

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 18, 2015 at 3:00 p.m.

1. **15-24500-E-13 RAMONA/ROBERT JONES OBJECTION TO CONFIRMATION OF**
 DPC-1 Pro Se PLAN BY DAVID P. CUSICK
 7-23-15 [[28](#)]

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 Debtors (*pro se*) on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

1. Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. Debtor has not provided a copy of the 2014 federal tax return.
2. Debtor has failed to file all pre-petition tax return required for the four years preceding the filing of the petition. Debtor testified at the First Meeting of Creditors that no federal tax return for 2014 has been filed to date.
3. The plan may not comply with 11 U.S.C. § 1325(a)(1)
 - a. Debtor's plan proposes to pay interest of 2% on arrears to Ocwen Loan Servicing in Class 1 for the mortgage. Debtor's Schedule D fails to indicate the date the claim was incurred, therefore the Trustee cannot determine if this creditor is entitled to interest under 11 U.S.C. § 1322(e)
 - b. Section 2.08 of the plan fails to indicate the monthly dividend to be paid to the mortgage arrears in Class 1. The dividend required to pay the claim in full within the term of the plan is \$260.00 per month.
 - c. Section 2.15 of the plan is blank as to the total amount of unsecured debts and the percentage to be paid to unsecured creditors. The Debtor's Schedule F indicates that Debtor has no unsecured creditors. If there are no unsecured debts, the plan should so state the total amount as \$0.00 and the percentage as 100%
 - d. Section 6 does not indicate if additional provisions are appended to the plan. Where no additional provisions are provided, this may not be material defect.
4. The plan will not complete within 60 months. The plan payment required to pay these debts is at least \$1,230.00.
5. Debtor's Schedule A lists the value of Debtor's real property as \$3,659,821.00. Debtor testified at the First Meeting of Creditors that this amount was listed in error.
6. Debtor's plan may not be the Debtor's best effort. Debtor's Schedule J lists on the mortgage payment of \$908.99. This payment is provided for in Class 1 of the plan. Adjusting the schedule for this error makes the net income \$3,169.00 per month, and the plan proposes to pay only \$283.98.
7. The Statement of Financial Affairs appears to be incomplete. The form calls for the gross amount of income Debtor has received from employment or business for the current year to date and the prior two years. The Form does not list the 2015 year to date total or the 2014 total income.

8. Debtor's petition fails to list Debtor's prior case.

The Trustee's objections are well-taken.

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. Moreover, Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2014 tax year still has not been filed. Filing of the return is required. 11 U.S.C. § 1308. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1) and (9).

The crux of the Trustee's third, fifth, sixth, seventh, and eighth objection is that the Debtor has both improperly, inaccurately, or plainly neglected to fill out the necessary information in the petition and Statement of Financial Affairs. The court nor the Trustee can possibly determine not only the viability and feasibility of the plan but also whether the Debtor even qualifies for relief under Chapter 13. Such failures from failing to list current income for 2015 to failing to accurately value the Debtor's property all brings up concerns over whether the plan is the Debtor's best effort and whether it complies with applicable law. Therefore, the Trustee's objections are sustained. 11 U.S.C. §§ 1325(a)(1) and (b).

Lastly, Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in excess of the 60 months permitted because the plan payment proposed is nearly \$1,000.00 lower than what would be required. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

Amended Plan Filed

Debtor has filed an amended plan on August 13, 2015. Dckt. 43. The plan which is the subject of this Objection is not now being prosecuted by Debtor.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2015. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

Juan Lopez ("Debtor") filed the instant Motion to Confirm the Amended Plan on July 2, 2015. Dckt. 22.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 3, 2015. Dckt. 30. The Trustee objects on the following grounds:

1. The Debtor's plan is not the debtor's best efforts. The Debtor is below median income and the applicable commitment period is 36 months:
 - a. Debtor is currently proposing a 34 month plan at 5% to general unsecured creditors. In Section 1.01, Debtor proposes to pay \$2,150.00 through June 25, 2015, month 2

of the plan, and \$500.00 per month for 32 months.

- b. Debtor's original plan proposed to pay \$1,075.00 for 60 months. The amended plan reduces the term to 34 months and the payment to \$500.00 per month moving forward. The Debtor's declaration suggests the changes are due to his estimating income wrong. Although, the changes to budget do not appear to be excessive or unreasonable, the fact is that the Debtor does not properly address why the changes were made or why they were inaccurate to being with causes some concern.

DEBTOR'S REPLY

The Debtor filed a reply on August 10, 2015. Dckt. 34. The Debtor responds stating, first, that the Debtor is committing to a 36 month plan. Debtor requests that the error be corrected in the order confirming.

The Debtor further states that he originally provided for Cach, LLC's secured claim in the amount of \$45,124.00. The Creditor filed an unsecured claim on April 24, 2015 in the amount of \$45,124.16. The Debtor's budget was spread thin over a period of 60 months in an effort to resolve the secured claim. Debtor made adjustments to Schedule J to reflect a more reasonable monthly expense.

Debtor concludes by stating that the Debtor's amended plan benefits the unsecured as it will pay no less than 5.00% to the general unsecured creditors.

DISCUSSION

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

A review of the Trustee's objections boils down to two main concerns: (1) the plan calls for a 34 month plan and (2) the Debtor does not explain the reduction in the changes to expenses.

As to the first concern, the Debtor's reply states that it was a scrivener's error and requests that it be corrected in the order confirming. Seeing that this was a mere typo, the court overrules the Trustee's objection seeing that the order confirming the plan can correct the plan commitment period to 36 months.

As to the second objection, while the Debtor should have addressed this correction at the initial time of filing rather than in response to the Trustee's objection, the change of Cach, LLC's claim from secured to unsecured and the resulting changes in expenses to not burden the Debtor on an overly stringent budget is sufficient justification for the change in the expenses. Therefore, the plan does appear to be the Debtor's best efforts, effectively and accurately reflecting the Debtor's financial reality.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

holding that:

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 2, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the plan commitment period to 36 months, 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.

3. [15-25615](#)-E-13 ANA HENRIQUEZ
MCC-1 Timothy McCandless

MOTION TO EXTEND AUTOMATIC STAY
7-29-15 [[11](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 29, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.
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Ana V. Henriquez("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-23298) was dismissed on May 11, 2015, after Debtor failed to timely file documents. See Order, Bankr. E.D. Cal. No. 15-23298, Dckt. 15, May 11, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the

court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtor's previous attorney did not communicate with the Debtor and subsequently did not prepare the necessary documents within the 14 day deadline. The Debtor states that the Debtor will timely file all statement, schedules, and plan. The Debtor has retained new counsel.

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

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

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

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

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

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

4. [11-32334-E-13](#) GINO ISOLA
D. Randall Ensminger

MOTION TO AVOID LIEN OF
MCKESSON EMPLOYEES FEDERAL
CREDIT UNION

7-20-15 [[191](#)]

Final Ruling: No appearance at the August 18, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, and Office of the United States Trustee on July 20, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Mckesson Employees Federal Credit Union ("Creditor") against property of Gino Isola ("Debtor") commonly known as 6036 Tall Brave Court, Citrus Heights, California (the "Property"). FN.1.

FN.1. The court notes that the Debtor failed to assign a Docket Control Number to the instant Motion. The Debtor and Debtor's counsel is reminded that pursuant to Local Bankr. R. 9014-1 that the use of Docket Control Numbers is required.

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,807.94. An abstract of judgment was recorded with Sacramento County on January 6, 2003, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$165,000.00 as of the date of the petition. The unavoidable consensual liens total \$193,944.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Mckesson Employees Federal Credit Union, California Superior Court for San Francisco County, Case No. CGC-02-412175, recorded on January 6, 2003, Book 20030106 and Page 0002 with the Sacramento County Recorder, against the real property commonly known as 6036 Tall Brave Court, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. [09-44339-E-13](#) GLEN PADAYACHEE
[14-2282](#) Peter Cianchetta
PADAYACHEE V. TERRY, III

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-30-14 [[1](#)]

Final Ruling: No appearance at the August 18, 2015 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 9/30/14
Answer: 10/31/14

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference was concluded on August 13, 2015, and removed from the calendar.

Notes: Status conference heard on 8/13/15 at 1:30 p.m.

6. [13-25345-E-13](#) JAMES/ANA SPEARS
CYB-3 Candace Brooks

MOTION TO APPROVE LOAN
MODIFICATION
7-17-15 [[66](#)]

Tentative Ruling: 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).

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, parties requesting special notice, and Office of the United States Trustee on July 17, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by James and Ana Spears ("Debtors") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,267.33. The new principal balance will be \$236,697.11 which will include all amounts and arrearages that will be past due (excluding unpaid late charges) less any amounts paid to the Creditor but not previously to Debtors' loan. The yearly rate will remain 3.375%.

