UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 15, 2015 at 2:00 P.M.

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1. 15-20502-C-13 MICHAEL/ANGELA CRAIK — MOTION TO CONFIRM PLAN
CMO-12 Cara O'Neill — 8-3-15 [73]

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Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2015. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to continue the Motion to Confirm the Plan to October 22, 2015 at 10:00 a.m.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following ground:

1. The plan relies on two motions to value collateral set for hearing on September 1, 2015.

Creditor's Objection

Bank of America, N.A. ("Creditor") objects to the Plan on the basis that it fails to provide for its secured claim and contests the debtors' valuation of the property that is the subject of the motion to value heard on September 1, 2015.

Discussion

The docket reflects that the court has not granted one of the debtor's two motions to value collateral that were heard on September 1, 2015. Due to dispute over valuation of the subject property, the motion to value collateral of Bank of America, N.A. was set for trial to be held on October 22,

2015 at 10:00 a.m. before the Honorable David Russell, Courtroom No. 35, 6th Floor, United States Bankruptcy Court, 501 I Street, Sacramento, California. Dkt. 102.

Since confirmation of the plan hinges on resolution of the motion to value collateral of Bank of America, N.A., the court's decision is to continue the motion to confirm plan to October 22, 2015 at 10:00 a.m. to be resolved concurrently with the motion to value collateral.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to October 22, 2015 at 10:00 a.m. before the Honorable David Russell, Courtroom No. 35, 6th Floor, United States Bankruptcy Court, 501 I Street, Sacramento, California.

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2. 15-20004-C-13 EVANGELINE MARAKAS MOTION TO CONFIRM PLAN
CAH-6 Jin Kim 7-31-15 [118]

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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 July 31, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Creditor's Opposition

Bank of America, N.A. opposes confirmation on the following grounds:

Secured Creditor seeks clarification as to whether its senior lien for the 4793 Madrid Ridge Ct., Las Vegas, Nevanda 89129 which has an Order approving Sale (Secured Creditor did not oppose) is being paid through Escrow or by the Chapter 13 Trustee pursuant to Plan Confirmation.

The Second Amended Plan appears to pay only $200.00 a month on Secured Creditor's claim despite conflicting language regarding sale in the miscellaneous provisions.

Secured Creditor requests Court take Judicial Notice pursuant to Federal Rules of Evidence 201 regarding Debtor's Order on Motion to Sell (Dkt 132, Ex A)and incorporated herein by reference.

Secured Creditor seeks clarification in the Confirmation Order that the Plan terms do not overturn the Order on Motion to Sell and Secured Creditor will be paid in full upon close of escrow.

Discussion

As the Creditor's concerns highlight, the Plan contains conflicting information regarding treatment of Creditor's claim. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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3. 15-22208-C-13 DENA LEE MOTION TO CONFIRM PLAN
CAH-1 C. Anthony Hughes 7-30-15 [27]

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Final Ruling: No appearance at the September 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 30, 2015 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.

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4. 15-24310-C-13 DPC-1 — ANGELO/LISA OLIVA, Thanh Troung Foxx — OBJECTION TO DISCHARGE BY DAVID P. CUSICK, 8-6-15 [50]

Also #5

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Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. 28 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). The defaults of the non-responding parties and other parties in interest are entered.

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 July 2, 2013 (Case No. 13-23391). Debtor filed this Chapter 13 case on May 28, 2015.

DEBTOR'S STATEMENT OF NON-OPPOSITION

Debtor does not oppose the Objection to Discharge.

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 15-24310.

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5. 15-24310-C-13 ANGELO/LISA OLIVA — OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1
TTF-4 Thanh Troung Foxx — 7-31-15 [44]

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 31, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Proof of Claim Number 1 of the Internal Revenue Service is overruled.

Angelo and Lisa Oliva, the Chapter 13 Debtors, ("Objectors") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $65,618.86 in unpaid civil penalties as to civil penalties relating to tax periods occurring in 2007 and 2008.

