Employment Development Department and disallow in its entirety. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 14 on the court's official claims registry, asserts \$5,496.99 claim. The Debtor objects to the Proof of Claim on the basis that Debtor never incurred the listed debt with the creditor.

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).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does

not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

The subject proof of claim asserts a claim of \$5,496.99 based on taxes owed to governmental units under 11 U.S.C. § 507(a)(8). The claim appears to have been signed by Andria Rodriguez, a Tax Administrator with the Employment Development Department, on May 15, 2013. The Proof of Claim asserts that there is a total of \$3,909.96 owed for a priority claim under 11 U.S.C. § 507(a)(8), based on unpaid California payroll taxes under 11 U.S.C. § 507(a)(8)(c). This amount appears to be for taxes charged for the period starting on January 1, 1009 to December 31, 2010.

The claim also includes an attachment showing the itemization of unsecured claims against the Debtor, showing an outstanding penalty of \$1,469.38 incurred on December 4, 2012 and interest not included in the priority claim of \$117.75.

In his sworn declaration, the Debtor states that he had no employees during the relevant years of 2009 and 2010, and thus would have owed no taxes to the Employee Development Department. The Declaration of the Debtor, Sam Buerckert, states that he does not owe any taxes to the Employment Development Department for the years 2009 through 2010, because he did not have any employees during those years. Debtor states that he filed a worker's compensation waiver based on the fact that he had no employees with the Contractor's State License Board, and objects to Proof of Claim No. 14 on that basis. Dckt. No. 34.

The Creditor on this claim, the Employment Development Department, appears to have been duly served at their legal office in Sacramento, but has not filed a response to Debtor's Objection to Claim. The Debtor states that the taxes incurred with Creditor should not have been assessed on Debtor because Debtor did have any employees during the tax periods of January 1, 2009 to December 31, 2010. 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 Employment Development Department filed in this case 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 objection to Proof of Claim number 14 of the Employment Development Department is sustained and the claim is disallowed in its entirety.

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, and the Chapter 13 Trustee on July 8, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

CitiMortgage, Inc., which identifies itself as a secured creditor in this case ("Creditor"), opposes confirmation of the Debtor's proposed plan. The Creditor provides a brief history of the security interest On September 30, 2004, Debtor and Joan Dominno-Day (collectively, the "Borrowers") obtained a mortgage loan (the "Loan") from Countrywide Home Loans, Inc. in the original principal sum of \$312,000.00, reflected in a promissory note (the "Note") secured by a deed of trust (the "Trust Deed") encumbering the real property located at 7835 Bonny Downs Way, Elk Grove, California.

On October 11, 2011, the Borrowers entered into a Loan Modification Agreement with Citi (through its authorized agent, Bank of America, N.A.) whereby the principal balance of the Loan was modified (with a portion of the modified balance being deferred to the maturity date), the interest rate reduced to 5.00% per annum, and the maturity date extended to October 1, 2051.

Debtor's Plan lists Citi's claim in Class 4. By virtue of the inclusion of Citi's claim in Class 4, Debtor is representing that there are no pre-petition arrearages due on the Loan as of the date he filed his bankruptcy petition. Creditor asserts, however, that there are prepetition arrears due under the Note and Trust Deed. Creditor claims that there is an outstanding pre-petition escrow shortage due under the Loan in the amount of \$1,540.35, and that the plan misrepresents the loan.

Additionally, Creditor cites to the anti-modification provision of 11 U.S.C. § 1322(b)(2). 11 U.S.C. § 1322(b)(2) applies only to secured claims. This means that a wholly unsecured claim on the debtors' primary residence may be avoided. The anti-modification clause of section 1123(b)(5) does not apply to secured creditors holding completely unsecured claims, even if they are secured by the debtor's primary residence. See *In re Zimmer*, 313 F.3d 1220, 1226 (9th Cir. 2002); see also *In re Lam*, 211 B.R. 36, 40-41 (B.A.P. 9th Cir. 1997).