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

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 29, 2015. Dckt. 71. The Trustee states that the Home Affordable Modification Agreement is between the Debtors and Creditor. The proposed agreement has been signed by both Debtors. The agreement states that "one of the borrowers signing this agreement lives in the property as a principal residence." However, the Debtor admits in both the Motion and Declaration that it is the Debtors' daughter who resides in the property and who makes the mortgage payment. The daughter is not named in the agreement.

DISCUSSION

The Trustee's objection is well-taken. A review of the Affordable Modification Agreement shows that in Section 1 of the agreement is "My Representations and Covenants," in which the Debtors "certify, represent to [Creditor], covenant and agree: . . . B. One of the borrowers signing this Agreement lives in the Property as a principal residence, and the Property has not been condemned." Dckt. 69.

In the Motion, the Debtors state: "The second piece of real property. . . is the property that the Debtors daughter resides in. Debtors' daughter has been making the mortgage payment to the mortgage Company, Nationstar Mortgage, LLC." Dckt. 66

In the Declaration, the Debtors state: "Our daughter rides [sic] in this Property and makes all of the payments on this loan attached to this property. Our daughter's name is listed on the subject deed of trust and note that was filed with this court by Creditor, Nationstar Mortgage, LLC on June 28, 2013 and assigned Claim Number 9." Dckt. 68.

Review of Pleadings in Bankruptcy Case

Debtor seeks to modify a loan secured by the real property commonly known as 6706 Hedgewood Drive, Sacramento, California. On the Bankruptcy Petition filed in this case Debtor lists 8135 Sheehan Way, Antelope, California as Debtor's residence. Dckt. 1. Schedule A lists both the Sheehan Way and the Hedgewood Drive properties. *Id.* at 12.

On Schedule G Debtor discloses that the Hedgewood property is leased to Debtor's daughter and son-in-law for an amount equal to the monthly mortgage payment, taxes, and insurance. *Id.* at 24. On Schedule I Debtor lists income from real property of \$795.84 a month. *Id.* at 26. On Schedule J no expenses (mortgage, taxes, insurance, repairs, utilities, and upkeep) are shown for the rental property to offset the \$795.84 in income. *Id.* at 28. The court notes that on Schedule J the water and sewer expense of \$236.67 and home maintenance expense of \$200 a month may appear to be a bit high for a family of two persons in one home.

If Debtor is not receiving \$795.84 a month in net monies from renting the Hedgewood property, but that money was being directly paid to the lender, then Debtor would have only \$180.00 a month of Monthly Net Income as computed on Schedule J. *Id.*

On August 16, 2013, Debtor filed revised Schedules I and J as exhibits in support of a motion to confirm the Chapter 13 Plan. Dckt. 38. Revised Schedule I deletes any income being derived from the rental of the Hedgewood property. *Id.* at 38. On Revised Schedule J (*Id.* at 5) Debtor lists their mortgage payment being \$1,859.02, which is \$788.64 less than listed on original Schedule J. On Revised Schedule J Debtor lists a \$300 a month transportation expense, and then for "other" expenses lists an additional \$300 for auto maintenance and \$40 for registration. *Id.* All totaled, the two debtors state a month automobile expense (spread over the Revised Schedule J) of \$640 a month. *Id.*

The court confirmed confirmation of the Amended Chapter 13 Plan on October 31, 2013. Order, Dckt. 62. No opposition to the Motion to Confirm was filed and no hearing was conducted by the court. Civil Minutes, Dckt. 54.

Concerns of the Trustee

While in the original schedules Debtor accounted for the "rental" of the property to family members, it was not so accounted in the Revised Schedules I and J.

The promissory note attached to Proof of Claim No. 9 is signed by Ana Spears and James C. Spears, the two debtors in this bankruptcy case, as the only two borrowers. All of the loan documents provided as an exhibit are signed only by Ana Spears and James C. Spears as the borrowers and persons obligated on the note. The Deed of Trust lists, inaccurately, Ana Spears and James C. Spears, Husband and Wife, and Arlette B. Bassett, a married woman, as "borrower." It appears that the term "borrower" is used in the Deed of Trust not in the same manner as the note, but merely identifying persons who may be on title to the property. It would not surprise the court that Debtor included the daughter on title as an inheritance transfer device to avoid the need to have a probate proceeding to ultimately transfer title to the daughter.

The concern here that the court and the Trustee share is that the Debtors, even prior to court approval, may already be in breach the modification. From the start of this case, it has been clear that the Hedgewood property is not the one in which Debtor resided. However, the Modification Agreement contains the express representation that "one of the borrowers signing this Agreement lives in the Property as a principal residence...." Exhibit A, ¶ 1.B.; Dckt. 69 at 3.

The Trustee's opposition raises another concern for the court. It appears that Debtor owns an investment property, the Hedgewood Drive property, which Debtor wants to ultimately transfer to Debtor's daughter. The information provided on Schedule A is that the Hedgewood Drive property has a value of only \$117,000 and is subject to liens totaling \$234,178, leaving it with a negative equity of \$120,000.

Debtor's daughter occupies and has possession of the Hedgewood Drive property in consideration for making the monthly mortgage, tax and insurance payment. Under the modification that will be \$1,267.00 a month. This is \$472.00 more a month than provided for the Class 4 claim under the confirmed Plan. Dckt. 39 at 4.

When the court considers that there appears to be a false representation in the proposed Loan Modification Agreement, the substantial increase in the monthly payment under the Modification and no corresponding ability to pay as required under the Plan, and Debtor's expenses under Revised Schedule J, the court cannot grant the Motion.

The Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice

7. [15-25745](#)-E-13 ROBERTO/ROSAEMMA CARRAZCO MOTION TO EXTEND AUTOMATIC STAY
CJY-1 Christian Younger 7-30-15 [[9](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.
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Roberto Garibay Carrazco and Rosaemma Carrazco ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-26268) was dismissed on May 7, 2015, after Debtor failed to make plan payments. See Order, Bankr. E.D. Cal. No. 14-26268, Dckt. 56, May 7, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the

subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtor owns a truck driving business and during the pendency of the prior case, one of the trucks broke down. This caused the Debtor to not be able to take more cargo loads and therefore caused a decrease in jobs causing the delinquency in plan payments. The Debtor now states that they still have the deal with the new contractors and have plans on repairing the second truck.

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

<p>The court's decision is to deny the Motion to Confirm the Modified Plan.</p>
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Keith and Zanetta Robinson ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 22, 2015. Dckt. 144.

TRUSTEE'S OBJECTION

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

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

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

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

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

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

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

DEBTOR'S REPLY

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

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

JULY 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 18, 2015. Dckt. 163. The court ordered that the Debtor shall file and serve any supplemental papers on or before August 4, 2015. Any reply shall be filed and served on or before August 11, 2015.

DEBTOR'S SUPPLEMENTAL REPLY

The Debtor filed a supplemental reply on August 4, 2015. Dckt. 166. The Debtor states the Debtor's counsel failed to recognize that the monthly obligation for the 2014 taxes being paid during the 2015 calendar year would be paid in full during the Debtor's Chapter 13. The Debtor's counsel states that this results in increasing the disposable income of the Debtor by \$1,145.00 (between the Internal Revenue Service and Franchise Tax Board), which brings the total plan payment for the remaining 15 months to \$1,875.00. The Debtor states that the failure to provide for a step-up was an oversight of counsel.

The Debtor request that in order confirming the modified plan the following language is added: "\$149,383.00 through 5/2015, \$690.00 X 12 months starting 6/2015, then \$1,875.00 X 15 months."

The Debtor states that they Debtor is current under the modified plan and have paid their July payment.

TRUSTEE'S RESPONSE

The Trustee filed a response on August 11, 2015. Dckt. 168. The Trustee states that the Debtor remains delinquent under the terms of the proposed plan. Based on the proposed language by the Debtor, the Trustee calculates that the Debtor is delinquent by \$1,380.00 under the proposed corrected payments.

Furthermore, the Debtor has not addressed the Trustee's concern regarding Schedule I showing higher payroll deductions for retirement loans, with a \$643.85 increase in the payroll deductions from \$787.49 to \$1,431.34. The Debtor has not offered any additional explanation for the changes in expenses.

DISCUSSION

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

The Trustee's objections remain well-taken.

At the July 28th hearing, the court offered the Debtor the opportunity to address the concerns of the Trustee, namely the changes in deductions and expenses. Specifically, the court in the civil minutes stated, quite explicitly:

The court notes, however, that the Debtor and Debtor's counsel should have provided the clarification as to the changes in expenses when presenting the Motion. When not so presented, it creates the appearance that a debtor and debtor's counsel might be trying to "slip one by the court," electing to

provide truthful, accurate, complete information only when forced to by the Trustee, creditors, or court. If the court were to conclude that such strategy was afoot, it could well lead to a determination that the debtor was prosecuting the case in good faith. If such a determination was made, a debtor might well never be able to confirm a plan in that case. In the future, the court will not be so indulgent in granting continuances for Debtor to provide information that should have been provided for at the time of the supplemental Schedule J.

Dckt. 163.

