

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 16, 2016 at 2:00 P.M.

1.	15-29802 -C-13	GWENDOLYN WHITE	MOTION TO CONFIRM PLAN
	MMN-3	Michael Noble	6-10-16 [56]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2016. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$1,869 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,110 is due on July 25, 2016. Debtors have paid \$5,121 into the plan to date.
2. Debtor is delinquent \$1,600 to Wells Fargo Bank for adequate protection.

Discussion

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

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

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

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

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

2. [16-22309](#)-C-13 ANN MCCLAUGHLIN
DPC-1 Seth Hanson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
5-18-16 [[13](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 18, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtors did not appear at the First Meeting of Creditors held on May 12, 2016. Pursuant to 11 U.S.C. § 343, Debtors are required to appear at the meeting.
2. Debtors have failed to file all pre-petition tax returns required for the four years preceding the filing of the petition.
3. The plan will not complete within 60 months as required by 11 U.S.C. § 1322(d).

Debtor's Opposition

The Trustee objects to confirmation of Debtor's plan based on the following: (1) Debtor's non-appearance at the initially scheduled 341 meeting; (2) the 100% plan will not complete in 60 months in light of the unsecured proof of claim filed by BMW Financial Services and the proof of claim filed by the IRS; and (3) Debtor may not have filed the last 4 years worth of tax returns.

Debtor believes the first and last objections have been resolved. Debtor respectfully asks the Court to continue the confirmation hearing for two months to allow her to resolve objection number 2.

Discussion

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

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

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

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

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

3. [16-23214](#)-C-13 LYUBOV ROMANOVICH
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-13-16 [[22](#)]

Also #4

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
2. Debtor is \$70.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$70.00 is due prior to the hearing on this matter. Debtor has paid \$0.00 into the plan to date.
3. The plan fails the liquidation analysis.

The court has considered the Trustee's reasons for dismissal and finds them to be valid. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

4. [16-23214](#)-C-13 LYUBOV ROMANOVICH
JCW-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY MTGLQ INVESTORS, LP
7-14-16 [[30](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

The court's decision is to sustain the Objection.

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

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By altering the arrearage amount owed, the Plan violates 11 U.S.C. § 1322(b)(2)'s anti-modification provision. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

Discussion

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 x MTGLQ

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

IT IS ORDERED

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

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on July 1,
2016 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

6. [16-23627](#)-C-13 ALEXANDAR POLUPAN
Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
7-21-16 [[24](#)]

Thru #9

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

The court's decision is to overrule the Objection.

The debtor was dismissed on August 3, 2016 thereby making the Objection moot.

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

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

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

IT IS ORDERED

that Objection to confirmation the Plan is
overruled as moot.

7. [16-23627](#)-C-13 ALEXANDAR POLUPAN
Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
7-28-16 [[35](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

The debtor was dismissed on August 3, 2016 thereby making the Objection moot.

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

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

The Objection to
the Chapter 13 Plan filed by HSBC Bank USA,
N.A. having been presented to the court, and
upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED

that Objection to confirmation the Plan is
overruled as moot.

8. [16-23627](#)-C-13 ALEXANDAR POLUPAN
AP-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK TRUST
COMPANY AMERICAS
7-21-16 [[27](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

The court's decision is to overrule the Objection.

The debtor was dismissed on August 3, 2016 thereby making the Objection moot.

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

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

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

IT IS ORDERED

that Objection to confirmation the Plan is
overruled as moot.

9. [16-23627](#)-C-13 ALEXANDAR POLUPAN
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-19-16 [[20](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

The court's decision is to overrule the Objection.

The debtor was dismissed on August 3, 2016 thereby making the Objection moot.

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

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

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

IT IS ORDERED

that Objection to confirmation the Plan is
overruled as moot.

10. [16-23235](#)-C-13 THOMAS/MODESTA HUSNICK
DPC-1 Eric Nixdorf

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-6-16 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2016. Fourteen days' notice is required. That requirement was met.

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

1. The plan classifies Patelco's two claims in Class 2, when one of the claims should be classified as Class 4 as the length extends beyond the length of the plan.
2. The plan fails to propose a monthly dividend to administrative expenses such as attorney's fees.
3. There is no evidence that deductions for retirement plans are reasonably necessary.

Debtor's Opposition

The Trustee recommended that Debtor's attorney file the amended plan correctly classifying the Patelco claim after the conclusion of the 341

meeting.

Trustee's Reply

The amended plan still misclassifies Patelco's claim.

Discussion

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 29, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-21870) was filed on March 25, 2016 and dismissed, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

The Trustee filed a statement of nonoposition.

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

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

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

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

Here, the plan was a skeletal filing by a pro se debtor. Debtor now has counsel. The extension is necessary to protect the debtor's automobile from being sold at a repossession auction.

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

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

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

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

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

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

12. [15-22040](#)-C-13 MILDRED JONES
PGM-1 Peter Macaluso

MOTION TO MODIFY PLAN
7-6-16 [[40](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on July 6,
2016 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

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

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

Below is the court's tentative ruling.

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

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

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors have failed to file all pre-petition tax returns required for the four years preceding the filing of the petition.
2. The plan exceeds 60 months - the maximum amount of time allowed under 11 U.S.C. § 1322(d).
3. The plan provides for adequate protection payments to Bosco Credit, LLC and refers to prior disbursements but does not identify when they were made and whether debtor advised the trustee.
4. The plan fails to provide for the priority claim of the EDD.

