

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 30, 2016 at 2:00 P.M.

1. [16-25101](#)-C-13 WALTER/NELLIE KENDRICKS MOTION TO VALUE COLLATERAL OF
TLA-1 Thomas Amberg BEECHWOOD FUND III, LLC
8-11-16 [[10](#)]

Tentative Ruling: The Motion to Value 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 the Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 11, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of Beechwood Fund III, LLC, "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9593 Annika Court,

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

The first deed of trust secures a loan with a balance of approximately \$539,124.00. Beechwood Fund III, LLC's second deed of trust secures a loan with a balance of approximately \$115,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Beechwood Fund III, LLC secured by a second deed of trust recorded against the real property commonly known as 9593 Annika Court, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$510,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on July 14,
2016 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval

as to form, and if so approved, the Chapter 13
Trustee will submit the proposed order to the
court.

Tentative Ruling: The Motion to Value 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 the Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 10, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3730 Gold Creek Court, West Sacramento, California. The Debtor seeks to value the property at a fair market value of \$410,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$455,000.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$96,920.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the

amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3730 Gold Creek Court, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$410,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. [16-24010](#)-C-13 ANTHONY SALCEDO
DPC-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
8-4-16 [[13](#)]

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

The court's decision is to overrule the Objection.

The Chapter 13 Trustee withdrew his objection. Dkt. 26. Accordingly, the Objection is overruled, and the plan is confirmed. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 4, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Geoffrey Richards, former Chapter 7 Trustee, ("Applicant") makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 2016 through July 2016. Applicant requests fees in the amount of \$3,607.50 and costs in the amount of \$0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the

administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged foattorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employto work in a bankruptcy case doeattorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant

related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

In this case, it is apparent that the Former Chapter 7 Trustee's investigation and efforts, would have culminated in a meaningful dividend to unsecured creditors. While these creditors may still receive that dividend, it was only through the efforts of the Chapter 7 trustee that the assets were discovered and then disclosed. Thus, the Chapter 7 Trustee's request for an administrative claim should be approved.

The former Chapter 7 Trustee is concurrently submitting his time records. As those time records show, the former Chapter 7 Trustee spent 11.1 hours rendering services in this case, as described above. Such time was reasonable, necessary, and appropriate. Compensation is sought at the rate of \$325 per hour.

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

Fees	\$3,607.50
Costs	\$0.00

The Chapter 13 Trustee filed a statement of nonopposition on April 23, 2015.

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

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

The Motion for Allowance of Fees and Expenses filed by Geoffrey Richards ("Applicant"), former Chapter 7 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 Geoffrey Richards is allowed the fees in the amount of \$3,607.50 and costs in the amount of \$0.00 as a professional of the Estate.

Final Ruling: No apAugust 30, 2016 hearing is required.

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

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

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

The court's decision is to sustain the Objection.

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on August 25, 2014 (Case No. 14-25355. Debtor filed this Chapter 13 case on June 21, 2016

DEBTOR'S STATEMENT OF NON-OPPOSITION

Debtor does not oppose the Objection to Discharge. Dkt. 18

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. 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 Discharge filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 16-24023.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor' August 4, 2016. Fourteen days' notice is required. That requirement was met.

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

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

1. The plan relies on support, alimony, and "daughter" contribution, but the Trustee has not received verification as to the increase in income.

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

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

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

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

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

Final Ruling: No apAugust 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on July 22, 2016 is
confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

9. [14-24246](#)-C-13 CARL ASMUS AND JODI
SAC-6 CAMPISI ASMUS
Scott CoBen

MOTION TO MODIFY PLAN
6-7-16 [[119](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. Co-Debtor's payroll deductions for tax, medicare, and social security remain the same despite the fact that her income has increase.
2. There is a \$100 expense for home ownership listed on Schedule J was not listed originally.
3. Trustee requests that Debtors notify the Trustee in writing of any change in employment.

Debtors' Reply

1. Mr. Asmus' employment income has declined to zero, and Mrs. Asmus was

out of work for much of the year.

2. The \$100 expense for home ownership listed on the updated Schedule J, line 4 should have been listed on line 4c instead. It is a reduction from the \$250 home expense listed on line 4c on the original Schedule J.
3. Debtors notified the Trustee of employment change in writing with the November 2016 plan payment. To avoid future confusion, Counsel will personally provide the notification to the Trustee.