However, rather than providing the information that the Debtor was required to supplement, the Debtor merely focuses on the error in plan payments and proposes alternative language for the order confirming. The Debtor in their reply does not even address the concerns over the change in expenses. The Debtor and Debtor's counsel was warned that further continuances would not be freely given, especially when the information that is lacking should have been presented at the time of filing the supplemental Schedule J. As to this objection, the Trustee's objection is sustained as the court cannot determine if the reduction in expenses is reasonable, necessary, or truthful.

Additionally, based on the proposed additional language by the Debtor and Debtor's counsel, the Debtor is \$1,380.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan, even after proposed language to alter the plan payments in the order confirming, is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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.

9. [15-24448](#)-E-13 JESSICA/JOVITO TABAYOYONG OBJECTION TO CONFIRMATION OF
DPC-1 Richard Sturdevant PLAN BY DAVID P. CUSICK
7-23-15 [[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 Debtors, Debtor's Attorney on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor's plan may not be the Debtor's best effort:
 - a. Debtor's Schedule I lists disability income for Debtor Jovito Tabayoyong of \$2,370.00 per month. Debtor testified at the First Meeting of Creditors that he went back to work in June. Based on pay stubs provided to the Trustee, Debtor earns approximate gross income \$3,662.00 per month.

- b. Debtor's Schedule I lists a retirement loan deduction for Debtor Jessica Tabayoyong of \$612.65 per month. Debtor testified that the loan will be repaid in approximately 3 years. The plan payments do not increase after the retirement loan is repaid.

The Trustee's objections are well-taken.

The crux of the Trustee's objection is that the Debtor is not accurately reporting their income nor providing for a future step up in plan payments. A review of the Debtor's Schedule I shows that Debtor Jovito Tabayoyong's only income is the disability income of \$2,370.00. However, the Debtor revealed at the First Meeting of Creditors that he has returned to work and provided paystubs. No supplemental Schedule I has been filed to adjust Debtor Jovito Taboyoyong's return to employment. This leaves the court questioning whether the proposed plan, with outdated information, is the Debtor's best effort.

This concern is only further exasperated by the fact Debtor Jessica Tabayoyong reports a retirement loan repayment that will end during the life of the plan but the plan does not propose any step up in plan payment following the completion of the loan repayment. This is just another instance that raises concerns that the proposed plan is not an accurate reflection of the Debtor's financial reality nor their best efforts. Therefore, the Trustee's objection is sustained as the plan does not appear to be the Debtor's best efforts. 11 U.S.C. § 1325(b)

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

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

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

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

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

10. [15-24654-E-13](#) JOSEF/AMY DUNHAM
DPC-1 Dale Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-15 [[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 Debtors), Debtor's Attorney on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor's plan does not provide for the mortgage arrears for creditor JPMorgan Chase Bank, N.A. The creditor filed an Objection to Confirmation stating that the mortgage arrears in the amount of approximately \$6,716.79. While the Trustee notes that no proof of claim has been filed, the plan does not provide for the payment of the mortgage arrears.
2. Debtor may not be able to make the plan payments. Debtor Josef Dunham testified at the Meeting of Creditors that he has

changed employment and is now earning about \$3,000.00 per month less than his previous employment.

The Trustee's objections are well-taken.

The Trustee's first objection concerns the failure of the Debtor's plan to account for the alleged arrears of JPMorgan Chase Bank, N.A. in the amount of \$6,716.79. While no Proof of Claim has been filed, JPMorgan Chase Bank, N.A. filed an Objection to confirmation that states that the plan does not provide for the cure of the arrearages. However, no evidence is provided for the bare allegations stated in the Objection and there is no proof of claim on file by JPMorgan Chase Bank, N.A. As such, the court overrules such objection. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

The Trustee opposes on the grounds that the Debtor represented at the Meeting of Creditors that he is currently earning \$3,000.00 less than previously. To date, no supplemental schedules have been filed for the court or the Trustee to review to determine whether the proposed plan is feasible with such a reduction in income. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

11. [15-24654-E-13](#) JOSEF/AMY DUNHAM
KK-1 Dale Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
6-24-15 [[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 Debtors, Debtor's Attorney, Chapter 13 Trustee on June 24, 2015. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

JPMorgan Chase ("Creditor") opposes confirmation of the Plan on the basis that the Debtor's plan does not provide for the curing of the pre-petition arrears owed to Creditor in the amount of \$6,716.79.

While a failure to provide for an arrearage would be grounds for denying confirmation, no evidence (either a proof of claim or declaration), the court cannot just "suppose" there is an arrearage because an attorney says there is.

The objection is overruled, without prejudice. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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 overruled without prejudice.

12. [11-48055](#)-E-13 CURTIS HEIGHER
PLC-7 Peter Cianchetta

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
2-9-15 [[100](#)]

No Tentative Ruling: The Objection to Notice of Mortgage Payment Change 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 9, 2015. By the court's calculation, 78 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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.

The Objection to Notice of Mortgage Payment Change is xxxxxx
--

Curtis Heigher ("Debtor") filed the instant Objection to Notice of Mortgage Payment Change and Request for Attorney's Fees on February 9, 2015. Dckt. 100.

The Debtor states that the confirmed Chapter 13 plan calls for payments to Wells Fargo Bank, N.A. ("Creditor"), who holds the first deed of trust on the Debtor's residence, of \$1,454.00. Creditor's Proof of Claim No. 7 called for ongoing mortgage payments of \$1,358.02 through February 15, 2012 and \$1,364.99 thereafter. The claim also included arrears of about \$9,980.76.

The Creditor filed a Notice of Payment Change on October 13, 2014. The Debtor filed an Objection to the Notice of Mortgage Payment. Dckt. 84. The court sustained the objection and ordered that:

[t]he stated changes in the required escrow payments in excess of \$1,531.67 (\$1,117.43 Minimum Payment and \$414.24 Escrow Payment) are disallowed. This disallowance is without prejudice to Wells Fargo Bank, N.A., or its successor from providing notice of such future, prospective changes allowed or required under the Note and Deed of Trust upon which Proof of Claim No. 7-1 in this case is based, however, such changes shall not be based on any amounts, asserted defaults, or expenses which predate the date of this order.

December 12, 2014 Order, Dckt. 96.

The Creditor filed a Notice of Mortgage Payment Change on January 9, 2015. The Notice states that the current monthly payment includes a minimum payment of \$1,436.69 and states that the escrow payment should be \$569.17 total per month (\$495.39 plus \$73.78 for shortage). The attached escrow analysis to the Notice begins with an actual positive balance of \$386.83 in November 2014, with an actual payment in November 2014 into escrow of \$402.21. For December 2014, there was an actual payment into escrow of \$0.85 and in January 2015 an actual payment into escrow of \$3,278.67. In January 2015, the actual balance in escrow was \$1,096.23.

The Debtor states in the Objection:

"[a]n analysis of the required escrow payments from February 2015 through January 2014 require payments of \$408.99 (6,004.11 - 1,096.23 = \$4,907.88 [/] 12 = \$4,08.99)."

Dckt. 100.

The Debtor argues that no explanation is offered as to the increase in the minimum payment for \$1,117.34 to \$1,436.69. The Debtor argues that the Creditor has not provided the new index the Creditor is using to determine the variable rate and the Debtor is unable to calculate the current payment due without it.

The Debtor asserts that the current minimum monthly payment maximum is \$1,201.21 and Escrow \$408.99 for a total payment of \$1,610.22. The Debtor notes that there is a post-petition deficiency caused by the Chapter 13 Trustee under paying the monthly ongoing mortgage payment and is addressing the same with an amended Chapter 13 plan.

ORDER CONTINUING HEARING

On March 31, 2015, the court continued the hearing to 1:30 p.m. on April 28, 2015, pursuant to a stipulation filed by the parties. Dckt. 108.

TRUSTEE'S RESPONSE

The Trustee responds that based on the court's December 12, 2014 Order, the Trustee adjusted the monthly payment to Creditor to \$1,531.67 (the

\$1,117.43 minimum principal and interest payment and a \$414.24 escrow payment).

The Trustee further notes that Debtor asserts that there has been a post-petition under payment of Creditor's claim totaling \$17,656.01 based on the Trustee having make the \$1,117.43 monthly payments since March 2012.