Discussion

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

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

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

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

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

14. [16-23744](#)-C-13 STEVE/LISA BLANKENSHIP
DPC-1 Richard Chan

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-19-16 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 19, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

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

1. The plan relies on the a pending motion to avoid lien of American Express Bank set for hearing on July 26, 2016. Dkt. 28.

Debtor's Opposition

The motion to avoid lien was granted.

Discussion

The motion to avoid lien was granted thereby resolving the Trustee's sole objection to confirmation. The Plan does complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 9, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [16-23745](#)-C-13 SCOTT/MELANIE MACKNIGHT
APN-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-24-16 [[12](#)]

Also #16

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that the plan significantly undervalues, according to NADA guidelines, the vehicle that is the collateral of Creditor's secured claim.

Discussion

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 Wells Fargo Bank,
N.A. 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.

16. [16-23745](#)-C-13 SCOTT/MELANIE MACKNIGHT
DPC-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-19-16 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 19, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The plan relies on a motion to value collateral being filed and granted for Wells Fargo Dealer Services.

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

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

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

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

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

17. [16-23251](#)-C-13 RICHARD O'BRIEN
DPC-1 Pro Se

TRUSTEE'S OPPOSITION TO
DEBTOR'S MOTION TO VACATE
DISMISSAL
7-27-16 [[29](#)]

DEBTOR DISMISSED: 06/17/2016

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

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

Below is the court's tentative ruling.

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

Incorrect Notice Provided. No Proof of Service filed. Twenty-eight days' notice is required.

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

The court's decision is to deny the Motion to Vacate Dismissal.

Debtor moves the court for an order to vacate the dismissal entered on June 17, 2016 due to excusable neglect.

Trustee's Opposition

The Trustee request the court deny the motion due to Debtor not filing documents timely. There is no evidence supporting the motion. Debtor did not explain why there was not enough time to file documents. Debtor appears to have had multiple prior filings under different names. Four cases, including this case, were all dismissed for failure to file documents. (Nos. 15-27496, 15-29758, 16-21623).

Legal Standard

Rule 60(b)

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

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

Discussion

As the Trustee points out, There is no evidence supporting the motion. Debtor did not explain why there was not enough time to file documents. Accordingly, the motion is denied.

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

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

18. [16-23554](#)-C-13 ANGELA WILSON
DPC-1 Paul Bains

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-13-16 [[18](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

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

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

The court's decision is to overrule the Objection.

The Chapter 13 Trustee filed an Supplemental Ex Parte Motion seeking to dismiss this Objection. Dkt. 28.

The court has considered the Trustee's concerns and finds them legitimate. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED

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

IT IS ORDERED

that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 31, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [16-23656](#)-C-13 WILLIAM/LORI CARPENTER
SS-2 Scott Shumaker

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK, N.A.
7-14-16 [[27](#)]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Value secured claim of JP Morgan Chase Bank, N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 5028 El Cemente Avenue, Davis, California. The Debtors seeks to value the property at a fair market value of \$660,342.00 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 \$727,931.11. JP Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$66,529.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Stipulation

The parties entered into a stipulation that states Creditor's claim shall be allowed as a non-priority general unsecured claim. Dkt. 33.

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' 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 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 JP Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5028 El Cemente Avenue, Davis, 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 confirm bankruptcy plan. The value of the Property is \$660,342.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

Also #21

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Incur Debt is -----.

The motion seeks permission to purchase a 2016 Honda Civic EX, which the total purchase price is \$24,086.33 at 15.99% interest, with monthly payments of \$522.34.

The purpose for seeking the purchase of the vehicle and loan is the debtor was previously provided a company vehicle. Due to a policy change, the company vehicle is no longer provided and the debtor needs a vehicle for work.

The motion states that the debtor can afford the payments under the current plan in that the loan modification provided by creditor Wells Fargo, approved by minute order on April 1, 2015 (DCN: PLC-12) lowered the monthly obligation by \$1,172.25 per month thereby giving us the ability to make the payments.

Trustee's Opposition

The interest rate is high, and the Debtor provided no evidence of

"shopping around" at other dealerships.

Discussion

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

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 15.99%. The Debtor provided no evidence of "shopping around" at other dealerships. Without evidence that the proposed vehicle is the most feasible deal that debtor could secure, the court is not prepared to grant the motion at this time.

The motion is denied.

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

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

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

IT IS ORDERED that the Motion is denied.

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. The Debtor failed to give 35 days notice.
2. The plan exceeds 60 months - the maximum amount of time allowed under 11 U.S.C. § 1322(d).
3. Trustee is uncertain of Debtor's monthly net income and ability to make plan payments.

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

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

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

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

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

22. [16-23359](#)-C-13 JOSE ESPARZA
DPC-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-6-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors plan may not be Debtors' best effort under 11 U.S.C. § 1325(b). Debtors' schedule I lists a repayment of a retirement fund loan of \$102.79 per month. Debtor testified at the first meeting held on June 30, 2016 that the loan will be paid off in November 2016. Debtors' plan proposes to pay \$100 per month for 60 months. The plan payment does not increase after the retirement loan is paid off.