Discussion

Debtors have successfully resolved the Trustee's concerns.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor is \$8,822.01 delinquent under the terms of the proposed First Modified Plan, as \$52,430.00 has become due under the terms of the proposed plan. Debtor is delinquent \$8,392.01 under the terms of the plan confirmed February 10, 2016. Debtor has paid a total of \$43,607.99 to Trustee with the last payment posted on July 8, 2016. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

The chapter 13 trustee has raised sufficient concern that Debtor is not adhering to the terms of the confirmed plan or the proposed modified plan, being delinquent in plan payments. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2016. 28 days' notice is required. This requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Henry P. Kanae and Katherine W. Kanae ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage LLC ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment to \$2,540.17 a month at an interest rate of 3.125%. The modification will capitalize the pre-petition arrears and provide for a new principal balance of \$550,203.45. The new interest rate of 3.124% will begin accruing as of September 1, 2016.

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

CHAPTER 13 TRUSTEE

On August 16, 2016, Chapter 13 Trustee filed a motion stating no opposition to the instant motion. Dckt. 160.

DISCUSSION

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

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

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

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

IT IS ORDERED that the court authorizes Henry Peter Kanae and Katherine Williams Kanae ("Debtor") to amend the terms of the loan with Nationstar Mortgage LLC, which is secured by the real property commonly known as 81621 11th Ave., Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 148.

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 22, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [16-22863](#)-C-13 WANDA MOORE
DPC-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-8-16 [[13](#)]

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 8, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to overrule the Objection and confirm the plan.

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Americredit Financial Services.
2. Debtor's plan fails the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$51,428.15 and Debtor is proposing a 0% dividend to unsecured creditors. The non-exempt real property totals \$19,352. The non-exempt personal property totals \$32,482.39. Debtor is claiming her interest in real property at 519 Blanks Lane, Emporia, VA, as exempt under "ES1 #1757-Unknown Exemption" and the Debtor claimed the same exemption for cash on hand where Debtor has not cited an intelligible statute. The trustee

objection to this claim of exemption.

3. The Debtor's plan proposes to pay \$4,500 in attorney's fees. Debtor's rights and responsibilities filed May 2, 2016 indicate \$4,000 in fees have been charged in this case and that \$1,500 was paid prior to filing. Debtor's disclosure of compensation also shows attorney's fees total \$4,000 and \$1,500 was paid prior. The balance of attorney fees in the plan appears to be \$2,500.
4. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Official Form 122C-1 filed on May 2, 2016 is blank. Debtor reports earning income from pension and rental income along with a domestic support obligation all of which was not reported on the form, but based on Form 122C-1, it appears that Debtor has not received any such income in the last six months prior to filing.

DEBTOR'S RESPONSE

Debtor responds to Trustee's objection, providing:

1. Debtor has filed a motion to value on calendar on the same day as the hearing on this objection.
2. Debtor filed amended schedule C on June 15, 2016.
3. The fees stated in Debtor's Rights and Responsibilities are correct. Debtor was charged \$4,000 in fees and \$1,500 was paid prior to filing. Attorney's fees are clarified in the order confirming plan.
4. Debtor filed an amended form 122C-1 on June 15, 2016.

JULY 19, 2016 HEARING

At the hearing on July 19, 2016, the court noting that the motion to value upon which the proposed plan relies was continued to August 30, 2016 in order to resolve a valuation dispute. The court continued the instant motion to the same date of hearing on that motion so that this objection may be resolved in conjunction.

DEBTOR'S SUPPLEMENTAL RESPONSE

On August 4, 2016, the Debtor filed a supplemental response, Dckt. 50, providing that Debtor and Creditor Americredit Financial Services, Inc., had come to a settlement as to the value of the 2008 Ford Mustang. Debtor filed a stipulation and order on motion to value collateral of Americredit Financial Services, Inc. on August 4, 2016, agreeing certain terms resolving the Motion to Value upon which the plan relies, resolving on basis for Trustee's objection. On August 4, 2016, the court granted the order on motion to value collateral pursuant to stipulation. Dckt. 49.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL

On August 16, 2016, Chapter 13 Trustee filed an ex parte motion to dismiss Trustee's objection to confirmation pursuant to FRCP 41, FRBP 9014 & 7041, noting that all concerns had been resolved, and that the only outstanding concern, the attorney fees in the plan \$4,500, would be resolved in the order confirming plan reducing the fees to \$4,000.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled, and Debtors' Chapter 13 Plan filed on May 2, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the clarifying language that approved attorney's fees shall be adjusted to reflect a reduction from \$4,500 in attorney's fees to \$4,000 in attorney's fees. Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

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

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

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

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

1. Debtor's plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. It appears that the tax deductions reported on schedule J may be unnecessary. Debtor deducts on schedule J \$1,250 per month for self-employment income tax. Debtor also deducts \$650 per month for past due tax payment. Debtor fails to provide any documentation supporting the payments of \$650 per month to tax authorities, no evidence of need to save \$1,250 per month for self-employment tax or bank statements showing the setting aside and saving of tax funds. Debtors also offer no evidence of past due tax liabilities owed or the balance owed by non-filing spouse.
 - a. Debtor files as exhibit L and exhibit M 2013 and 2012 tax returns. The 2013 return shows that Debtors overpaid their federal taxes by \$3,732 and their state taxes by \$781. Debtor provides a second copy of the 2013 tax return for an unknown reason. Th 2012 return shows debtors overpaid federal taxes by \$7,573. No state return is provided. There was a federal

overpayment of \$1,615 and state overpayment of \$436.

- b. Trustee questions what if any balance is owed on past tax debt considering after filing 2012, 2013, and 2014 returns the IRS would have kept a combined amount of \$12,920 in refund the Debtor would have otherwise been entitled to and FTB would have kept at least \$1217 for the same reason.
2. In section 6.01 - 6.02, Debtor appears to be reducing the previous term of 60 months to a plan term ending in August 2016 however the plan is not clearly designated. It may be 44 months.
3. Debtor's motion to approve loan modification was heard and denied on February 25, 2014 and denied, PJR-9. Debtor's plan proposes to pay ongoing mortgage in class 4. Debtor currently has a pending adversary proceeding attempting to get the mortgage lender to enter a loan modification. Until Debtor gets a loan modification, she has no proposal to cure the arrears, which are owing of \$47,791.
4. Debtor's plan may not comply with 11 U.S.C. § 1325(a)(1). Debtor's plan proposes to pay interest on arrears to Legacy Lan HOA in Class 1. However this creditor may not be entitled to interest unless the plan provides for interest on late payments or non-applicable bankruptcy law requires it.
5. Trustee is unable to determine whether Debtor is able to make plan payments under 11 U.S.C. § 1325(a)(6). No income statements or profit/loss statements, paystubs, corporate tax returns, etc., have been provided to Trustee.
6. Debtor has not provided copies of the corporate tax returns to show what Debtor's non-filing spouse's corporation has earned in 2013, 2014, or 2015.
7. Debtor's plan was not filed in good faith. In section 6.04 of the plan, Debtor indicates that prior to reconverting to chapter 13, Debtor paid off her 07 GMC Yukon and sold the property. A representative of the Trustee's office has searched the court docket and cannot find authorization from the court authorizing the sale. Debtor has manipulated the bankruptcy process for her benefit, converting the case to sell property of the estate without any payments to chapter 7 trustee or the estate.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL OPPOSITION

On June 21, 2016, Chapter 13 trustee filed an amended response to Debtor's motion to confirm amended plan. Trustee states:

1. The matter was previously continued from May 24, 2016 based on Debtor's motion, stating that "Until the debtor can resolve this adversary proceeding . . . the debtor cannot confirm her chapter 13 plan." A motion to dismiss the adversary is pending on the same calendar and opposed by Debtor. As such, unless Debtor changes her position, if the adversary proceeding is dismissed, the motion to confirm should be denied.
2. Trustee has previously objected to confirmation on the basis that the plan is not Debtor's best efforts based on tax expenses. Trustee no

longer asserts this objection.

3. Debtor may be attempting to reduce the previous term of the 60 months to a plan term ending August 2016. However the specific number of months in the plan is not clearly designated. The 60th month of the plan appears to be September 2016 and Trustee objects to verify this plan length.