In the Response, Trustee provides the following summary of payments made to Creditor through the Chapter 13 Plan:

- a. The confirmed Chapter 13 Plan provides for a monthly payment to Creditor of \$1,454.00 (inclusive of taxes and insurance). Dckt. 5.
- b. In February 2012, the Trustee adjusted the payment to \$1,366.15 based on written correspondence from Creditor. See Exhibit 1, Letter, Dckt. 114, p.5. This correspondence from Creditor states:
 - i. New Mortgage Payment Effective 02/2012.....\$1,366.15
- c. In May 2012, the Trustee adjusted the payment to \$1,117.43 based on a letter dated March 16, 2012, from Creditor. Exhibit 2, *Id.* at 6. This correspondence states:
 - i. In accordance with the modification agreement, the interest rate will increase to 4.375% with the payment due on May 15, 2012, "with a monthly payment amount of \$1,117.43." *Id.*
 - ii. If further states, "If Wells Fargo pays the taxes and/or insurance, please refer to the monthly billing statement for the total payment amount with escrow." *Id.*
- d. The Trustee states that it was not sent a monthly billing statement by Creditor setting forth any escrow amounts to be paid in addition to the stated amount of \$1,117.43.
- e. The Trustee did not directly notify the Debtor of the payment change.
- f. For November 2014, Creditor sent a notice of mortgage payment change, increasing the monthly payment to \$1,859.23, increasing the escrow amount from \$402.21 to \$422.54. Exhibit 3, *Id.* at 9-14. The notice, *Id.* at p. 13, states that as of November 2014, Creditor computed an escrow under funding of \$2,889.84. [Using the \$402.21 "current escrow amount" shown on page 12 of this Exhibit, the under funding represents approximately 7 months of escrow payments.]
- g. Debtor objected to the Notice of Mortgage Payment Change, and while the objection was pending the Trustee reduced the payments to the prior \$1,117.43 amount. The Trustee notified Debtor's counsel of this adjustment by correspondence dated November 18, 2014. Exhibit 4 (email), *Id.* at 15.

- h. Starting with January 2015, the Trustee continued to make the monthly payments of \$1,117.43 to Creditor based on the court's December 12, 2014 Order (Dckt. 96). This notice was given in writing to Debtor and Debtor's counsel, which included the court's December 12, 2014 Order. *Id.* at 16-19.
- i. The court's December 12, 2014 Order determined that the correct monthly payment for principal, interest, and escrow was \$1,531.67 (\$1,117.43 principal and interest, and \$414.24 for escrow payment) effective with the November 2014 payment and going forward.
- j. The Trustee reports that, as of filing the Response, \$42,876.58 had been disbursed to Creditor by the Trustee for post-petition mortgage payments. (First disbursement was June 29, 2012). The Trustee has also disbursed \$9,980.76 for payment on the pre-petition arrearage on Creditor's claim.
- k. The Trustee is uncertain of the Debtor's methodology in computing there being a \$17,656.10 escrow shortage.

STIPULATION

On April 24, 2015, the parties filed a stipulation requesting that the hearing be continued to 1:30 p.m. on June 2, 2015 and that the deadline to respond to the Objection be extended to May 19, 2015. Dckt. 116.

The court continued the hearing to 1:30 p.m. on June 2, 2015. The court further ordered that any response to the instant Objection be filed and served on or before May 19, 2015.

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee's Supplemental Response advises the court that no other parties have filed any further pleadings.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on May 19, 2015. The evidence in opposition to the Objection to Notice of Mortgage Payment Change identified by Creditor is Proof of Claim No. 7 it has filed in this case. Creditor has filed 20 pages of Exhibits in opposition to the Objection, but has failed to provide testimony or other basis for some of these documents to be authenticated. Fed. R. Evid. 901, *et seq.*

The salient points advanced by Creditor in this Opposition to Objection to Notice of Mortgage Payment Change are:

- A. On October 13, 2014, Creditor issued a Notice of Mortgage Payment Change which reflected a total payment amount of \$1,859.23. This Notice was filed with the court.

1. The Certificate of Service for the October 13, 2014 Notice states that it was served on the Debtor, Debtor's counsel, and the Trustee. *Id.* at 9.
- B. The court determined that the correct payment amount for the Notice of Mortgage Payment Change beginning in November 2014 was \$1,531.67. Order, Dckt. 96.
- C. On January 9, 2015, Creditor issued another Notice of Mortgage Payment Change (two months after issuing the October 13, 2014 Notice), increasing the total payment amount to \$2,005.86. The monthly escrow payment was increased \$422.54 to \$569.17 - which by the court's calculation is a 34.7% increase after two months.
 1. The Notice does not explain how the escrow amount has increased 34.7%.
- D. The January 9, 2015 Notice was filed with the court. Exhibit 3, *Id.* at 11-15. With respect to the Escrow, this Notice states that as of November 2014, there was a positive \$386.63 escrow balance. From that starting month, Creditor states,
 1. In November 2014 \$2,485.46 was advanced for County property taxes. No other escrow advances are shown.
 2. An escrow payment in the amount of \$3,278.67 was made in January 2015, which resulted in there being a \$1,096.23 positive escrow balance.
 3. As of May 2015, Creditor projects that there should be an escrow balance of \$414.24, assuming that the April 2015 property taxes were paid from escrow. [From this Notice, it does not appear that the taxes have been paid and there remains \$1,096.23 in escrow.]
- E. On March 15, 2015, Creditor filed yet another Notice of Mortgage payment change with the court. Exhibit 4, *Id.* at 16-20. This Notice states that the payment of principal and interest has increased to \$1,866.11 (due to an increase in the interest rate to 6.5% from 5.625%).
 1. The amount of the loan, as determined in the Loan Modification Agreement was \$306,493.14, as of April 14, 2009. The loan is amortized over 30 years. As a rough approximation (and recognizing that in the first 5 years of the loan most of the payments go to interest) the court estimates that repaying of \$281,000.00 (estimate principal balance), amortized over 26 years of the loan, would be \$1,914.96.
 2. If the court uses the \$414.24 as the correct escrow monthly payment amount as stated by Creditor in January 2015, then the current monthly payment would appear to be approximately \$2,330.00.

- a. Creditor computes a higher escrow amount because the property taxes total \$5,944.66, which when divided by 12 equals \$495.39 a month.
- b. Creditor also identifies \$885.32 in escrow payments which have come due since the court's December 2014 order that have to be cured.

JUNE 2, 2015 HEARING

At the hearing, the parties advised the court that this dispute has been resolved that they will have it documented. The resolution may include an attempt by the Trustee to recover disbursements made to creditors holding general unsecured claims. The arrearages to be cured arising from the December 2014 determination of this court of the correct payment amount and arrearage, and not for possible prior arrearage.

Based on the representations of the parties, the court continued the hearing to 3:00 p.m. on August 18, 2015. Dckt. 128.

DISCUSSION

Since the hearing, no supplemental papers have been filed in connection with this Objection nor any other motion.

At the hearing, -----

While resolution of this dispute appears to have eluded the Debtor and Creditor, it appears deceptively simple to the court. The following information is required:

- A. The payments made to Creditor since the November 2014 payment change as determined by the court.
- B. The accurate amount of expenses to be funded through escrow from November 2014 going forward.
- C. The principal balance as of November 1, 2014, the amount of interest accruing since the October 2014 payment, and the application of payments to principal and interest since November 1, 2014.
- D. The escrow shortfall since November 1, 2014.
- E. Computation of remaining principal balance as of July 1, 2015 through the end of the loan.
- F. Computation of the current escrow payment.
- G. Computation of a cure for shortfalls, if any, in escrow payments since November 2014.

- H. Short term cure of shortfall in escrow payments through the Chapter 13 Plan or by specially authorized payments outside of plan.

The court cannot reconcile Debtor's contention that the principal and interest payments should be \$1,201.23 with the estimated principal balance based on principal payments made during the first four years of a thirty year loan and an interest rate of 6.5%. Using the Microsoft Excel loan calculator, a thirty year loan, with 6.5% interest for a \$306,000 principal will have monthly payments of will have monthly principal and interest payments of \$1,934.

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 Notice of Mortgage Payment change 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 objection is **XXXXXX**

13. [15-24763-E-13](#) TITO AMARO
DPC-2 Scott Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-15 [[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, Debtor's Attorney, on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear and be examined at the Meeting of Creditors. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation. The Meeting has been continued to September 10, 2015 at 11:00 a.m.. Debtor's counsel advised the Trustee by email on July 15, 2015 that Debtor was in the hospital and would be unable to attend the meeting.
2. The Debtor has failed to file a Motion to Value Collateral of Chase Home Mortgage (the court makes no determination that an

entity named "Chase Home Mortgage is actually a creditor in this case).

3. The Debtor's plan's additional provisions incomplete. Debtor's plan indicates in Section 6 that additional provisions are appended to the plan, and the additional provisions provide: "Class 4 secured creditor Chase Home Mortgage shall have limited relief from 11 U.S.C. § 362 for the sole purpose of". The additional provisions appear to be incomplete so that the nature of the stay under 11 U.S.C. § 362 for Chase Home Mortgage is not clear, where the creditors is listed as Class 1 to be valued at \$0.00 and as Class 4.

The Trustee's objections are well-taken.

The basis for the Trustee's first objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). While the Debtor's counsel contacted the Trustee concerning the Debtor's hospital visit, as of now, the Debtor has not appeared at the required Meeting of Creditors.

As to the Trustee's second objection, a review of the Debtor's plan shows that it relies on the court valuing the secured claim of Chase Home Mortgage. However, the Debtor has failed to file a Motion to Value the Collateral of Chase Home Mortgage. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

Lastly, the Trustee's third objection deals with the incomplete nature of the Debtor's proposed plan. A review of the plan shows that the Additional Provisions is not complete as to the treatment of Chase Home Mortgage concerning 11 U.S.C. § 362. Without knowing specifically what the Additional Provision provides, the court nor the Trustee can determine whether the additional provision is proper. Therefore, the Trustee's objection is sustained.