DEBTOR'S RESPONSE

Debtor responds to the Trustee' objection and proposes to step up his chapter 13 plan payments when his 401k loan ends November 2016. Starting on the seventh month of the plan (December 2016), Debtor will increase his payment to \$203 per month for the remaining 54 months left in the plan. Accordingly, general unsecured creditors will receive no less than 4%. Debtor requests that the order confirming plan reflect these changes.

DISCUSSION

Debtors' schedule I lists a repayment of a retirement fund loan of \$102.79 per month, which will be paid off in November 2016. Debtor proposes step up in plan payments beginning December 2016, from \$100 per month to \$203 per month, resulting in general unsecured creditors receiving 4%. Debtor has resolved Trustee's basis for objection, and the objection is overruled. The court will order that the order confirming plan reflect the increase in plan payments and confirm the plan.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 24, 2016 is confirmed, and counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language: "IT IS FURTHER ORDERED that starting on the seventh month of the plan (December 2016), Debtor will increase his plan payments to \$203 per month for the remaining 54 months left in the plan." Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [16-21966](#)-C-13 TANIA PEREZ
DPC-1 Thomas Gillis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
5-11-16 [[13](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 11, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the objection, and the plan is not confirmed.

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

1. Debtor is \$135 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$135 is due May 25, 2016. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

The Trustee reports that Debtor is now current.

2. Debtor does not appear to be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule I reflects income of \$133. When examined at the 341 meeting, Debtor stated no knowledge

of this source of income.

3. Debtor claims an exemptions in 4 bank accounts under CCP 704.070. Instead of reporting the amount to be exempt, she enters 75%. By failing to designate an amount, Debtor causes Trustee an administrative burden. Trustee determined the amount not exempt is \$232.
4. Debtor indicated at her 341 meeting on May 5, 2016, that she was recently married and now has an additional last name of Vasquez, which is not reported on the voluntary petition.

JUNE 14, 2016 HEARING

At the hearing, the court set the Objection for final hearing at 2:00 p.m. on August 16, 2016. Opposition was to be filed and served on or before July 5, 2016, and reply, if any, filed and served on or before July 26, 2016.

DEBTOR'S RESPONSE

On August 9, 2016, Debtor filed a response to Trustee's motion, asserting:

1. Trustee has confirmed that Debtor is now current on plan payments.
2. The \$133 per month income that Debtor could not explain at the first meeting of creditors is for "tax over withholding." The \$133 in income represents the expected tax refunds that debtor receives each year. In 2015, Debtor received tax refunds of \$976 from the federal return and \$617 from the state return, amount to \$1,593, which divided by 12 months is \$132.75. Thus, in preparing plans, Debtor's counsel routinely schedules the refunds as additional income for debtors.
3. Debtor is filing an amended schedule C to schedule an actual amount instead of 75%.

Having corrected the deficiencies, Debtor requests the plan be confirmed.

DISCUSSION

Debtor has not corrected the deficiencies raised by Trustee to the satisfaction of the court. Although Debtor has sufficiently explained the \$133 in additional income, which issue was raised at the first meeting, and the docket reflects that Debtor has filed an amended schedule C, Dckt. 33, reflecting actual amounts to be exempted and not percentages, Debtor has provided no evidence upon which the court may rely by way of declaration or authenticated document to show that Debtor has actually cured the default in plan payments. Debtor merely asserts in a motion stating that Debtor has cured the plan payments, however the court has received no verification from Chapter 13 Trustee that this is the case, and Debtor has provided no proof for the court as to this statement.

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

Additionally, Debtor must now account for a second person in the household having income.

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

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

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

IT IS ORDERED that the final hearing on the Objection is sustained and the plan is not confirmed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor is \$330 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$330 is due July 25, 2016. The case was filed on May 19, 2016, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
4. Section 2.11 of the plan lists a class 4 debt owed to John R. Nelson as a direct pay. Debtor's schedule D indicates the debt is secured by a deed of trust on Debtor's real property. The plain language in section 2.11 states in part that "Class 4 claims mature after the completion of the plan, are not in default, and are not modified by this plan." Debtor testified at the first meeting of creditors on July

7, 2016 that the mortgage is not current and the debt a balloon payment which is all due and payable now.

CREDITOR'S OPPOSITION

Creditor, John R. Nelson, is holds a secured debt, secured by Debtor's residence, 4393 Solano Road, Fairfield, CA. In July 2008, Nelson conveyed title to the real property to Debtor and Javier to took title as husband and wife. Debtor and Javier gave Creditor an all-inclusive promissory note dated July 8, 2008, secured by deed of trust and assignment of rents of the same date. The Not is a "wrap around" note that is expressly subject and subordinate to a pre-existing first deed of trust in favor of U.S. Bank, as successor to Downey Savings and Loan. The loan in the original principal amount was \$500,000. When Debtor and Javier were unable in 2012 to repay the Not in full under the terms, Creditor refrained from exercising his rights under the deed of trust and Debtor and Javier continued to make ongoing monthly payments. Creditor gave Debtor and Javier an opportunity to obtain financing to repay the note, but months of apparent effort yielded no results. Creditor gave Debtor and Javier notice of a December 2015 due date for the due amount on the Note. As of December 28, 2015, the amount owing on the Note was \$546,304.70, but Debtor did not pay the Note in full as required. As of May 20, 2016, the balance due had grown to \$557,388.48. Interest continues to accrue at a rate of \$96 per day, and Debtor and Javier have made no payments to Creditor since December 2015. Creditor thus objects to the plan on the following basis:

1. Debtor cannot unilaterally modify Creditor's secured claim. Debtor's obligation to Creditor is secured only by the real property, Debtor's homestead and only place of residence. Section 1322(b)(2) of the Bankruptcy Code gives the Debtor rights to modify secured claims but not those that are secured by the principal residence. To the extent that the plan purports to extend the due date or otherwise change the terms of the Note, it violates section 1322(b)(2).
2. The plan is not feasible and does not satisfy 11 U.S.C. § 1325(a)(6). Here, Debtor's schedules indicate that her disposable monthly income is approximately \$330 per month. The schedules include a monthly payment of \$4,170.07 for mortgage payments, which is the amount of the monthly payment the Debtor proposes to make to Nelson on account of the Class 4 claim. Debtor has made no payment to Creditor since December 2015. As of July 13, 2016, Debtor was in arrears on plan payments to chapter 13 trustee. It is clear Debtor cannot reliably make proposed payments of \$4,170.07 to Creditor. Thus, the plan is not feasible.
3. The plan lacks good faith and thus violates 11 U.S.C. § 1325(a)(3). Although her schedules do not identify any such asset, it appears Debtor has cattle and livestock that are kept on the real property in violation of local zoning ordinances. Creditor has also observed various motor vehicles on the real property, none of which are identified on the schedules or as assets held by third parties.

DISCUSSION

Chapter 13 Trustee and Creditor have raised numerous valid basis for concern. In addition to not providing Trustee with all the documentation requested and necessary to make a determination as to plan feasibility, Debtor has not made a single proposed plan payment to date. Most concerning is Debtor's treatment of Creditor John Nelson's secured claim, which came due in full prior to the filing of this plan. Debtor has not properly classified the

claim, as section 2.11 states in part that "Class 4 claims mature after the completion of the plan, are not in default, and are not modified by this plan." As pointed out by Trustee and Creditor, Debtor is in default on this secured claim, which became due prior to the filing of this petition and plan.

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.

25. [16-23672](#)-C-13 DANIEL CEJA
KSR-1 Diana Cavanaugh

OBJECTION TO CONFIRMATION OF
PLAN BY DEBRA L. WALDROP
7-20-16 [[24](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 20, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Creditor, Debra L. Waldrop, is the owner, holder and beneficiary of a promissory note in the original principal sum of \$265,000 secured by a deed of trust on property owned by Debtor. Creditor opposes confirmation of the Plan on the basis that Debtor's plan erroneously provides that arrearages on the note are \$20,000. Instead, the arrearage amount is a sum equal to \$30,071.23 not \$20,000.

DISCUSSION

Creditor provides in her motion and proof of claim that the arrearage amount on the claim prior to the filing of the petition is \$30,071.23, not \$20,000 as provided for in the plan, Proof of Claim No. 1. The plan reflects that Debtor has not provided for \$20,000 in arrearages, not \$30,071.23. The debtor may not be able to afford plan payments that include the full amount of the arrears owed.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor Debra L. Waldrop 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.

Also #27

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 14, 2016. Fourteen days' notice is required. This requirement was met.

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

Creditor, Bank of America, N.A., is holder of promissory note in the original principal sum of \$717,200, secured by deed of trust encumbering 1757 Park Oak Drive, Roseville, CA. Creditor opposes confirmation of the Plan on the basis that:

1. Debtor's plan cannot be confirmed because it was not proposed in good faith, 11 U.S.C. § 1325(a)(3). Debtor's plan is essentially blank and does not provide a realistic roadmap for effective reorganization. Debtor proposes to improperly modify Creditor's secured claim without explanation. Debtor's schedules appear incomplete and inaccurate. Debtor has had an extensive history of bankruptcy filings impacting the subject property, foregoing deficiencies, and it does not appear Debtor is seeking sincere chapter 13 relief and is instead forestalling the foreclosure sale of the property.
2. The plan fails to properly classify and account for Creditor's

claim. Debtor improperly lists Creditor as a wholly unsecured creditor in class 5, with a claim of only \$1,200. Creditor is in the process of finalizing its proof of claim for this matter and estimates that its total secured claim is in the approximate amount of \$943,345.07 and that its pre-petition arrears is \$320,858.07 representing 71 pre-petition payments totaling \$313,164.92, \$1458.88 in late charges, \$3,879.43 in foreclosure fees and costs, \$2,025 in attorney's fees and \$.23 in suspense.

3. Debtor's plan does not provide for the full value of Creditor's claim, 11 U.S.C. § 1325(a)(5)(B)(ii).
4. Debtor's plan does not cure Creditor's prepetition arrears as required under 11 U.S.C. § 1322(b)(5).
5. Debtor's plan does not provide for ongoing post-petition payments, 11 U.S.C. § 1322(b)(5).

Creditor points out numerous deficiencies that are of great concern to the court, including that Debtor does not properly classify Creditor's secured claim (instead treating it as wholly unsecured), does not provide for the full value of that secured claim, does not cure the arrears owed on the claim, and does not provide for ongoing post-petition payment on the claim. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor Bank of America, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 13, 2016. Fourteen days' notice is required. This requirement was met.