Creditor appears to indicate that there is still equity in the real property securing Creditor's interest in Debtor's residence; thus, Debtors cannot modify the rights of the Creditor. Creditor states that assuming *arguendo* that Debtor's inclusion of Citi's claim in Class 4 is intended as a proposed modification of the claim, such a modification is impermissible. Debtor's sworn schedules reflect that the Property is his principal residence; Creditor is therefore is protected by the anti-modification provisions of section 1322(b)(2). Creditor argues that the Plan violates section 1322(b)(2) to the extent it seeks to modify Citi's claim by eliminating the pre-petition arrearage due under the Loan.

The Debtor not having provided for the payment of the pre-petition escrow shortage due under the loan in the plan, and the Creditor's claim being impermissibly modified, 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.

30. [13-29771](#)-C-13 SEAN/CYNTHIA YATES
CA-2 Michael David Croddy

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF CRODDY AND ASSOCIATES, P.C.
FOR MICHAEL D. CRODDY, DEBTOR'S
ATTORNEY(S)
7-4-14 [[35](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 28 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Final Application for Fees has been 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Final Application for Fees. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FEES REQUESTED

Michael Croddy, Counsel for the Chapter 13 Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of February 21, 2012 through August 29, 2013.

Description of Services for Which Fees Are Requested

Counsel states that his work included meeting with the Debtors, document preparation and filing, and attendance at the Meeting of Creditors during the pre-confirmation period. Counsel conducted an initial consultation meeting for the petition filed on July 25, 2013 with Debtors, and spent 6.20 senior attorney hours on this case. Counsel explains that Debtors wished to file a Chapter 13 bankruptcy due to high income, debt, and desire to strip a second mortgage on their property. The applicant has been retained and has served as an attorney for the Debtors since the beginning of the case; prior to the filing of this case, the applicant received \$1,781.00.

DISCUSSION

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).

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 as legal 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 legal services undertaken 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 [legal fee] tab 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 is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services rendered the confirmation of a plan on October 8, 2013, which provides for monthly payments of \$983.00 to be disbursed to creditors Toyota Financial and Chase for a 2012 Toyota Tundra and second deed of trust on Debtors' real property, and for payments made to Creditors holding security interests in Debtors' 2012 Ford Expedition, a timeshare, and the first deed of trust in real property outside of the plan as Class 4 Creditors. The plan also provides a 1% dividend to unsecured claim holders in Debtors' case. The court finds the services performed by the Applicant for the estate were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$375.00/hour for counsel for 6.20 hours and \$125.00/hour for a legal assistant for 5.50 hours. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$3,012.50 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of \$406.16 for postage and copying fees. The total costs in the amount of \$406.16 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$3,012.50
Costs and Expenses	\$ 406.16

For a total final allowance of \$3,418.66 in Attorneys' Fees and Costs in this 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 Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Michael Croddy, Attorney for the Chapter 13 Debtors
Applicant's Fees Allowed in the amount of \$ 3,012.50
Applicants Expenses Allowed in the amount of \$ 406.16,

\$1,637.66 (\$3,418.66 minus the \$1,781.00 previous received from Debtors) will be paid through the Chapter 13 Plan to the extent available.

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

Final Ruling: 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. No appearance required.

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 May 22, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Value and determine the creditor's secured claim to be \$0.00. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JULY 1, 2014 HEARING

The court continued this matter to this hearing date to permit the Creditor to submit an authenticated appraisal and other evidence presenting Creditors own valuation of the property located at 3533 Mission Avenue, Carmichael, California.

REVIEW OF THE MOTION

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 3533 Mission Avenue, Carmichael, California. The Debtors seek to value the property at a fair market value of \$213,276.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$233,161.83. Creditor JP Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$249,973.58. Debtors argue that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

OPPOSITION BY CREDITOR

Creditor JPMorgan Chase Bank, N.A. ("Creditor"), essentially argues

that is junior lien is not subject to avoidance under 11 U.S.C. § 506(d) because the Creditor's claim is not wholly unsecured.

Debtor asserts that the fair market value of the subject property exceeds the alleged balance owed on Debtors' First Deed of Trust. Debtors allege that the fair market value of the Subject Property is \$213,276.00, and that it is encumbered by a First Deed of Trust in favor of Bank of America, N.A.. in the amount of \$233,161.00. However, Creditor believes the fair market value of the Subject Property exceeds the balance of the First Deed of Trust.