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

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

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

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

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

14. [15-24765](#)-E-13 GLEN/TERRI SULLIVAN
DPC-1 Scott Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-15 [[18](#)]

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 Debtors, Debtor's Attorney on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The plan will not complete within 60 months. Section 2.13 of the Debtor's plan lists the Internal Revenue Service as a Class 5 debt for \$3,617.24. The Internal Revenue Service filed a Proof of Claim 1-2 indicating priority debt of \$11,669.65. The plan will take 69 months to pay this in full.

2. Debtor's plan may not be their best efforts. The Debtor is above median income according to the Statement of Current Monthly Income Form 22C. Debtor's Schedule J indicates a net monthly income of \$1,781.73, while the plan payment is only \$840.00 and Debtor proposes to pay 0% to unsecured creditors. Form 22C-2 also appears to reflect business expenses are expected to decrease.

The Trustee's objections are well-taken.

The Trustee's first objection states that due to the Proof of Claim 1-2 filed by the Internal Revenue Service which lists a priority claim of \$11,669.65, the Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 68 months due to larger Internal Revenue Service priority claim. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

The Trustee next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

[i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 0% dividend to unsecured claims. The proposed plan only provides for plan payments of \$840.00. However, the Debtor's Schedule J states that the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$1,781.73. Thus, the court may not approve the plan.

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

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

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

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

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

15. [14-31066](#)-E-13 RICARDO/DIANA MANZANO
TOG-3 Thomas Gillis

MOTION TO MODIFY PLAN
7-1-15 [[43](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2015. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

Ricardo and Diana Manzano ("Debtor") filed the instant Motion to Confirm the Modified Plan on July 1, 2015. Dckt. 43.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 3, 2015. Dckt. 50. The Trustee objects on the basis that the Debtor is delinquent in plan payments in the amount of \$882.00 under the terms of the proposed plan.

DISCUSSION

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

The basis for the Trustee's objection is that the Debtor is \$882.00 delinquent in plan payments. According to the Trustee, under the proposed plan,

in month seven payments increased to \$577.00 per month, so a total of \$1,970.00 has become due. The Debtor has only paid a total of \$1,088.00, with the last payment posted on July 28, 2015 in the amount of \$136.00. Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

16.	<u>15-23469</u> -E-13	TERESA/WELDON PILLOW	MOTION TO CONFIRM PLAN
	NSV-2	Nima Vokshori	6-10-15 [<u>32</u>]

Final Ruling: No appearance at the August 18, 2015 hearing is required.

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

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

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

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

TRUSTEE'S OBJECTION

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

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

JULY 21, 2015 HEARING

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

TRUSTEE'S SUPPLEMENTAL FILINGS

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

JULY 28, 2015 HEARING

At the hearing and by prior order of the court (Dckt. 70), the hearing was continued to 3:00 p.m. on August 18, 2015. Dckt. 82.

DEBTOR'S SUPPLEMENTAL DOCUMENT

The Debtor filed a supplemental document on July 27, 2015. Dckt. 77. Pursuant to the court order, the Debtor filed a supplement which states with particularity the grounds in which the confirmation of the modified plan should be confirmed. A review of the supplemental document reveals that the Debtor complied with Fed. R. Bankr. P. 9013 by stating the grounds with particularity and specificity.

TRUSTEE'S WITHDRAWAL OF OPPOSITION

The Trustee filed a Withdrawal of Trustee's Opposition on August 3, 2015. Dckt. 85. The Trustee states that the Debtor has resolved the concerns raised by the Trustee. Namely, the Debtor's Motion to Value Collateral of U.S. Bank, N.A. was granted, each Debtor filed a declaration in support of the plan, and the Trustee's motion to Disgorge Fees was denied.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have now filed evidence in support of confirmation and supplemental papers stating with particularity the grounds for confirmation. No opposition to the Motion was filed by the creditors and the Trustee has withdrawn his objections. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 28, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

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

A. 10248 Marlaw Court, Elk Grove, California

The proposed purchaser of the Property is Eddie and Pamela Bean and the terms of the sale are:

1. Purchase Price is \$408,000.00.

2. The sale is all cash.
3. All costs of sale, including escrow fees, title insurance, and broker's commissions, will be paid from the sale proceeds.
4. Escrow will close in 45 days instead of 30 days.
5. Initial deposit of \$3,000.00.

Dckt. 263. FN.1.

FN.1. The court notes that the terms of the sale were not specifically set out in the Motion as is standard and expected in a Motion to Sell. The court had to mine through the Purchase Agreement to pull the relevant terms of the sale. Movant and Movant's counsel should, in the future, lay out the terms of the sale in the Motion.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on August 4, 2015. Dckt. 266. The Trustee objects based in part because the Debtor has not identified the amount of proceeds that will result from the sale and has announced his intent to use an unidentified portion of the proceeds in the Motion. The Trustee states that the Debtor does not provide a detailed motion showing the breakdown of proceeds and seller's cost.

The Debtor notes that the Property was originally scheduled with no equity, having a value of \$255,500.00 and secured claims of \$784,179.00. No exemption was claimed in the Property. The Trustee notes that the Debtor and non-filing spouse waived exemptions as to other than the section used for other properties. The Trustee notes that while the property of the estate vested on confirmation, the Debtor later changed it to not vest on confirmation when they subsequently confirmed a modified plan.

The Trustee concludes by saying that, while the plan does not call for any proceeds to be paid to the Trustee, the Trustee may seek to modify the plan, and the Debtor has not revealed what proceeds if any will exist and how much they intend to use (as well as for which purposes, although the Debtor has intended to use a portion for living expenses and/or Chapter 13 Plan payments).

WELLS FARGO BANK, N.A.'S CONDITIONAL OPPOSITION

Wells Fargo Bank, N.A. ("Creditor") filed a conditional opposition on August 4, 2015. Dckt. 268. FN.2.

FN.2. While the Creditor titles the paper as a "Conditional Non-Opposition," a review of the filing reveals that it is actually a conditional opposition and, therefore, the court *sua sponte* re-framed the title.

Creditor states that it is the holder of a note on the Property which at the time of filing of the case, the debt totaled \$372,937.95. The Creditor states that it opposes the instant Motion but will withdraw such opposition if the following condition is added by the court to the order: "Either Wells Fargo will be paid in full subject to a proper payoff quote, or that any sale short of full payoff will be subject to Wells Fargo's final approval."

DISCUSSION

First, to address the opposition of Creditor, the Creditor is stating, in essence, that it demands additional language to be added to order in order for the Creditor to consent to the sale. This added language is pregnant with implications. First, it is clear that the present Motion is not one to sell the Property free and clear of liens pursuant to 11 U.S.C. § 363(f). Thus, by "admitting" that additional language to the order is required, Wells Fargo Bank, N.A. implies that every other sale order which does not contain the demanded additional language does in fact work a sale free and clear of the Wells Fargo Bank, N.A. lien. This is not only incorrect, but likely not an "admission" that Wells Fargo Bank, N.A. sought to make for all of the bankruptcy cases in which it is a creditor with a secured claim.

Additionally, the Creditor is stating that the sale should only be authorized if it is paid the "proper pay off quote" or that Creditor give "final approval." To first address the "proper payoff quote," the Creditor does not provide this quote nor any indication of how it will be calculated or what is "proper." The court will not add language that, in effect, gives the Creditor the power to demand, and state that the court has so ordered, payment of any payment amount. As with every other creditor with a lien, Wells Fargo Bank, N.A. may submit its demand and lien release into the sale escrow and be properly paid. If it demands an improper amount, then the Debtor and buyer may seek relief from the court.

As to the Trustee's objection, the court shares the same concerns over the lack of information provided by the Movant. The Motion, as noted above, lacks the specifics as to how the sale proceeds will be disbursed. Furthermore, the fact that the Movant states that he intends to retain some of the funds "for living expenses and/or chapter 13 Plan payments" without providing any amounts is worrisome.

From the contract provided as Exhibit A in support of the Motion (Dckt. 263), the court distills the following information about the sale.

A.	Sale Price.....	\$408,000.00
B.	Cash Sale (Buyer Financing)	
C.	Buyer Pays Escrow Fees	
D.	Seller Pays Other Costs (assume 1%).....	(\$ 4,000)
E.	Estimated Broker Commission....	(\$24,480.00)
F.	Buyer.....	Eddie and Pamela Bean

From Amended Schedule D the Debtor states that the secured claim for which the Marlaw property is the collateral is valued at \$357,000.

Thus, it appears that the sale should net around \$20,000.

To address these concerns and vagaries of the Motion, the court orders that all sales proceeds, after the permitted liens and expenses, shall be disbursed directly from escrow to the Chapter 13 Trustee, who shall hold the monies pending further order of the court.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. After reviewing the purchase agreement, provides a fair sale price which will result in a benefit to the Movant, creditors, and estate. The sale will result in a \$408,000.00, to pay off the lien of Creditor as well as the other administrative costs of the sale. The sale is further beneficial given the dissolution of the Movant's marriage.