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor is \$75 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$75 is due July 25, 2016. The case was filed on May 24, 2016, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

4. Debtor's plan contains several errors as follows:
 - a. Section 2.13 lists creditor "BOA" for \$1,200 as class 5 debt. Debtor's schedules lists that Bank of America is a general unsecured creditors for \$714,585 and indicates the debt is for a "loan." However debtor testified at the first meeting of creditors that Bank of America holds the mortgage on Debtor's real property. The debt should be listed on schedule D and provided for as a class 1 or class 4 claim.
 - b. Section 2.15 of the plan fails to list a percentage to be paid to unsecured creditors and the total amount of unsecured debts.
 - c. Section 6 fails to indicate if there are any additional provisions appended to the plan though none appear to be attached.
5. Debtor's plan fails chapter 7 liquidation analysis. Debtor's non-exempt assets total \$841,535 and the plan is silent as to the percentage to be paid to unsecured creditors.
6. The plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is retaining rental property and not receiving any rental income. Debtor testified at the first meeting that his daughter resides in the property at 1757 Park Oak Drive, Roseville, CA and she does not pay any rent.

The Chapter 13 Trustee has state numerous basis for concern, including Debtor's lack of cooperation in not providing necessary documents, and a number of deficiencies in the plan itself, including conflicting information as to the treatment of Creditor Bank of America's claim, failing to list percentage to unsecured debtors, and not indicating if there are additional provisions. Debtor's plan also fails chapter 7 liquidation and the court is not convinced that the plan was debtor's best efforts. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Thru #30

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 13, 2016. Fourteen days' notice is required. This requirement was met.

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Section 2.15 of the plan fails to list the percentage to be paid to unsecured creditors and the total amount of unsecured debts.

4. The plan will not be complete in 60 months as required by 11 U.S.C. § 1322(d). Debtors provide for arrears on the mortgage to Shellpoint Mortgage on 428 Amber Drive, Suisun City, CA, of \$60,000. Instead, the arrears owed are \$66,970. Based on Trustee's calculations, the plan will take 83 months to pay the arrears in full at the current plan payment.
5. Debtor proposes plan payments of \$2,930.02 per month. This payment is insufficient to fund the Class 1 mortgage payment of \$1,930.02 per month, as well as the arrears on the mortgage and Trustee compensation. The total minimum required plan payment is \$3,300.00 per month.
6. Debtor's plan fails chapter 7 liquidation analysis.
7. Debtor cannot make plan payments under 11 U.S.C. § 1325(a)(6).

The court has reviewed Trustee's concerns and basis for objection, and agrees that the plan is deficient and debtor has not fulfilled all obligations required by the Bankruptcy Court to the satisfaction of the court. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, , parties requesting special notice, and Office of the United States Trustee on July 15, 2016. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.</p>

The Trustee objects to the Debtor's claim of exemptions of "100% of fair market value, up too any applicable statutory limit" of all personal property listed on Schedule A/B. Debtor has failed to claim a definite amount where CCCP § 703.140 only allows exemptions up to a certain definite amount. Therefore Trustee must object to the exemptions and the court cannot determine if the plan pays unsecured creditors what they would receive in a chapter 7 case. These include:

1. Clothes valued at \$2,000 under CCCP § 703.140(b)(3) which does not allow an exemption in excess of \$600 in value of any particular item, where the Ddebtor has not averred that no item exceeds \$600.
2. Jewelry valued at \$1850 under CCCP §§ 703.140(b)(4) & (5) which allows up to \$1,425 total for jewelry and up to \$1,280 plus any unused amount under paragraph 1 of the exemption section, where Debtor does not state what amount is claimed under each exemption.

3. Accounts valued at \$10,766 in checking and savings accounts without identifying any information about the account numbers.
4. Checking account valued at \$0.00 without identifying the definite amount of the exemption claimed.
5. 401(k) and IRA accounts valued at \$15,830 without identifying any information about the account numbers.

The Trustee's concerns are well-founded, and is correct in pointing out that Debtors have not claimed their exemptions in a manner that allows for the Trustee or the court to make an assessment as to the validity of the exemptions claimed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

30. [16-23673](#)-C-13 PHILLIP/REHEMA PETE
EMM-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
6-23-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 23, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Creditor, The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2006-J4, Mortgage Pass Through Certificates, Series 2006-J4, is holder of the first deed of trust on Debtor's real property residence commonly known as 428 Amber Drive, Suisun City, CA. Creditor opposes confirmation of the Plan on the basis that the chapter 13 plan understates the pre-petition arrears owed to Creditor. Debtor states the amount is \$60,000, and the arrearage amount is actually \$66,970.

Proof of Claim No. 1 filed by Creditor reflects that the arrearage amount is \$66,970, not \$60,000.

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

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

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

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

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

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 6, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 13, 2016. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtor did not appear at the first meeting of creditors on July 7, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtor is \$25 delinquent in plan payments to the Trustee to date and

the next scheduled payment of \$25 is due July 25, 2016. The case was filed on May 27, 2016, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

5. Debtor's plan contains the following errors:

- a. Section 1.03 of the plan indicates that the term of the plan is N/A, Debtor has failed to state a plan term of either 36 or 60 months as required by the form.
- b. Section 2.10 states "refer to schedule A & D." Section 2.13 states "refer to schedule F." Debtor has failed to list any creditors or claim amounts to be paid through the plan. Trustee cannot determine if the plan is feasible without this information.

6. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

7. Debtor cannot make plan payments under 11 U.S.C. § 1325(a)(6). Plan calls for payments of \$15 per month. Debtor's schedule J shows a negative net income of (\$39.00). Trustee's review of the form indicates that the math is incorrect, and the actual net income is negative (\$411.00).