Objectors assert that the civil tax penalties asserted by the IRS in the Claim are dischargeable based on the standard articulated by the 9th Circuit Court of Appeals in *McKay v. United States*, 957 F.2d 689, 693 (9th Cir. 1991), where the court stated that 11 U.S.C. § 523(a)(7)(B) "makes dischargeable any tax penalty 'imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition.' A penalty imposed on unpaid taxes accruing more than three

years before the filing of the petition are dischargeable." *Id.* In that the Proof of Claim states the Debtors' 2007 and 2008 civil tax penalties were assessed in 2009, such penalties must have been based on transactions or events that occurred more than 3 years prior to the filing of the Debtors' Chapter 7 bankruptcy petition in April 2013, therefore, such penalties were correspondingly discharged in Debtors' Chapter 7 case.

On October 2, 2013, Debtors filed a Chapter 13 bankruptcy case (Case No. 2013-32875). Debtors made payments under a confirmed Chapter 13 plan in such case over a period of approximately 14 months. According to the Final Report filed by Trustee David Cusick in such Chapter 13 case, a total of $30,379.48 was paid to the Internal Revenue Service in such Chapter 13 case.

A review of the proof of claim in the Debtor's prior Chapter 13 case in comparison to the proof of claim filed in this proceeding shows that the Internal Revenue Service applied the $30,379.48 payments made by the Debtors in their prior Chapter 13 case were applied to the Debtors' civil penalty liability for years 2007 and 2008.

Objectors request that the Court enter an order (1) disallowing the claim of the Internal Revenue Service to the extent of $65,618.86 to reflect the amount discharged in Objectors' prior Chapter 7 case and (2) requiring the Internal Revenue Service to reapply the $30,379.48 amount paid by Debtors' under their prior Chapter 13 plan to Debtors' remaining outstanding liability to such agency.

Creditor's Opposition

Debtors have not submitted evidence to overcome the claim's prima facie validity. Instead, Mr. Oliva has simply filed a declaration alleging that it is his belief that the "civil tax penalties" were discharged in the prior Chapter 7 bankruptcy proceeding. This declaration is not sufficient evidence to carry the Debtors' burden of proof. Accordingly, the objection to the proof of the claim should be denied.

In the instant case, the Debtors failed to remit employee taxes for their corporation for the quarters ending September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, and September 30, 2008. As a result, the IRS assessed trust fund recovery penalties for each of these quarters under 26 U.S.C. § 6672. The IRS referred to these trust fund recovery penalties as civil penalties on its proof of claim.

It appears that the debtors are contending that these trust fund recovery penalties are not entitled to priority status by 11 U.S.C. § 507(a)(8) because the IRS has identified these assessments as civil tax penalties on its proof of claim. It also appears that the debtors are contending that these tax liabilities fall within the purview of 11 U.S.C. § 523(a)(7)(B). However, as described above, trust fund recovery penalties are deemed priority taxes, not penalties dischargeable under 11. U.S.C. § 523(a)(7)(B). *See generally In re Mosbrucker*, 227 B.R. 434 (8th Cir. BAP 1998), *aff'd*, 193 F.3d 250 (8th Cir. 1999). The fact that these assessments are referred to as civil penalties by the IRS on its proof of claim does not alter the essential character of these assessments as taxes that were required to be collected or withheld and for which the debtors are liable in whatever capacity. *See generally United States v. Sotello*, 436 U.S. 268, 275 (1978).

Here, the Debtors have filed two consecutive Chapter 13 bankruptcy petitions, and the IRS has filed proofs of claims in both of these

bankruptcy proceedings for the same priority taxes assessed against the Debtors under 26 U.S.C. § 6672, among other tax liability claims. Because the IRS properly filed a proof of claim in the first Chapter 13 bankruptcy petition, and because no objection was raised by the Debtors in that proceeding, the government contends that the IRS's claim was deemed allowed under 11. U.S.C. Section 502(a), and the debtors should therefore be precluded from being able to challenge the trust fund recovery penalty liabilities in this bankruptcy proceeding.

Discussion

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

As Creditor points out, trust fund recovery penalties are entitled to priority status by 11 U.S.C. § 507(a)(8) and are not penalties dischargeable under 11. U.S.C. § 523(a)(7)(B).

Based on the evidence before the court, the creditor's claim is allowed. The Objection to the Proof of Claim is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of the Internal Revenue Service, Creditor, filed in this case by the Chapter 13 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 objection to Proof of Claim Number 1 of the Internal Revenue Service is overruled.