As such, the Motion is granted.

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

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

The Motion to Sell Property filed by Yohannes Giorgise 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 Yohannes Giorgise, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Eddie and Pamela Bean or nominee ("Buyer"), the Property commonly known as 10248 Marlaw Court, Elk Grove, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$408,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 263, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. All proceeds of the sale, after payment of the liens and expenses provided above, shall be disbursed directly from escrow to the Chapter 13 Trustee in this

case. The Trustee shall hold the monies pending further order of the court.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement

18. 15-24476-E-13 KENNETH/STACEY ACKMAN
TLA-3 Thomas Amberg

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

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). The Defaults of the non-responding parties are entered by the court.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 30, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Value secured claim of Real Time Resolutions, Inc. ("Creditor") is denied without prejudice.</p>
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The Motion to Value filed by Kenneth Ackman and Stacey Ackman ("Debtors") to value the secured claim of Real Time Resolutions, Inc. (as Agent for The Bank of New York Mellon FKA The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G) ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5700 20th Street, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of \$410,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

PROOF OF CLAIM NO. 2

A review of the claim registry for the instant case shows that Creditor filed Proof of Claim No. 2 on June 25, 2015. The Proof of Claim lists the creditor as "Real Time Resolutions, Inc. as Agent for The Bank of New York Mellon FKA The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as

Trustee for the Certificateholders of CWEQ Revolving Home Equity Loan Trust, Series 2006-G." The Proof of Claim indicates that payments should be directly sent to Real Time Resolutions, Inc.

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

JULY 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 18, 2015. Dckt. 48. The court ordered that the Debtor shall file and serve supplemental papers on or before August 11, 2015.

DEBTOR'S COUNSEL'S SUPPLEMENTAL DECLARATION

Thomas Amberg, Jr., the Debtor's counsel, filed a supplemental declaration on August 4, 2015. Dckt. 49. Debtor's counsel states that the instant Motion was titled poorly and the Debtor is seeking to value the collateral of the Bank of New York Mellon. Debtor's counsel states that The Bank of New York Mellon was served via certified mail at their registered FDIC address as well as the agent's address. Debtor's counsel also states that the servicer was served.

DEBTOR'S SUPPLEMENTAL DOCUMENT

The Debtor filed a supplemental document on August 11, 2015. Dckt. 51. The supplemental document states that the Motion is seeking to value collateral of The Bank of New York Mellon. The Debtor states that the Bank of New York Mellon has been served all the pleadings, including the Motion and all supplemental documents. The Debtor states that they are not seeking to value collateral of Real time Resolutions, Inc. The Debtor states that the Motion was poorly titled and tacked the language from the proof of claim.

DISCUSSION

The Motion to Value clearly states that the claim to be valued is that of Real Time Resolution, Inc. While this pleading may have been served on both Real Time Resolution, Inc. and Bank of New York Mellon, Trustee, the only relief sought is against Real Time Resolutions, Inc. Just as a plaintiff could not contend that a party not named as a defendant, but had a copy of the complaint served on them, should have judgment entered against them, the court does not issue orders granting relief against persons not clearly named against whom relief is requested. While it may be argued that the creditor should have known that it was intended by the debtor that the creditor's name was to have been placed in the motion and an order obtained against the creditor and not the agent, there is little reason for having the court engage in such suppositions and put at issue of whether Due Process has been satisfied, when it is so easy to correctly identify parties.

The court is concerned that in granting a motion that seeks to value the collateral of an agent, rather than the actual creditor, would result in an "maybe-effective order." If the court were to grant such order, it would possibly be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well - most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or not having the benefit of paying a reduced secured claim.

The Debtor's responses does not cure the deficiencies in the Motion. The Debtor and Debtor's counsel is suggesting that, while the Motion is titled "poorly," the court should just suppose the correct creditor in the Motion. This, as described above, raises concerns over due process concerns and identifying the right parties. The court will not just assume that, while the actual creditor, The Bank of New York Mellon, was served, that they have the necessary notice of the instant Motion when the title explicitly is seeking to value the collateral of Real Time Resolution, Inc. The fact that the Motion was admittedly "poorly titled," the fact remains that there are legitimate and important concerns concerning due process and notice as to whether the actual creditor has been properly served and noticed.

Therefore, the Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

19. [15-24476-E-13](#) KENNETH/STACEY ACKMAN
DPC-1 Thomas Amberg

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-9-15 [[36](#)]

Tentative Ruling: The Objection to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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)(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 9, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The hearing was continued to allow for the Debtor's prosecution of a motion to value a secured claim.

The court's decision is to sustain the Objection.

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

1. The Debtor's plan relies on the Motion to Value Collateral of Real Time Resolutions, Inc.
2. The plan may not be proposed in good faith and may be causing unfair discrimination to the unsecured creditors. The Debtor is an above the median income and propose plan payments of \$693.00 per month for 60 months, paying no less than 7% dividend to unsecured creditors. The Debtor's Schedule J states that the Debtor is paying an ongoing court ordered restitution in the amount of \$1,400.00 per month. Debtor fails to disclose this treatment to creditors in their plan as either a Class 3, 4, or 5 or general unsecured to be paid directly by Debtor in the additional provisions. Additionally, the Trustee states he is unsure if the Debtor is entitled to relief under 11 U.S.C. § 109 because the Debtor failed to list the amount of claim

owed to the Sacramento Department of Revenue Recovery, Community Bank/Lane Bryant, GECRB/Sams Club, and States Recovery System.

DEBTOR'S REPLY

The Debtor filed a reply on July 28, 2015. The Debtor states that the Motion to Value was continued to August 18, 2015 to allow counsel to file supplemental documents relating to the real creditor in interest on or before August 11, 2015.

The Debtor further states that the Debtor did disclose the obligation of the Sacramento Department of Revenue Recovery at a pre-Meeting of Creditors, at the Meeting of Creditors, and in other discussions. The obligation is disclosed in Debtor's Schedule C. The Debtor proposes to add a provision in the order confirming stating "The Debtors shall continue to make payments directly to the Sacramento County Department of Revenue Recovery in the amount ordered by said Agency. The Debtors shall notify the Trustee of any change in the amount of these payments."

The Debtor requests continuing the instant Objection to August 18, 2015 to be heard in conjunction with the Motion to Value.

AUGUST 11, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 18, 2015 to be heard in conjunction with the Motion to Value.

DISCUSSION

The Trustee's objections are well-taken.

First, the court denied without prejudice the Motion to Value Collateral of Real Time Resolution, Inc. due to the Debtor incorrectly naming the actual creditor. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

As to the second objection, well it is possible that the order confirming could have addressed the Trustee's objection as to the Sacramento County Department of Revenue Recovery but the fact that the Motion to Value was denied and the fact that there is the possibility, based on the failure of the Debtor to provide the debt amount owed, that the Debtor does not qualify for relief under Chapter 13, the objection is sustained.

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

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

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

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

20. [11-22287](#)-E-13 LAWRENCE MORGAN CONTINUED MOTION FOR CONTEMPT
PLC-8 Peter Cianchetta 4-6-15 [[143](#)]

Final Ruling: No appearance at the August 18, 2015 hearing is required.

The Motion for Contempt is continued to 3:00 p.m. on September 22, 2015.

Pursuant to the court order issued on August 13, 2015 (Dckt. 160) and pursuant to the stipulation of the parties, the hearing has been continued 3:00 p.m. on September 22, 2015.

21. [11-22287](#)-E-13 LAWRENCE MORGAN CONTINUED MOTION FOR CONTEMPT
PLC-8 Peter Cianchetta 4-6-15 [[143](#)]

Final Ruling: No appearance at the August 18, 2015 hearing is required.

The motion appearing to be an erroneous duplicate docket entry, this duplicate calendar entry is removed from calendar.

22. [15-24594-E-13](#) GARY/TAMRA SPENCER
DPC-1 George Burke

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-15 [[16](#)]

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 Debtors, Debtor's Attorney on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Section 2.11 of Debtor's plan lists several secured debts as being paid directly by the Debtor as Class 4 debts. Of the three vehicles listed in Class 4, it appears that two of them, both claims to Sacramento Credit Union, will complete within the 60 month term of the plan. Based on the purchase dates and claim amount listed on Schedule D, the 2004 Toyota Solara and 2007 Cadillac Escalade should be paid off prior to the end of the plan. Section 2.11 provides that Class 4 is for claims that

will mature after the completion of the plan. Section 2.09 states that Class 2 claims are for secured claims that have matured or will mature prior to the plan being completed. The Trustee states that two of the claims of Sacramento Credit Union will be paid off after the end of the plan and therefore miscategorized.