The court has reviewed Trustee's concerns and basis for objection, and agrees that the plan is deficient and debtor has not fulfilled all obligations required by the Bankruptcy Court to the satisfaction of the court. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

33. [14-30989](#)-C-13 DEBORAH ENGLISH
PGM-2 Peter Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
7-11-16 [[26](#)]

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 11, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Deborah A. English ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment to \$700.29 a month. The modification will provide for an interest rate of 2.000%, with the first payment due August 1, 2016, for a total of 60 months. The modified principal balance of the note will include all amounts and arrearages that will be past due as of the Modification Effective Date less any amounts paid to the Lender but not previously credited to the Debtor's loan and less principal in the amount of \$9,034.55, which has been forgiven. The principal balance of the loan that will be due and payable is \$187,475.59. \$11,711.08 of the new principal balance shall be deferred and will be treated as a non-interest bearing forbearance and Debtor will not pay interest or make monthly payments on the deferred balance. The New Principal balance, less the Deferred Balance, shall be referred to as the "Interest Bearing Principal Balance" and that amount is \$175,764.51. The new maturity date will be July 1, 2056.

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

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

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

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

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

IT IS ORDERED that the court authorizes Deborah A. English ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 2361 50th Ave., Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 29.

Final Ruling: No appearance at the August 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 7, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [16-23793](#)-C-13 DOROTHY TYLER-LEWIS
DPC-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-19-16 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 19, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtor lists the Internal Revenue Service (IRS) on schedule E and in Class 5 for \$1.00 entitled to priority. On 06/24/16 the IRS filed a claim number 2-2 for \$32,808.68. According to Trustee's calculations, the plan will complete in 118 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor admitted at the first meeting of creditors that they expect a refund from both the Franchise Tax Board and the IRS for 2015 taxes. Debtor failed to list the possible refunds as an asset on schedule B and this may affect the liquidation analysis required under 11 U.S.C. § 1325(a)(4) absent the possible offset right of the creditors to the refunds.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2016. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtor did not appear at the first meeting of creditors on April 23, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor's counsel may not be licensed to practice in the Eastern District of California.
3. Debtor may not be able to make plan payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6).
4. Debtor is \$2,500.94 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,500.94 is due July 25, 2016. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
5. Trustee is uncertain that debtor has disclosed all liabilities owed.

Debtor lists his mortgage on schedule D and provided for the claim in class 1 of the plan. No other debts are listed.

6. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
7. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(i).

The court has reviewed Trustee's concerns and basis for objection, and agrees that the plan is deficient and debtor has not fulfilled all obligations required by the Bankruptcy Court to the satisfaction of the court. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

37. [16-23696](#)-C-13 MARK/DEBRA HICKEY
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-13-16 [[27](#)]

Also #38

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 13, 2016. Fourteen days' notice is required. This requirement was met.

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

1. Debtor has failed to file all prepetition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. §§ 1308 and 1325(a)(9).
2. Debtors' plan fails to provide for the secured debts of Employment Development Department and Brian Keller.
3. The plan fails to provide for priority debts as required by 11 U.S.C. § 1322(a)(2). Debtors' schedule E/F lists priority debts to County of Sacramento and Toll Roads Violation Department. These debts are not provided for in the plan.
4. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6).

- a. Debtors' schedule I lists on 8c family support of \$2,150 per month. Debtor filed a declaration of Shasta Cellar in support of the plan. The declaration indicates Shasta Cellar is the daughter of the Debtors and that she provides support to her parents of \$2,150 per months and does not expect to be repaid. The declaration does not offer any details of the source of the funds or indicate that Ms. Cellar is willing and able to provide this amount of support for the next 60 months of the plan. According to schedule, the remainder of Debtors' income comes from social security disability and pension funds. Where the total contribution from a third party will be \$129,000 over the life of the plan, Trustee is not convinced that Debtors will have this income for the duration of the plan. Debtors' statement of financial affairs does not disclose historical family support income year to date or over the last two years.
- b. Schedule J lists net income on line 23c of \$2,353.04 per month. Debtors' plan calls for payments of \$2,350 for twelve months, then \$3,930 for forty-eight months. There is no evidence of how Debtors will be able to increase the plan payments by \$1,580 in the 13th month of the plan.

The court has reviewed Trustee's concerns and basis for objection, and agrees that the plan is deficient and debtor has not fulfilled all duties required by the Bankruptcy Court to the satisfaction of the court. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

38. [16-23696](#)-C-13 MARK/DEBRA HICKEY
JAA-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
7-1-16 [[24](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 1, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Creditor, Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2005-C, asset backed pass-through certificates, holds a security interest in Debtor's real property located at 2609 Butano Drive, Sacramento, CA, securing a note in the amount of \$300,000.

Creditor opposes confirmation of the Plan on the basis that Debtors are proposing to withhold arrearage payments until month 13 of the plan. Creditor objects to the plan because it violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I), requiring that periodic payments on a secured claim must be made in equal monthly installments.

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

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

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

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

39. [16-23097](#)-C-13 CARL BROWN
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-6-16 [[20](#)]

Also #40

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 6, 2016. Fourteen days' notice is required. This requirement was met.