Creditor states that it has retained a Residential Appraiser to provide a full interior and exterior appraisal of the Subject Property. Creditor states that their hired Residential Appraiser has conducted the inspection of the Subject Property, and that the Creditor is waiting for the appraisal report to be prepared. Creditor requests that this matter be continued so Creditor can obtain a verified appraisal of the Subject Property. Dckt. No. 53.

The court not having received an authenticated, competing valuation from the Creditor on its estimated value of the property, the court will proceed to rule on the evidence of value provided by the Debtor. The Debtors assert that the fair market value of the home is \$213,276.00 as of the petition filing date.

The first deed of trust secures a loan with a balance of approximately \$233,161.83. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$249,973.58. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3533 Mission Avenue, Carmichael, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$213,276.00 and is encumbered by senior liens securing claims which

exceed the value of the Property.

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 2, 2014. Forty-four days' notice is required. That requirement was met.

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

The court's tentative decision is to overrule the Objection to Proof of Claim number 8 of Bank of American, N.A. allow the claim. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

At the June 24, 2014 hearing held on this matter, the court continued the hearing on this matter to this hearing date. Civil Minutes, Dckt. No. 50.

Review of Objection

The Proof of Claim at issue, listed as claim number 8 on the court's official claims registry, asserts \$51,017.55 claim. The Debtor objects to the Claim on the basis that the claim was filed after the date set for filing claims pursuant to FRBP 3002(c).

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, Debtor objects to the late filed proof of claim of Bank of America, N.A. The deadline for filing a Proof of Claim in this matter was January 2, 2014. The creditor's claim was filed April 9, 2014.

On March 6, 2014, Creditor filed a Motion to Allow Late Claim. The court entered a Civil Minute Order on April 14, 2014 denying the Motion without prejudice to Creditor filing a proof of claim. The court noted that its order does not touch on the propriety or authenticity of such a proof of claim.

Creditor's Opposition

Creditor requests that the court allow its late filed proof of claim. On October 16, 2013, the court entered a Civil Minute Order valuing the balance of Creditor's secured claim at \$0.00 with the balance of the claim to be general unsecured, paid through the confirmed plan.

On August 29, 2013, Debtor filed a proposed Chapter 13 plan and included the treatment of the secured portion of Creditor's claim in Class 2, where the value is \$0.00 but the claim was \$50,627. And included that unsecured portion in Class 7 to be paid a 1% dividend.

The amount reflected in the plan, Class 7 was a total of \$52,925. Debtor's Schedules A and F include Creditor's with an unsecured claim of \$50,925. The total amount of Debtor's Schedule F unsecured debt is \$2,298. Therefore, Creditor asserts it is clear that the \$52,925 combined in Class 7 of the plan included Creditor's unsecured claim from Schedule A.

The Order Confirming the Plan was entered October 28, 2013.

Creditor argues that the allowance of the late filed claim does not prejudice the estate because the claim was provided for in the confirmed Chapter 13 Plan.

Debtor's Response

Debtor argues that the Creditor failed to follow the rules and the claim should not be allowed.

Discussion

The court's decision is to allow the claim in its entirety. The court retains the right to extend the time for filing a proof of claim for cause. FRBP 3003(c)(3). Here, the court is cognizant of the fact that Debtor prepared and confirmed a plan that clearly contemplated treatment of the claim at issue. Debtor caused a Motion to Value the secured value of the claim to be decided, provided for treatment of the claim in Classes 2 and 7 of the plan, and confirmed a plan with treatment of the claim included.

The court denied a Motion to Allow Claim by Bank of America, N.A. without prejudice to filing a proof of claim. The court reviewed Bank of America, N.A.'s proof of claim and is convinced of its authenticity given the extensive documentation attached to the proof of claim form.