2. The plan is not the Debtor's best efforts. Debtor is above median income. Form 22C shows net disposable monthly income of \$2,017.04. Debtor's plan proposes to pay \$450.00 per month for sixty months, paying 100% to unsecured creditors. Debtor's Schedule J indicated net monthly income of \$1,480.57, which is \$1,030.57 more than the proposed plan payment. Debtor is proposing to pay approximately 30% of net income into the plan each month. Where the plan is effective on confirmation and unsecured creditors are not paid in full on that date, interest appears to be required to pay the present value to unsecured claims.

DEBTOR'S REPLY

The Debtor filed a reply on July 31, 2015. Dckt. 20. The Debtor addresses the Trustee's objection in order as follows:

1. Debtor requests that the court issue an order confirming the plan subject to Debtor filing an additional provision allowing such or amended plan removing said claims from the plan. The Debtor states that they prefer to pay the auto loans outside the plan and thus upon their payoff freeing up capital for retirement planning and paying for college expenses.
2. Debtor denies the allegation that the plan is not their best efforts. The Debtor is in the process of putting their kids through school/college and expect expenses going forward of about \$800.00 per month that are not reflected in Schedule J showing \$1,030 cash flow available.

Additionally, the Debtor state that they receive weekly paychecks which makes budgeting difficult in the marriage.

Debtor states that they are proposing paying 100% to unsecured but the Trustee is asserting that interest should be paid on the unsecured. The Debtor asserts that the cite is from a nonbinding authority. The Debtor objects to payment of interest on unsecured debt through the plan because it would add about \$70.00 per month to the cost of the plan. Adding the trustee fees further eliminates the chapter 13 advantages. Debtor argues that they filed the Chapter 13 to stop interest on the debt and thereby find an affordable way to get out of debt while still permitting the financing of their children's education and keeping their standard of living on a reasonable budget.

DISCUSSION

The Trustee's objections are well-taken.

While the Trustee's first objection may have been able to be addressed in the order confirming, the Trustee's second objection makes confirmation of this plan impossible. The crux of the Trustee's second objection is that, due to the fact the Debtor is an above median debtor and under the proposed terms of the plan, the Debtor must provide for the present value to unsecured claims. The Debtor responds by stating that the case law cited by the Trustee is not binding and that requiring the payment of interest on the unsecured claims would undermine the Debtor's purpose in filing.

While the Trustee does cite to an Oregon case, other courts in other Districts have concurred that where the plan is effective on confirmation and unsecured creditors are not paid in full on that date, interest appears to be required to pay the present value to unsecured claims. *See In re McKenzie*, 516 B.R. 661 (Bankr. M.D. Ga. 2014); *In re Braswell*, No. BR 13-60564-FRA13, 2013 WL 3270752, at 1 (Bankr. D. Or. June 27, 2013); *In re Hight-Goodspeed*, 486 B.R. 462, 464 (Bankr. N.D. Ind. 2012). The court agrees that the Bankruptcy Code requires Debtor to pay the present value to unsecured claims when the unsecured creditors are not paid in full on the date the plan is effective.

The Bankruptcy Code expressly provides,

"(b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan-

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan."

11 U.S.C. § 1325(b).

Here, Debtor has the ability to pay in full all claims, and pay them sooner than sixty-months. However, Debtor understands the value of having the money today, rather than having it stretched out over time. The "value" of the property distributed under the plan (the cash payments) over time is less than the amount of the claim today, even if the payments stretched over five years equals what the amount of the claim as of the commencement of the bankruptcy case. Debtor is utilizing the Bankruptcy Code and the Chapter 13 Plan to stretch out and delay payments to pre-petition creditors so that Debtor can have more money to spend for other purposes. Effectively, the Chapter 13 Plan is being used to force creditors to extend further credit and delay payment.

The arguments of Debtor's counsel (for which no evidence has been presented) contends that Debtor has more, unstated expenses, then testified to under penalty of perjury on Schedule J. If such expenses actually exist, the

court would expect Debtor to so truthfully and honestly testify under penalty of perjury when signing the Schedules.

Debtor further objects, projecting that to provide for interest for creditors, in exchange for having the luxury of delaying payment over a five year period and being able to use for current purposes, rather than paying the existing creditors, the additional projected disposable income, would cost an additional \$70 a month. This represents of 4.5% of the extra \$1,550 of disposable income a month that Debtor is generating. That still leaves Debtor an extra \$1,480 a month of disposable projected income for Debtor to spend.

As such, for the plan to be confirmable under 11 U.S.C. § 1325, the Debtor must provide for the present value of the unsecured claims, based on the interest rate calculation under *Till v. SCS Credit Corp*, 541 U.S. 465 (2004).

While Debtor cries "foul" that the Trustee seeks to have the present value of the claims provided for in the Plan, the court notes the following. The two Chapter 13 debtors have a monthly gross income of \$11,204. Schedule I, Dckt. 1 at 26-27. Debtor's monthly expenses include: (1) \$500 a month for phones, internet, and cable; (2) \$700 for transportation, (3) \$300 for entertainment, (4) \$511 for vehicle insurance, and (5) \$836 in car payments for three cars. Debtor has two children, one 22 years old and the other 17 years old. No information is provided concerning the 22 year old and, since she is listed as a dependent, what income she provides to the household. With all of these expenses, and apparently providing a vehicle for the adult child in the family, issues of good faith arise. Debtor's desire to squeeze the interest from creditors and the failure to disclose expenses which they now claim exist may indicate that this case was not file, and plan not proposed, in good faith.

It appears clear that with some minor tweaks, Debtor can generate the \$70 a month so creditors will at lease receive the value of their claims which are being spread over sixty months. Paying interest does not render an undue (or possibly any) hardship on Debtor. Paying the required interest will be all but unnoticeable. FN.1.

FN.1. It is probably likely that in fighting over the issue of interest, Debtor has cause to be expended, just by Debtor's counsel, time worth a substantial part of, it not all, of the interest which must be paid for the payments stretched out over sixty months.

Therefore, the Trustee's objection is sustained. 11 U.S.C. § 1325(b).

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

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

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

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

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

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

23. [15-25094-E-13](#) ALEX/MICHELE MARTINEZ
MWB-1 Mark Briden

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
7-15-15 [[22](#)]

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). The Defaults of the non-responding parties are entered by the court.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 15, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Value secured claim of Green Tree Servicing LLC ("Creditor") is denied without prejudice.</p>

The Motion to Value filed by Alex and Michele Martinez ("Debtors") to value the secured claim of Green Tree Servicing LLC ("Creditor") is accompanied

by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2725 Sandstone Drive, Anderson, California ("Property"). Debtor seeks to value the Property at a fair market value of \$180,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 3, 2015. Dckt. 29. The Trustee states that he is unsure if the Debtor has named the actual creditor. The Motion requests to value Green Tree Servicing, LLC. The Creditor has not filed a Proof of Claim. The Trustee conducted an online inquiry of the Shasta County Recorder's Official Records Database, which shows Beneficial California Inc as Grantee of the last recorded Deed of Trust recorded on January 25, 2007 which the Trustee presumes is the Second Deed of Trust. The Trustee states that in searching the name Alex V Martinez, none of the results showed Green Tree Servicing, LLC.

APPLICABLE LAW

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

DISCUSSION

Debtor seeks to value the collateral of "Green Tree Servicing LLC." However, the court cannot determine from the evidence presented what, if any, the identified entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion is actually the real party in interest.

The court will not issue orders on incorrect or partial parties that are ineffective.

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

The Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Alex and Michele Martinez ("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 without prejudice.

24. [15-24495](#)-E-13 JAMES/DANIELLE VINCENT
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-23-15 [[25](#)]

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 Debtors (*pro se*) on July 23, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

1. Debtor has failed to provide the trustee with 60 days of employer payment advices received prior to the filing of the petition.
2. Debtor has failed to pay an installment fee of \$79.00.
3. The Debtor's plan contains the following defects:

- a. Section 2.07 indicates that administrative fees of \$12.90 per month are to be paid, yet the Debtor is a pro se Debtor and no attorney fees are due under the plan.
 - b. The plan does not list any creditors in Class 1, 2, 3, or 4. Debtor testified at the Meeting of Creditors that they have an auto loan. While treatment of the secured claim is not required, the Trustee argues that it may indicate the Debtor cannot afford plan payments.
 - c. Section 2.15 of the plan is blank as to the total amount of unsecured debts and the percentage to be paid to unsecured creditors. Debtor's Schedule F lists total unsecured debts of \$48,768.20.
 - d. Section 6 does not indicate if additional provisions are appended.
4. The plan fails Liquidation analysis. The plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. Debtor's non-exempt assets total \$37,001.46 and the plan is silent as to the percentage to be paid to unsecured. The Debtor fails to claim any exemptions on Schedule C.
 5. Section 2.13 does not list and priority debts even though the Debtor testified at the Meeting of Creditors that the owe the Internal Revenue Service approximately \$3,400.00
 6. The Debtor's Statement of Financial Affairs, question 1 is not properly filled out. The Debtor does not provide for the gross income of the Debtor for the current year or the prior two years.
 7. Debtors's Statement of Current Monthly Income is not properly filled out. Form 22C-1, line 5 improperly deducts business expenses. Additionally, the Debtor lists the incorrect total annual income as \$97,884.00 when it should be listed as \$129,324.00. Also Line 16c lists the incorrect median family income. It should be \$64,779.00.