JUNE 28, 2016 HEARING

At the hearing on June 28, 2016, the court noted that as the confirmability of this plan is contingent upon the resolution of adversary proceeding case no. 15-2248, upon which a motion to dismiss was coming on calendar the same day of the hearing on this motion, the court deferred rendering its decision until after that hearing on August 23, 2016.

DISCUSSION

The court notes that on July 20, 2016, the motion to dismiss set for hearing on August 22, 2016, filed was withdrawn in the adversary proceeding, Dckt. 47, Case 15-2248. The Defendant in the adversary proceeding instead filed an answer to the complaint.

However, the court is unclear as to the current status of the chapter 13. The last filing on the docket was a supplemental opposition filed by the chapter 13 trustee on June 21, 2016. There being no movement on the docket as to the status of this chapter 13 case since June 21, 2016, the court will render its decision upon hearing a status report of the position of the parties in open court on August 30, 2016.

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

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 4, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to continue the Objection to September 13, 2016.

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

1. Debtor did not appear at the first meeting of creditors on July 28, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.\
2. Debtor is \$930 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$930 is due August 25, 2016. The case was filed on June 15, 2016, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
3. The total fees charged and paid in this case are not clear. Debtor's plan section 2.06 states \$3,500 in attorney fees were paid and an

additional \$1,000 shall be paid through the plan. The Disclosure of Attorney Compensation, Statement Pursuant to Rule 2016(b) indicates \$3,500 in attorney fees have been charged in the case and \$2,500 was paid prior to filing and \$1,000 balance is due. The Rights and Responsibilities states \$3,500 in fees were charged and \$2,500 by Debtor. The Statement of Financial Affairs states the debtor paid \$2,500. Schedule I does not reflect any business income, only \$4,000 is allowed in a non-business case.

Trustee asks the court to continue this objection to after September 1, 2016, the continued date of the first meeting of creditors, to September 13, 2016. If Debtor fails to resolve Trustee's objection, the Trustee prays the court deny confirmation of debtor's plan.

DEBTOR'S RESPONSE

Debtor replies to Trustee's objections, asserting the following:

1. While the address is correct, debtor never received notice of the first meeting date. Debtor has every intention of appearing at the continued meeting set for September 1, 2016.
2. Debtor acknowledges that the first plan payment was not made July 25, 2016. Two monthly payments will be remitted before the date of the hearing on the objection.
3. Debtor acknowledged disparity in the information as to the attorney's fees, and suggests the matter be clarified in the order confirming plan that the gross amount of fees allowed in this case is \$4,000.

DISCUSSION

The court notes that there are several deficiencies pointed out by Trustee, including being delinquent in plan payments, failing to appear at the first meeting of creditors, and confusion as to the attorney's fees paid in this case. However, noting that the first meeting of creditors was continued to September 1, 2016, and noting that Debtor asserts that he has every intention of appearing at that meeting, the court will continue the instant objection to a date following that meeting. If the debtor has not resolved all issues raised by Trustee at that time, the court will deny confirmation of the plan.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to September 13, 2016 at 2:00 p.m.

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2016. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 25, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [16-24094](#)-C-13 ROSHANDA WASHINGTON
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
8-2-16 [[21](#)]

Thru #19

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 2, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The Motion filed by Roshanda H. Washington ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Chevrolet Malibu ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in March 13, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,763.23. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. Debtor asserts the creditor's secured claim should be determined to be in the amount of \$10,000. *See* 11 U.S.C. § 506(a).

CREDITOR'S OPPOSITION

Creditor opposed the motion, stating that the asserted value of \$10,000 is too low, and instead asserts a valuation of \$11,625.

CHAPTER 13 TRUSTEE'S RESPONSE

Chapter 13 Trustee files a response stating that it appears that Debtor's declaration includes a list of items requiring repair between \$1,000 to \$3,000, though that declaration does not explain how Debtor arrived at the conclusion.

DEBTOR'S REPLY

Debtor replies, stating that Debtor and Creditor have arrived at a settlement as to the value of the 2013 Chevrolet Malibu, arriving at a value of \$10,812.50 with an interest rate of 5% per annum.