There is no prejudice to the Debtor or the estate in allowing this claim as Debtor prosecuted and confirmed a plan with treatment of this claim in mind.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. 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 Asset Acceptance LLC filed in this case 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 objection to Proof of Claim number 8 of Bank of America, N.A. is overruled.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on July 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on three grounds. First, it appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor lists a deduction of \$126.50 for life insurance on Line #32 of Form B22C; however, the Debtor does not list an expense for life insurance on Schedule J.

Second, it appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$235.00 for 60 months with a 14% dividend to unsecured creditors, which totals \$11,296.00. Form B22C reflects income of \$2,340.00, according to page 8 of Form B22C, this income is from pig and goat farming. Debtor has listed negative \$433.00 on Schedule I, which appears to be from the Pig and Goat Farming and reflects a livestock trailer, 12 pigs, and 12 goats on Schedule B. Debtor has not provided an attachment to Schedule I to show Debtor's gross income and expenses from this business.

Third, it appears that the Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$16,278.00, but the Debtor is proposing a 14% dividend to the unsecured claim holders, which totals \$11,296.00. The following assets are non-exempt: cash, a checking account, a 1999 Chevrolet Silverado, a 2006 Chevrolet Cobalt, a 1974 John Deere Tractor, pigs and goats, and a 2007 Chevrolet Malibu not fully exempt on Schedule C.

RESPONSE BY DEBTORS

The Debtors respond by stating that:

1. The Trustee has raised in the objection the fact that Debtors failed to provide a \$126.50 payment of life insurance. Debtors have amended their Schedule J and filed the amendment on July 11, 2014.
2. The Trustee has raised in the objection the fact that Debtors failed to provide an attachment to Schedule J showing gross income and expenses from the business. Debtors amended their Schedule J and filed the amendment on July 11, 2014. The Opposition states that this was a software oversight that Counsel's office has corrected the error for future matters.
3. The Trustee has raised in the objection the fact that the plan fails the Chapter 7 liquidation analysis. Debtors believe that the Trustee is failing to account for cost of sale and Trustee percentage that would be taken in a Chapter 7 liquidation. Furthermore, Debtors believe the Trustee is using incorrect, gross numbers for the calculations.

Taking into account the Trustee's fees that will be taken out of the monies disbursed, and the costs of sale for Debtors' non-exempt property, it appears that unsecured claim holders in this case will have received as much as such creditors would have in a Chapter 7 case, and that the plan meets the Chapter 7 Liquidation Analysis. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 30, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Trustee objects to the confirmation of Debtor's plan on the basis that Debtor has not provided a declaration from his girlfriend, indicating that she is in support of the arrangement for his mortgage adjustment payments or that she has the ability to contribute funds to the Debtor on a monthly basis. Debtor's modified plan proposes to increase his plan payments due to a mortgage adjustment.

The Debtor's Declaration, Dckt. No. 49, states that he will be receiving \$491.96 per month from his girlfriend to afford the increased plan payment. Debtor has included this monthly contribution on his amended Schedule I filed as Exhibit A, Dckt. No. 50, but has not provided evidence that his girlfriend is in support of the and that she is able to cover the payments mentioned.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. There is no monthly dividend for attorney fees in Section 2.07 of the Plan.
2. It appears that the plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$3,316.00 for 60 months with a 0% dividend to unsecured creditors. Debtors' 2013 tax return reflects that Debtors received a refund of \$5,287.00, but Debtors have not proposed to pay any future tax refunds into the Plan or charge their income tax withholdings so that they will not receive a large tax refund.
3. Debtors provide for the debt of the County of Sacramento in Class 1 of the Plan, but it appears that this debt matures prior to the completion of the Plan, and should be provided in Class 2A.
4. Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$147,532.00, and the Debtor is proposing a 0% dividend to unsecured claim holders. The following assets are non-exempt: \$136,901.00 from the real property on Schedule A, and \$10,631.00 from the over-exemption of the use of California Civil Code of Procedure § 703.140(b)(1)(5)

on Schedule C. The total amount allowed is \$26,925.00 and Debtor has exempted \$37,556.00.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) on July 3, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not provided the Trustee with Business Documents, including the Questionnaire, 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). . This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). A business questionnaire and request for documents was mailed to Debtor on June 3, 2014.
3. Debtor's Plan also omits the following required information:

Mortgage: Class 1 of Debtor's plan lists only a total payment of \$980.00 on the totals line. The plan omits the creditor's name,

amount of mortgage arrears, amount of arrears dividend, and amount of monthly contract installment. Debtor testified at the First Meeting of Creditors on June 26, 2014, that the creditor is OneWest Bank, that he has not paid the mortgage in approximately three years, and the contract payment is \$4,700.00 per month. In Debtor's prior case, creditor OneWest Bank filed an Objection to Confirmation indicating that arrearage due at the time were \$342,540.81, which included 55 delinquent mortgage payments, in which the payment amount was \$5,070.23.

Vesting of Property: Section 5.01 of the plan has neither box checked, so it does not indicate if the property of the estate reverts in Debtor upon confirmation which means by law it vests upon confirmation. The Trustee is not certain if the Debtor intended this result.

Additional Provisions: Section 6 of the plan fails to indicate if additional provisions are appended to the plan, though none are attached.

4. Debtor admitted at the Meeting of Creditors that there is a second mortgage on his property. The plan and Schedules do not disclose a second mortgage. Creditor JPMorgan Chase has filed a claim, Court Claim No. 1, for \$219,362.23, with \$39,941.37 of arrears. The claim attachments indicate that the debt is for an equity credit line against real property located at 1788 Park Oak Drive, Roseville, California, and that the last payment received was March 1, 2009, and that sixty-three payments have since come due. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.
5. The plan calls for payments of \$100.00 per month for thirty-six months. The plan payment is insufficient to fund the Class 1 mortgage payment.
6. Debtor's Schedule I lists on Line 8a net business income of \$5,900.00 per month. Schedule B, Item #13 fails to list Debtor's business. Item No. 29 does not list any business machinery, fixtures, equipment and supplies. The Statement of Financial Affairs, Dckt. No. 18, page 25, Item No. 18 does not list a business.
7. Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtors' testimony at the First Meeting of Creditors held on June 26, 2014. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not

jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver failed with the court after reviewing the docket.

8. Debtor's Schedule I lists on Line 8a business income of \$5,900.00 per month. Debtor testified that this is the net amount after business expenses are deducted. Debtor has not filed a statement of detailed business expenses as an attachment to Schedule I.
9. Debtor's plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is below median income according to Form 22C, the Statement of Current Monthly Income, Dckt. No. 19. Debtor lists the net \$5,900.00 business income on line 3a, while the form calls for the gross amount of business income. Trustee is unable to determine if Debtor is truly below median as gross business income is not disclosed.
10. Debtor has not completely filled out the Statement of Financial Affairs. Item No. 1 lists income of \$29,500.00 from Monolit Builders, Inc. and does not indicate the date. The form calls for year to date gross income as well as gross income received during the two years immediately preceding this calendar year. Item No. 3 calls for payments made to creditors within 90 days of the commencement of the case unless it is less than \$600.00. The "none" box has been left blank, however no payments to creditors are listed. Item No. 16 calls for the name of the Debtor's spouse and any former spouse. Debtor testified that he is married, but the box is marked "none." Item No. 18 calls for the nature, location, and name of business. The box is marked "none," though Debtor has disclosed business income.

Based on the foregoing, 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.

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 and Debtor's Attorney on July 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtors' testimony at the First Meeting of Creditors held on June 26, 2014. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver filed with the court after reviewing the docket.

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 Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Debtor is denied the exemptions claimed in Debtor's cash on hand made pursuant to Cal. Code Civ. P. § 703.140(b)(5); checkings and savings based on Cal. Code Civ. P. § 703.140(b)(5); exemption in household goods and furnishing claimed pursuant to Cal. Code Civ. P. § 703.140(b)(3); books and pictures made under Cal. Code Civ. P. § 703.140(b)(3); wearing apparel claimed under Cal. Code Civ. P. § 703.140(b)(3), and the exemptions claimed in the Ford F 150 (2010) and Ford Fusion (2010 Salvaged) made under Cal. Code Civ. P. § 703.140(b)(3).