For Form 22C-2, lines 8 and 9 use incorrect deductions for Housing and Utilities expenses of \$519.00 and \$1,718.00, where the correct deductions are \$545.00 and \$1,692.00 according to the Internal Revenue Service National Standards. Additionally, Line 12 improperly deducts \$612.00 for vehicle operation expense which should be \$472.00. Also, line 13 improperly deducts \$612.00 for vehicle ownership costs which should be \$517.00

8. The plan is not the Debtor's best efforts. According to the Trustee's calculations, the Debtor's disposable income totals \$1,491.77. Based on the applicable commitment period of 60 months, unsecured creditors would be entitled to receive 100%. However, the plan does not propose to pay unsecured creditors.

The Trustee's objections are well-taken.

The majority of the Trustee's objections boil down to the fact that the Debtor has not fully, accurately, and truthfully completed the necessary documents. A review of the petition and schedules shows that the Debtor have improperly used deduction on their Statement of Current Monthly Income, have not filled out the amount and disbursement percentage for unsecured creditors, have not indicated whether there are additional provisions, and fails to provide for the Internal Revenue Service priority claim in the plan. Simply, this is an incomplete, almost skeletal plan, supported by incomplete schedules. The Debtor's plan and Debtor's schedules do not comply with the requirements of the Bankruptcy Code and the Trustee's objection is sustained. 11 U.S.C. § 1325(a)(1).

The Trustee further opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that Debtor's non-exempt assets total \$37,001.46. However, the Debtor has failed to state what the amount of unsecured claims are nor what the proposed distribution is. Facially, the court cannot determine whether the Debtor passes the liquidation analysis because, without that information, the court cannot determine if the unsecured are receiving at least what they would in a chapter 7. For that reason, the Trustee's objection is sustained.

Furthermore, the Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). The Debtor has failed to provide all necessary pay stubs. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor has also failed to pay the required installment fee of \$79.00. A review of the docket shows that the Debtor still has not paid the required installment payment. The failure to comply with the order on installment payments is an additional ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

In short, the failure of the Debtor to fully, accurately, truthfully, and properly fill out the necessary schedules and plan makes it impossible for this court to not only determine the feasibility and viability of the plan but also whether the Debtor qualifies for a Chapter 13. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

25. [15-25899-E-13](#) LINDA LEWIS
Pro Se

ORDER TO SHOW CAUSE
7-29-15 [[10](#)]

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider 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 Provided. The Proof of Service states that the Order to Show Cause was served on representative of the Debtor and Office of the United States Trustee on July 31, 2015. By the court's calculation, 19 days' notice was provided.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Order to Show Cause is sustained and the case is dismissed.
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On July 29, 2015, the court issued an Order to Show Cause Why Bankruptcy Case Filed for Estate of Decedent Should Not Be Dismissed. Dckt. 10. The court ordered the following:

IT IS ORDERED that the persons filing the Bankruptcy Petition shall show cause why this case should not be dismissed. The persons filing the Petition shall provide in response any legal bases upon which they assert a bankruptcy

petition may be filed for "Est. of Lewis, Linda, D." The response may be presented at the hearing on this Order to Show Cause or filed prior to the hearing.

IT IS FURTHER ORDERED that the court shall conduct a hearing on this Order to Show Cause at 3:00 p.m. on August 18, 2015.

IT IS FURTHER ORDERED that the issuance of this Order to Show Cause does not alter or limit the Notice of Incomplete Filing and Intent to Dismiss (Dckt. 3) and the dismissal of this case pursuant thereto if all of the required documents are not timely filed.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward a copy of this Order to Antonia Darling, Esq., the Assistant U.S. Trustee for Region 17, at the Sacramento Division Office.

Dckt. 10.

"DEBTOR'S" FAILURE TO REPLY

To date, no supplemental papers have been filed by any parties in connection to the instant Order or for any other purpose.

DISCUSSION

On July 27, 2015, a bankruptcy petition was filed for a debtor identified on the Petition as "Est. of Lewis, Linda, D. (Pro Se)." Petition, Dckt. 1. The court understands this name to be that for the estate of a deceased person named "Linda D. Lewis." The address for the decedent's estate is listed as 9347 Matador Way, Sacramento, California. Id. The Petition is filed under Chapter 13, purporting to be one for rehabilitating the finances of an individual.

Using LEXISNEXIS, the court ran a public death records search. The report generated by LEXISNEXIS states Social Security Death Records discloses that a Linda D. Lewis, who resided at 9347 Matador Way, Sacramento, California, died on February 17, 2011. The Social Security Number reported by the Social Security Administration has the same first five digits (the last four not included in the LEXISNEXIS Report) as the Social Security Number listed on the Statement of Social Security Number (Dckt. 5) filed in this case.

The signature provided on the Petition is illegible (the name appears to be "Lois S-----"). Dckt. 1. No telephone number is provided for the person signing the Petition. Id. The signature on the Statement of Social Security Number is equally illegible. Dckt. 5. An Application to Pay the Filing Fee in Installments for this bankruptcy case has also been filed. The signature of the person signing the Application is illegible. Dckt. 6.

Using the information provided on the Petition and stated Social Security Number, the court could not find any other bankruptcy cases filed by this "Linda D. Lewis."

Congress has defined who may be a "debtor" in a bankruptcy case. For a bankruptcy case under Title 11, Congress requires that "only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." 11 U.S.C. § 109(a).

The term "person" is statutorily defined by Congress in 11 U.S.C. § 101(41) to be:

(41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that--....

Congress further limits who may qualify as a "debtor" in a Chapter 13 debtor, stating in 11 U.S.C. § 109(e) [emphasis added]:

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$ 383,175 and noncontingent, liquidated, secured debts of less than \$ 1,149,525 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$ 383,175 and noncontingent, liquidated, secured debts of less than \$ 1,149,525 may be a debtor under chapter 13 of this title.

"Individual with regular income" is further defined by Congress in 11 U.S.C. § 101(30) [emphasis added] to be:

(30) The term "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

The debtor for this case being stated to be "Est. of Lewis, Linda, D.," the deceased "individual" no longer "resides" in the United States. Further, the deceased "individual" who was Linda D. Lewis no longer has any regular income. If income is being generated, it is being generated by the estate created as a matter of California state law following the death of Linda D. Lewis.

Courts addressing this issue under all Chapters of the Bankruptcy Code have uniformly held that a decedent's estate is not eligible to commence a bankruptcy case. Examples of such rulings include: In re Shepherd, 490 B.R. 339 (N.D. Ind. 2013); In re Walters, 131 B.R. 447 (Bankr. S.D. 1990); and In re Estate of Grassman, 91 B.R. 928 (Bankr. Ore. 1988).

In California, when a person dies, his or her assets and liabilities at death devolve into his or her "estate," to then be administered through probate in the California courts. However, that "estate" is not a legally recognized entity as, for example, is a corporation or trust. As stated by the California Court of Appeal:

An "estate" is not a legal entity and is neither a natural nor artificial person. It is merely a name to indicate the sum total of the assets and liabilities of a decedent, or

of an incompetent, or of a bankrupt. (*Tanner v. Best Estate*, 40 Cal.App.2d 442, 445; *Johnston v. Long*, 30 Cal.2d 54, 63.) An "estate" can neither sue nor be sued. (11 Cal.Jur., p. 1055, § 680.)

Estate of Bright v. Western Air Lines, Inc., 104 Cal. App. 2d 827, 828-829 (1951). For example, the Ninth Circuit held in *Blue Ridge Ins. Co. v. Stanewich* that, absent limited exceptions (not applicable in the context of commencing a bankruptcy case),

[E]xcept where [Cal. Probate] §§ 552 and 553 apply, it is proper to name the representative of the estate rather than the estate because an estate is not a legal entity. *Estate of Bright v. Western Air Lines, Inc.*, 104 Cal. App. 2d 827, 828, 232 P.2d 523 (1951) (an estate cannot sue or be sued); *Tanner v. Estate of Best*, 40 Cal. App. 2d 442, 445, 104 P.2d 1084 (1940) (estate not a legal entity).

142 F.3d 1145, 1150 (9th Cir. 1998).

The Petition on its face indicates that the attempt is being made to commence a bankruptcy case for the deceased Linda D. Lewis, who is neither a "person" nor an "individual" as defined by the Bankruptcy Code. Alternatively, if the attempt is to commence a bankruptcy case for the probate estate of the decedent, such probate entity is (1) not a legal entity which can sue or be sued and (2) not a "debtor" under the Bankruptcy Code.

The lack of any replies being filed further indicates that this was an improper filing and that there is no cognizable "debtor."

Therefore, for the reasons stated supra, the order is sustained 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 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 is sustained and the case is dismissed.