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6. 15-21914-C-13 SHAUN/AMELIA STALKER — MOTION TO APPROVE LOAN MODIFICATION
CAH-1 C. Anthony Hughes — 8-7-15 [20]

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Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 7, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Shaun and Amelia Stalker ("Debtors") seeks court approval for Debtor to incur post-petition credit. Green Tree Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The proposed credit agreement is a loan modification that makes the following offers: The new principal balance of the Note will be $181,565.37. The interest rate is 4.000% and is fixed for 40 years. The total monthly payment is $973.87 and includes taxes and insurance.

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

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

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

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

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

IT IS ORDERED that the court authorizes Shaun and Amelia Stalker ("Debtors") to amend the terms of the loan with Green Tree Servicing, LLC which is secured by the real property commonly known as 7448 Berry Lane, Citrus Heights, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 23.

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7. 14-32416-C-13 SEAN/LIA DUNCAN MOTION TO MODIFY PLAN
RJM-2 Rick Morin 7-24-15 [28]

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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 24, 2015. 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. Debtorswere previously denied court authorization to incur new debt to purchase a new vehicle for $379.12 per month. (Dkt 36). The amended Schedule J filed on 7/24/15 reflects an amount of $379.12 as a car payment expense.

2. Debtors have paid ahead $1,265 under the proposed plan. The modified plan proposes payments of $985 per month for the first 7 months, then $705 per month for the next 53 months of the plan. Attempting to reduce the plan payments already due to less than the amount already paid, without explanation, may be proposed in bad faith.

Debtors' Reply

Debtors concede that the proposed plan should not be confirmed at this time as it was prepared in anticipation of incurring a new monthly car loan expense with court permission and the court denied such permission.

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.

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8. 15-24716-C-13 DPC-1 | PHILIP REVILLAS
W. Scott de Bie | OBJECTION TO DISCHARGE BY DAVID P. CUSICK
8-6-15 [17]

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Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. 28 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). The defaults of the non-responding parties and other parties in interest are entered.

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 27, 2012 (Case No. 12-29347). Debtor filed this Chapter 13 case on June 10, 2015.

DEBTOR'S STATEMENT OF NON-OPPOSITION

Debtor does not oppose the Objection to Discharge.

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 15-24716.

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9. 15-23720-C-13 MARK LUNA MOTION TO CONFIRM PLAN
MB-1 Michael Benavides 7-24-15 [31]

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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 July 24, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor is $3,830 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,925 is due on September 25, 2015. Debtor has paid $1,925 into the plan to date.

2. Debtor has failed to make filing fee installment payments in July and August of 2015.

3. The plan proposes a 100% dividend to unsecured creditors while this motion and accompanying declaration propose a 0% dividend.

4. Debtor's declaration (dkt. 34) states that operation of a business is debtor's primary source of income. The petition and SoFA do not identify any business or business income.

Debtor's Amended Motion to Confirm (Dkt 43)

Debtor has paid all installment fees and the plan proposes to pay 100% dividend to unsecured creditors.

Discussion

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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10. 15-25721-C-13 NICHOLAS HUGGINS
SJS-1 Scott Johnson

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
8-20-15 [19]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 20, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The court's decision is to set the Motion to Value secured claim of GM Financial, "Creditor," for evidentiary hearing.

Debtor's motion

The motion is accompanied by the Debtor's declaration. Debtor is the owner of a 2008 Chrysler Sebring, which he contends has a replacement value of $3,095 as of the date of the filing of the motion value based on online appraisal guides. The declaration does not provide details as to the condition or mileage of the car.

The petition values the Vehicle at $4,397 and states that it is in fair condition with 105,000 miles. As the owners, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2012, more than 910 days prior to filing of the petition, with a balance of approximately $12,904.81.

Creditor's opposition

Creditor contends that under 11 U.S.C. § 506(a), the correct standard for valuation of personal property is "the price a retail merchant would charge" and such price is most accurately measured by the "retail" value of the vehicle. In determining the retail value, courts routinely find industry guides are appropriate evidence of value. *In re Thayer*, 98 B.R. 748 (BK W.D.VA 1989).

Creditor further claims that the *NADA Guides* qualifies as a "market report" because it provides quotations for vehicles. Creditor also regularly relied on the *NADA Guides* in ascertaining values for vehicles in its business. Therefore, values from the *NADA Guides* are admissible as evidence for determining the replacement value of the Vehicle at issue. Creditor requests this court to value the Vehicle at $7,700, as reflected in the *NADA Guides*.