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

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

1. Debtor is currently in two active cases, case number 16-23097, filed May 12, 2016, and case number 14-29900, in which counsel Peter Macaluso was contacted on June 3, 2016 regarding an incorrectly submitted Request for Dismissal.
2. On the voluntary petition, the attorney of record is Anthony Hughes of the Law Offices of Peter Macaluso. Trustee has requested a copy of the petition with original signatures from debtor's attorney.
3. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).
4. Debtor does not appear to be able to make the plan payments under 11

U.S.C. § 1325(a)(6). On schedule I, debtor reports income of \$2,600 gross and identifies his occupation as "part time work." On line 13, debtor reports he recently accepted a position as a bus driver earning \$350 per week or \$1,516 per month. Trustee is uncertain if the income in addition to what is reported on schedule I or if the income is in replacement of the "part time work." Trustee also notes that schedule J's expenses are very minimal.

5. Debtor has failed to provide Trustee with proof of income for the 60 days preceding filing the filing of the bankruptcy. This is required 7 days before the date set for the first meeting.
6. The additional provisions of the plan state that debtor is in the process of HAMP application for loan modification with Americas Servicing Co. The Debtor admitted at the first meeting of creditors that he has not filed an application for loan modification.

The court notes that on August 10, 2016, the court addressed with Trustee and Debtor's counsel the first two basis for objection: That there were two active cases pending, one of which has since been dismissed, and second that there was a different attorney of record on the petition. The court has resolved these two objections, however several basis for objection remain and have not been addressed by Debtor, including that Debtor appears to fails chapter 7 liquidation analysis, it is unclear if Debtor will be able to make plan payments as the debtor's unemployment is uncertain, debtor has not provided proof of income to Trustee, and debtor has failed to take action on a loan modification upon which the plan relies.

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

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

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

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

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

40. [16-23097](#)-C-13 CARL BROWN
DPC-3 Peter Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-6-16 [[24](#)]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 6, 2016. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The objection to claimed exemptions is overruled.
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The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. 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).

(Emphasis added).

DEBTOR'S OPPOSITION

Debtor opposes this objection, asserting that Debtor will file a spousal waiver on or before the hearing on this matter.

DISCUSSION

The docket reflects that on August 5, 2016, Debtor filed with the court the spousal waiver of right to claim exemptions pursuant to CCP § 703.140(a)(2). The Trustee's objection 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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is overruled.

41. [16-24334](#)-C-13 SYLVIA KNIGHT
RJ-1 Richard Jare

MOTION TO VALUE COLLATERAL OF
SAFE CREDIT UNION O.S.T.
8-3-16 [[14](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3) on shortened time. Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 3, 2016. Thirteen days' notice is provided.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of Safe Credit Union, "Creditor," is denied without prejudice.

The Motion filed by Sylvia A. Knight ("Debtor") to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Nissan Ultima SE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,000 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).

DEFICIENT NOTICE

Although Debtor has served this motion on shortened notice, Debtor has not served Creditor Safe Credit Union at the correct address, and in fact the court is puzzled as to what address Debtor served. The address that Debtor served notice on Creditor is as follows:

Safe Credit Union
Attn: Managing Officer

4636 Watt Avenue
North Highlands, CA 95660

However, a search on the California Secretary of State website reflects that Safe Credit Union is an active business within California, and that the entity address is:

Safe Credit Union
2295 Iron Point Road, Suite 100
Folsom, CA 95630

The agent for service of process and agent address, also from the California Secretary of State website is:

Safe Credit Union
Agent for Service: Chris Harris
2295 Iron Point Road, Suite 100
Folsom, CA 95630

Safe Credit Union filed a proof of claim in this case, Proof of Claim No. 1. In this proof of claim, Safe Credit Union's address is twice listed as:

Safe Credit Union
2295 Iron Point Road, Suite 100
Folsom, CA 95630

Debtor, attempting to affect the rights of a secured creditor, has not properly effected service on said secured creditor. The court will deny the motion.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 25, 2016. 28 days' notice is required. This requirement was met.

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

The court's decision is to

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtors are not in compliance with an Order Granting Motion To Sell, granted February 9, 2016, Dckt. No. 55. Debtors were to sell personal residence located at 8845 Brittany Park Drive, Sacramento, California. \$10,000 of the proceeds were to be turned over to Trustee to be held and released pending a court order for relocation expenses. To date, Trustee has no knowledge of the sale having occurred.

DEBTORS' OPPOSITION

Debtors assert that they have conveyed to their counsel that they wish to keep their Chapter 13 case active if possible. Though the funds that the Trustee seek are no longer available, Debtors have expressed a willingness direct the equivalent amount of the funds to the Trustee, if given a chance to do so over time.

Debtors have had preliminary discussions with their counsel on filing an Amended Chapter 13 Plan to replenish the funds that were to be directed to the Trustee.

In the event that Debtors present a Modified Chapter 13 Plan that sufficiently resolves the Trustee's concerns, Debtors request that the Court deny the Trustee's Motion to Dismiss Case.

JUNE 22, 2016 HEARING

At the June 22, 2016 hearing, the court set a briefing schedule, issued an order to show cause to debtors and debtors' counsel, and continued the instant motion to be heard after the order to show cause was heard.

AUGUST 10, 2016 HEARING

At the August 10, 2016 hearing, the court noting that the order to show cause issued to Debtors and Debtors' counsel was continued to August 16, 2016, continued the instant motion to occur in conjunction with or after that hearing.