DISCUSSION

The court notes that a stipulation has been filed on the docket, Dckt. 50, resolving the opposition asserted by Creditor. The stipulation provides that the secured valuation shall be \$10,812.50 with interest accruing at a rate of 5% per annum, and that Creditor is entitled to receive pre and post confirmation monthly adequate protection payments of no less than \$204.50 per month under and pursuant to the chapter 13 plan. Debtor will amend the plan as necessary to conform to this stipulation.

The court will grant the motion to value collateral pursuant to the terms of the asserted stipulation of the parties.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2013 Chevrolet Malibu ("Vehicle") is determined to be a secured claim in the amount of \$10,812.50 with interest accruing at a rate of 5% per annum, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,812.50 and is encumbered by liens securing claims which exceed the value of the asset.

18. [16-24094](#)-C-13 ROSHANDA WASHINGTON
APN-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
8-1-16 [[15](#)]

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

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

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

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to overrule the Objection and confirm the plan.
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Creditor Wells Fargo Bank, N.A., opposes confirmation of the Plan on the basis that Debtor's plan relies on a Motion to Value the Collateral of a vehicle in which Creditor's has a secured interest, a 2013 Chevrolet Malibu. Creditor has opposed that Motion to Value, specifically the asserted valuation of the vehicle at \$10,000, instead asserting a higher value of the vehicle of \$11,625 at an interest rate of 6.25% per annum.

DEBTOR'S REPLY

Debtor replies, stating that Debtor and Creditor have arrived at a settlement as to the value of the 2013 Chevrolet Malibu, arriving at a value of \$10,812.50 with an interest rate of 5% per annum.

DISCUSSION

The court notes that a stipulation has been filed on the docket, Dckt. 50, resolving the opposition asserted by Creditor. The stipulation provides that the secured valuation shall be \$10,812.50 with interest accruing at a rate of 5% per annum, and that Creditor is entitled to receive pre and post confirmation monthly adequate protection payments of no less than \$204.50 per month under and pursuant to the chapter 13 plan. Debtor will amend the plan as necessary to conform to this stipulation. The stipulation has resolved Creditor's only basis for objection, and the court will thus confirm the plan pursuant to the stipulation of the parties, Dckt. 50.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 24, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the language to reflect the terms of the stipulation of the parties, Dckt. 50, as to the agreed upon value of the Creditor Wells Fargo Bank, N.A.'s interest in its collateral, \$10,812.50 at a 5% interest rate per annum, and monthly adequate protection payments of no less than \$204.50 per month for the remainder of the plan. Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court. Debtor shall amend the schedules as necessary.

Final Ruling: No appearance at the August 30, 2016 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 4, 2016. Fourteen days' notice is required. This requirement was met.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Wells Fargo Bank, N.A., which is set for hearing on August 30, 2016 the same date of the hearing on this Objection..

Creditor Wells Fargo Bank, N.A., opposes confirmation of the Plan on the basis that Debtor's plan relies on a Motion to Value the Collateral of a vehicle in which Creditor's has a secured interest, a 2013 Chevrolet Malibu. Creditor has opposed that Motion to Value, specifically the asserted valuation of the vehicle at \$10,000, instead asserting a higher value of the vehicle of \$11,625 at an interest rate of 6.25% per annum.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL

On August 16, 2016, Chapter 13 Trustee filed an ex parte motion to dismiss Trustee's objection to confirmation pursuant to FRCP 41, FRBP 9014 & 7041, noting that all concerns had been resolved

DISCUSSION

The court notes that a stipulation has been filed on the docket, Dckt. 50, resolving the opposition asserted by Creditor. The stipulation provides that the secured valuation shall be \$10,812.50 with interest accruing at a rate of 5% per annum, and that Creditor is entitled to receive pre and post confirmation monthly adequate protection payments of no less than \$204.50 per month under and pursuant to the chapter 13 plan. Debtor will amend the plan as necessary to conform to this stipulation. The stipulation has resolved Creditor's only basis for objection, and the court will thus confirm the plan pursuant to the stipulation of the parties, Dckt. 50.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 24, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the language to reflect the terms of the stipulation of the parties, Dckt. 50, as to the agreed upon value of the Creditor Wells Fargo Bank, N.A.'s interest in its collateral, \$10,812.50 at a 5% interest rate per annum, and monthly adequate protection payments of no less than \$204.50 per month for the remainder of the plan. Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court. Debtor shall amend the schedules as necessary.