Discussion

The value of the vehicle is in dispute. The court needs additional evidence in order to make a determination regarding value.

The Creditor and/or the debtor may submit a verified appraisal to the court. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980).

The court's decision is to schedule a valuation hearing at the hearing held on September 15, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) will be set for evidentiary hearing at the hearing held on September 15, 2015.

****

11. 13-26238-C-13 ROY/LENAY BROOKS MOTION TO INCUR DEBT
CAH-1 C. Anthony Hughes 8-4-15 [35]

****

Final Ruling: No appearance at the September 15, 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, respondent creditor, and Office of the United States Trustee on August 4, 2015. Twenty-eight days' notice is required.

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

The motion seeks permission to purchase a Used 2011 Hyundai Sonata with 64,000 miles, which the total purchase price is $25,168.41, with monthly payments of $381.34 for 66 months.

The plan proposes to pay unsecured creditors 100%.

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

The Debtor does not address the reasonableness of incurring debt of around $20,000 to purchase a well-used vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts.

Further, the transaction is not best interests of the Debtor. The loan calls for a high interest charge — 7.95%. The debtor could purchase a newer, more reliable vehicle for substantially less capital.

The motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

****

12. 15-25438-C-13 LISA ORTIZ — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-2 Lucas Garcia — 8-12-15 [22]

Also #13

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 12, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The plan relies on the a motion to value the collateral of Bank of America, N.A., and no motion was filed.

2. The plan undervalues the debt owed to the IRS.

3. The plan proposes to pay $6,000 in attorney fees when only $4,000 is allowed in non-business cases.

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.

****

13. 15-25438-C-13 LISA ORTIZ
PPR-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 7-24-15 [19]

****

Final Ruling: No appearance at the September 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2015. Forty-two 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)(1) 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.

Creditor, Bank of America, N.A. has **withdrawn** its objection to confirmation. (Dkt. 29). Thus, the court's decision is to overrule the objection as moot.

However, based on the Trustee's objection to confirmation (Dkt. 22), the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is therefore not confirmed notwithstanding that the court has overruled this objection to confirmation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Bank of America, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled as moot.

****

14. 15-25343-C-13 MICHAEL HAGERTY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-2 Pro Se — 8-12-15 [22]

****

Final Ruling: No appearance at the September 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2015. Forty-two 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)(1) 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.

The case was dismissed on September 13, 2015 (Dkt. 31). Thus, the court's decision is to overrule the objection as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled as moot.

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15. 15-25347-C-13 DIANNE/ALAN DREVER — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Harry Roth — 8-12-15 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 12, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Form 22C fails to disclose VA income. Rather than $594.34, disposable income should be $3,343.13.

2. The plan relies on the motion to value collateral of Patelco Credit Union.

3. The plan accelerates payment to class 2 creditor Ford Motor Credit and delays payment to unsecured creditors.

The court granted the motion to value collateral of Patelco Credit Union. Dkt. 30. The court has considered the Trustee's remaining 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.

****

16. 11-42548-C-13 DAVID O'REILLY
SDB-6 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
8-13-15 [129]

****

Final Ruling: No appearance at the September 15, 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, respondent creditor, and Office of the United States Trustee on August 13, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of The Bank of New York Mellon Trust Company, 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 462 Anderson Way, Rio Vista, California. The Debtor seeks to value the property at a fair market value of $150,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $182,818.55. The Bank of New York Mellon Trust Company, N.A.'s second deed of trust secures a loan with a balance of approximately $18,661. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon Trust Company, N.A. secured by a second deed of trust recorded against the real property commonly known as 462 Anderson Way, Rio Vista, California is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $150,00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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17. 15-21748-C-13 DOUGLAS/DIEM WOODWARD MOTION TO CONFIRM PLAN
SJS-1 Scott Sagaria 7-23-15 [48]

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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 July 23, 2015. Forty-two days' notice is required. That requirement was met.

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

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

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

1. The plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals $16,933.69 and Debtors are proposing a 13.10% dividend to unsecured creditors paying approximatly $8,096. Non-exempt assets include $11,991.36 in real property equity and $4,939.37 in personal property including bank account balances and tax refunds. The non-exempt balance does not deduct for priority claims originally deducted on Debtors' liquidation analysis.