DISCUSSION

The court docket reflects that no supplemental briefs, addressing whether dismissal with or without prejudice or conversion to chapter 7 is appropriate under the facts and circumstances, were filed in accordance with the court's briefing schedule. The court will render its decision upon hearing the order to show cause, set for hearing August 16, 2016 at 9:30 am, and the oral arguments of the parties.

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

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

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

IT IS ORDERED that the Motion to Dismiss is

Tentative Ruling: 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 Order to Show Cause was served by the Clerk of the Court on Ernest and Sharon Victorine, ("Debtor"), Trustee, and other parties in interest on June 23, 2016.

The court's decision is to . . .

Summary of Order

The debtors, through their counsel Robert Fong, filed a Motion to Sell Residence in which they sought court permission to complete a short sale of real property commonly known as 8845 Brittany Park Drive, Sacramento, CA 95828, from which transaction the debtors would receive \$10,000.00. Dckt. No. 45 (Feb. 4, 2016).

This court granted the motion on the condition that the \$10,000.00 be held by the Chapter 13 Trustee, to be released pursuant to a noticed motion. The rationale for that requirement was that the \$10,000.00 constitutes property of the estate.

The ensuing order entered February 23, 2016, which was prepared by Mr. Fong and approved as to form by the Chapter 13 Trustee, included the following two paragraphs:

7. Debtor(s) shall send a final escrow closing statement to the trustee after close of escrow.

8. The \$10,000.00 Debtors are to receive for relocation costs from the sale are to be held by the Trustee, to be released by Court order pursuant to a Noticed Motion.

Order Granting Motion to Sell Personal Residence, Dckt. No. 55 (Feb. 23, 2016).

Three months later, the Chapter 13 Trustee filed a Trustee's Motion to Dismiss Case because there had been no report of the status of the sale, the final escrow closing statement had not been received, and the \$10,000.00 required to be held by the Trustee had not been turned over. Dckt. No. 58 (May 25, 2016).

The debtors' opposition to dismissal of the case implicitly concedes that the sale occurred and that the requirements of paragraphs 7 and 8 of this court's order were not obeyed. Although there is no explanation of what happened and why, the response says "the funds that the Trustee seek[s] are no longer available" and that the debtors wish to file "an Amended Chapter 13 Plan to replenish the funds that were to be directed to the Trustee." Response to Trustee's Motion to Dismiss Case, Dckt. No. 62 (June

8, 2016).

Court ordered Robert W. Fong show cause why he should not be fined \$10,000.00 that has been dissipated under his supervision in violation of this court's order.

Court also ordered Ernest Jordan Victorine, Jr., and Sharon Fern Victorine, show cause why the \$10,000.00 that has been dissipated in violation of this court's order.

RESPONSE

Debtors and counsel respond. Counsel states he attempted to follow up with Debtors on numerous occasions (April 4-call and email; April 5-call; April 6-call; April 27-call). Trustee's office subsequently filed MTD, after which counsel sent Debtors a letter. It was only after this that Debtors responded. Debtors expressed they wanted to keep the case active and they were willing to repay the amounts to chl3 Trustee. Counsel asserts he believes he acted diligently, and at all times was in communication with Trustee's office, and made no attempts to hide any information from the court. Debtors assured counsel they knew the terms of the sale including turning over \$10,000 to Trustee, counsel believed Debtors to be reliable, but they did not do so. Counsel urges the court not to sanction \$10,000.

Debtor Sharon Victorine provides that they spent the \$10,000 on gambling activity. Debtors state they experienced much emotional difficulty during the period, including family members (sisters, mother, husband-debtor) falling ill. No valid explanation for not turning over the funds, Debtor has contacted Gamblers Anonymous because she knows she needs help. Debtor has presented a first modified plan to attempt to make things right to pay \$500 per month for the next 20 months.

CHAPTER 13 TRUSTEE RESPONSE

Sharon Victorine appears to be claiming responsibility for spending the funds of gambling activity, so Ernest Victorine may not be in contempt. Sharon Victorine may be in contempt.

Trustee is not satisfied with the amount of detail provided by Counsel as to his communications with Debtors. Trustee sets out 13 different questions asking for further detail as to communications between counsel and Debtor, and counsel and Trustee, and related actions taken by counsel, asking for frequency, manner, of these communications. Did he ever communicate what was need to make a motion for the release of funds or the documentation needed? How much communication did counsel have with trustee's office? Was any letter sent to Debtors before the MTD? Etc.

Attorney's Supplemental Declaration

Debtors told their attorney that they used the funds for medical expenses.

Sharon Victorine's Supplemental Declaration

Debtor states: "I have no valid explanation for failing to turn over the funds, or the sequence of events that followed. Until the case was brought for a Motion to Dismiss, my husband did not know that I did not turn over the funds to the Trustee. At first, I thought I used the funds for health and medical reasons, but a review of my bank statements show that much of the funds were spent on gambling activities, including charges as local area casinos and ATM withdrawals."

Ernest Victorine's Supplemental Declaration

Debtor states: "I was aware that the funds were to be turned over to the Trustee. In conversations with my wife, I told her that the funds should be turned over to the Trustee in accordance with the Court order pursuant to the Motion to Sell Personal Residence. My wife and I made trips to casinos. We always went together. We both used the funds that were in our bank accounts in our gambling trips."

Discussion

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 Order to Show Cause 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 Order to Show Cause is . . .