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*), Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

OneWest Bank N.A. fka OneWest Bank, FSB ("Creditor") objects to the confirmation of the Debtor's Chapter 13 Plan. The Creditor states that it will file its Proof of Claim in the approximate amount of \$1,112,018.19, including arrearage in the approximate amount of \$329,851.52, for a claim secured by the real property commonly known as 1788 Park Oak Drive, Roseville, California 95661 (the "Property").

The Creditor objects to the Debtor's Chapter 13 Plan on the following grounds:

1. Pursuant to 11 U.S.C. §1322(b)(5), the plan fails to provide for the curing of the default on Secured Creditor's claim. According to the plan, the Debtor has not provided for Secured Creditor's claim, including the pre-petition arrears due to Secured Creditor. The arrearage on Secured Creditor's claim is in the approximate amount of \$329,851.52. Debtor does not provide for post-petition regular monthly payments due to Secured Creditor.
2. Pursuant to 11 U.S.C. §1325(a)(6), the Plan does not provide how Debtor will be able to make all payments under the Plan and to comply with the Plan. According to the plan, Debtor's will make monthly payments of \$100.00 for 36 months to the Trustee for a base plan amount of \$3,600.00-- this amount will be insufficient to fund the plan once the arrears on Secured Creditor's claim, an additional

\$329,851.52, is fully provided for.

Based on the Creditor's above objections, regarding the Debtor's omission of payments for the pre-petition arrearage on Creditor's claim in the plan, and insufficient monies to pay the claim in the plan, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court is also sustaining the Objection made by the Trustee, opposing confirmation of Debtor's proposed plan, on this hearing date (Objection, DPC-2). The present objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor 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.

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

Correct Notice Not Provided. No Proof of Service was filed on the docket.

Tentative Ruling: The Motion to Extend Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

On June 11, 2014, the court entered an order granting Debtor's Ex Parte Motion to Extend the Automatic Stay, on an interim basis through August 15, 2014. The court further ordered that a final hearing on the Motion shall be held July 29, 2014. Before July 20, 2014, Debtors were to file Supplemental Pleadings in support of the Motion and Notice of Hearing, and serve the Original Pleadings, Supplemental Pleadings, and notice of the Final Hearing. Any Opposition to the Motion was to be filed on or before July 15, 2014, with any Reply due by July 22, 2014.

At the hearing on July 29, 2014, the court continued the hearing to permit Debtor's counsel to upload the missing certificate of service for the Motion to Extend the stay.

On August 1, 2014, Debtor's counsel uploaded a Notice of Continued Hearing regarding the Motion and a Certificate of Service. The Certificate of Service states that the Motion, Notice, Declaration, and Order Granting Temporary Stay Extension were served on the U.S. trustee, Chapter 13 Trustee, and Deutsche Bank National Trust Company. As the Motion has been properly served, the court will entertain the requested relief.

Requested Relief

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. A review of Debtor's past filings shows that this is Debtor's third bankruptcy case pending within the last year.

Debtor's first case was file October 29, 2013 (13-33887) and was

dismissed on February 20, 2014 because Debtor did not make plan payments and did not provide the Chapter 13 Trustee with requested tax documents. Debtor's second case was filed on March 5, 2014 (14-22263) and was dismissed on June 3, 2014 because Debtor did not attend the Meeting of Creditors and did not provide the Trustee with requested tax documents. The instant case is Debtor's third and was filed on June 11, 2014. Pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon entry of the June 11, 2014 order, the automatic stay was extended through August 15, 2014.

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

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

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

Here, Debtor argues that the instant petition was filed in good faith. He previously had trouble attending the Meeting of Creditors because he does not have a driver's license and is currently residing in Texas with his daughter and son-in-law. Debtor and his daughter will be back in California in July, as his son-in-law will soon be discharged from his Army post in El Paso, Texas.

As for the tax documents, Debtor states that he had not filed taxes for the past five years and was not in possession of any tax documents when the Trustee requested the information.

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, unless terminated by further order of this court.

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

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

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

IT IS ORDERED that the Motion is

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