2. Debtors have incorrectly classified Wells Fargo Home Mortgage in both Class 2 and Class 4 of the plan. Debtors propose to cure mortgage arrears in Class 2 while paying their ongoing monthly mortgage in Class 4. On June 19, 2015, Well Fargo filed Claim No. 11, claiming arrears on the mortgage of $5,026.20. The claim indicates that Debtors were delinquent two payments at the time of filing for a delinquency of $3,890.60, the claim also includes $1,135.60 in fees. Class 1 of the plan is where delinquent secured claims that mature after the completion of the plan are categorized. Based on the claim filed by

Wells Fargo Home Mortgage and Debtors' plan, the ongoing mortgage payments should be paid through Class 1 of the plan.

3. Debtors do not appear to be able to make payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

   a. Debtors propose to value the secured claim of Wells Fargo Bank/Beck's Furniture, but have not filed a motion to value collateral. Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

   b. Debtors list on Schedule E a priority claim for IRS in the amount of $5,182.59 but fail to provide for the claim in the plan. Debtors' prior plan proposed payment to the IRS in Class 5. The Trustee is unable to determine why the claim has been removed in the proposed amended plan.

The Trustee's opposition is well-taken by the court. The court agrees that Debtors' plan fails liquidation analysis, that Debtors have miscalssified the claims of Wells Fargo Home Mortgage, and that Debtors' failure to file a Motion to Value the Collateral of Wells Fargo Bank or Beck's Furniture and failure to list the IRS claim in the amended plan indicate that Debtors will not be able to make plan payments. The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

****

18. 15-26657-C-13 ROBERT/LEE-ANN MAHAN MOTION TO EXTEND AUTOMATIC STAY
MRL-1 Mikalah Liviakis 8-31-15 [11]

Thru #20

***

Final Ruling: No appearance at the September 15, 2015 hearing is required.

Final 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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. 14 days' notice is required. This requirement was met.

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

The Motion to Extend the Automatic Stay is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael McManus.

Robert John Mahan and Lee-Ann Maham ("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. 15-21424) was dismissed on August 19, 2015, after Debtor failed to confirm a plan within sixty days. *See* Order, Bankr. E.D. Cal. No. 15-21424, Dckt. 69, August 19, 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.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor provides that Debtor has worked diligently to prosecute their prior chapter 13 case, however liens and secured claims that required resolution, as well as an adversary proceeds, Adv. Case No. 15-02075, and resulting constantly changing information necessitated that Debtor filed several amended plans. This was why Debtor fell behind in plan payments. By the time the case was dismissed, Debtor was catching up on plan payments, and had filed a third plan and Motion to Confirm Plan, Case No. 15-21424, Dckt. 63 & 65. Debtor now believes most of the issues have been resolved and that a plan may be confirmed in a timely manner

TRUSTEE'S OPPOSITION

Chapter 13 Trustee filed an opposition to Debtor's motion on September 4, 2015. Trustee states he is uncertain the Debtor's motion and declaration provide sufficient information about the immediate prior case to grant the motion. Debtor has failed to address the finding in the civil minutes of the previous case, Case No. 15-21424, Dckt. 60. The finding was that Debtor was "not eligible for chapter 13 relief because the debtor owes more than $450,000 in noncontingent, liquidated secured assets." Judge McManus stated "Given the failure to accurately list a known debt, the debtor gerrymandered eligibility."

In this case, the summary provides that the amount entitled to priority is $36,002, and non-priority unsecured debtor $231,313. Debtor reports in Section 2.15 of the plan unsecured claims of $331,311. Debtor also reports in Class 2B.1 of the plan Theodore Keefer Trustee with a claimed amount of $145,000 and value the creditor's interest in its collateral as $35,000. The $110,000 difference is not reported in schedule D as unsecured. Finally, Debtor fails to report on schedule B any possible debtor refund to be issued on case 15-21424. Trustee has received information the debtor refund on case 15-21424 is $23,972.46.

DISCUSSION

The court notes that the previously dismissed chapter 13 case, Case No. 15-21424, was before the Honorable Michael S. McManus. The court will transfer the instant case and all matters associated with it to be heard before Judge Michael McManus. The Motion to Extend Automatic Stay is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28.

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 continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael

McManus.

****

19.	15-26657-C-13 MRL-2	ROBERT/LEE-ANN MAHAN Mikalah Liviakis	MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION SERVICE, INC. 8-31-15 [14]

****

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael McManus.

The court notes that the previously dismissed chapter 13 case, Case No. 15-21424, was before the Honorable Michael S. McManus. The court will transfer the instant case and all matters associated with it to be heard before Judge Michael McManus. The Motion to Extend Automatic Stay is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28.

An 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 Motion is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael McManus.

****

20. 15-26657-C-13 ROBERT/LEE-ANN MAHAN — MOTION TO VALUE COLLATERAL OF ALLIANT CREDIT UNION
MRL-3 Mikalah Liviakis — 8-31-15 [18]

****

Final Ruling: No appearance at the September 15, 2015 hearing is required.

Final 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. 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 ----------.

The Motion to Value is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael McManus.

The court notes that the previously dismissed chapter 13 case, Case No. 15-21424, was before the Honorable Michael S. McManus. The court will transfer the instant case and all matters associated with it to be heard before Judge Michael McManus. The Motion to Extend Automatic Stay is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28.

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

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

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

IT IS ORDERED that the Motion is continued to September 21, 2015 at 1:30 p.m. in Courtroom 28 before the Honorable Michael McManus.

****

21. 15-26064-C-13 JEANNE CHRISTENSON
CAH-1 C. Anthony Hughes

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
8-5-15 [9]

****

Final Ruling: No appearance at the September 15, 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, respondent creditor, and Office of the United States Trustee on August 5, 2015. Twenty-eight days' notice is required. This 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 Bank of America, 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 8129 Quartz Lane, Smartsville, California. The Debtor seeks to value the property at a fair market value of $136,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $171,999.58. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $51,600.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 8129 Quartz Lane, Smartsville, 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 $136,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

****

22. 15-22666-C-13 MARIBEL BAHNER
SJD-2 Susan Dodds

MOTION TO CONFIRM PLAN
7-30-15 [43]

Also #23
****

Final Ruling: No appearance at the September 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

However, the court notes that Debtor's amended plan, which they are here confirming, has not been filed separately on the court docket and instead is appended to Debtor's motion, Dckt. 43. The court directs Debtor's counsel to separately file the amended chapter 13 plan on the docket so that it may be separately identifiable from the instant motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 30, 2015 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.

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23. 15-22666-C-13 MARIBEL BAHNER
SJD-3 Susan Dodds

OBJECTION TO CLAIM OF JUDITH BUGARIN AND NORBERTO BUGARIN, CLAIM NUMBER 6
7-31-15 [50]

Final Ruling: No appearance at the September 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 30, 2015.44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 6 of Judith and Norberto Bugarin is sustained in part, and Claim Number 6 claiming an amount of $5,047.26 is allowed as a general, unsecured, non-priority claim.

Proof of Claim Number 8 is duplicative and disallowed in its entirety.

Maribel Bahner, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Judith and Norberto Bugarin ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case, and that duplicate Claim No. 8 be sealed for confidentiality, and the Claims No. 6 and 8 be combined as applying to one claim.

Proof of Claim No. 6: Proof of Claim No. 6-1 was filed by Judith and Norberto Bugarin on July 19, 2015 for past due rent. Creditors is asserted to be priority in the amount of $2,775, with total amount claimed of $5,047.26. Objector asserts that nothing in the claim or supporting documents provides sufficient basis that the claim is priority, and in fact the claim states that it is for past due rent. Additionally, Objector asserts that Creditors have included confidential information for themselves and Debtor, and urge that the claim should be sealed for confidentiality purposes.

Proof of Claim No. 8: Proof of Claim No. 8 was filed by Creditors on July

27, 2015. The claimed is asserted to be unsecured non-priority for $5,047.26 for the same issue of unpaid rent. The claim is not marked as amending the prior claim, but appears to be a duplicate of Claim 6. Again, the claim includes confidential information that Debtor asks the court to seal.

Debtor requests that Claim 8 be sealed for confidentiality purposes, and that Claim Nos. 6 and 8 be combined to apply as one claim. Finally, Debtor requests that the claim be denied in its entirety or in the alternative denied as a priority claim and instead be treated as unsecured non-priority.

CREDITOR'S RESPONSE

No responses or objections have been filed in connection with the Trustee's objection to claim.

CHAPTER 13 TRUSTEE'S RESPONSE

On August 5, 2015, Chapter 13 Trustee filed a statement of non-opposition to the instant motion.

DISCUSSION

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

Claim No. 6: Creditors claim priority status of $2,775 for the past due rent under 11 U.S.C. § 507(a)(7). Section 507(a)(7) provides priority status to unsecured claims of individuals "arising from the deposit . . . of money in connection with the purchase, lease, or rental of property . . . ." 11 U.S.C. § 507(a)(7). This means that priority treatment is permissible for certain unsecured claims of individuals who deposited money with the debtor priori to commencement of bankruptcy proceedings, not for past-due rent, as claimed by Creditors in Claim No. 6. The court finds, however, that it is not appropriate to deny this claim in its entirety, as Creditors have provided sufficient evidence to satisfy the court that this debt is a general, unsecured, non-priority claim.

Claim No. 8: The court agrees that Creditors by filing Claim No. 8, were attempting to remedy the mistaken classification of their debt as "priority," and in fact should have been filed as an amendment to Claim No. 6. The court will disallow Claim No. 8.

Finally, the court agrees that the Claim Number 6 contains private information, which confidential information should be redacted and/or sealed.

Based on the evidence before the court, Creditors' Proof of Claim Number 6 in the amount of $5,047.26 is allowed as a general, unsecured, non-priority claim. Creditor's Proof of Claim Number 8 is duplicative and is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Judith and Norberto Bugarin, Creditor filed in this case by Maribel Bahner, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6 of Judith and Norberto Bugarin is sustained in part and Proof of Claim Number 6 in the amount of $5,047.26 is allowed as a general, unsecured, non-priority claim.
>
> **IT IS FURTHER ORDERED** that Proof of Claim Number 8 of Judith and Norberto Bugarin is duplicative and is disallowed in its entirety.

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24.	15-25172-C-13 DPC-1	ERIC/CLEOFE PRICE Mary Ellen Terranella	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-31-15 [14]

Thru #26

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 31, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection to Confirmation of Plan, and the Plan is not confirmed.

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

1. Debtors misclassified California Republic Bank Auto Finance and Infiniti Financial Services in Class 2B of the plan. It does not appear either of these creditors qualify under Class 2B of the plan, and instead should be listed under Class 2A.

   a. Debtors had a prior case that was filed April 1, 2015 and dismissed on June 26, 2015, Case No. 15-22702. Infiniti Financial Services filed an Objection to Confirmation, Dckt.

Control No. APN-1 in Debtors' prior case. The objection as sustained by the court at the hearing held May 7, 2015. Debtors' plan filed April 1, 2015 in the prior case lists California Republic in Class 2B. It is unclear why Debtors again list California Republic in Class 2B. The creditor filed a claim on July 6, 2015, Claim No. 3, which lists the date of financing was on April 12, 2013 for a 2013 Ford. Thus, California Republic should not be in Class 2B of the current case.

b. Infiniti Financial Services should not be listed in Class 2B. The creditor filed a claim on July 6, 2015, Claim No. 2, where it appears the installment sale contract as to a 2013 Infiniti EX37 was signed by Cleofe Price on October 28, 2013.

2. The plan does not appear to provide for all of Debtors' projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). Debtors are below median income proposing to pay $1,315 per month for 60 months with 0% guaranteed dividend to general unsecured claims. On July 21, 2015, Trustee received copies of Debtors' paystubs for their 2014 tax returns. A review revealed that Debtors received significant refunds–$3,592 from the Internal Revenue Service, and $694 from the Franchise Tax Board. Debtors report on their schedule I that their average net income is $6,168 per month. If Debtor factors in their tax refunds, they would have an estimated additional $357.17 per month. Trustee requests that Debtors amend their plan to propose any future tax refunds be paid into the plan as an additional payment toward unsecured claims.

The Trustee's concerns are well-taken. While the court has granted Debtors' Motions to Value the Collateral of the two creditor claims, those of California Republic and Infiniti Financial Services, on the basis of negative equity in the vehicles, Debtors must make the necessary adjustments to the plan to reflect the amounts determined to be secured. Additionally, the court shares Trustee's concerns that Debtors have not accounted for their whole disposable income. 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 Plan is not confirmed.

****

25. 15-25172-C-13 ERIC/CLEOFE PRICE — CONTINUED MOTION TO VALUE COLLATERAL OF CALIFORNIA REPUBLIC BANK AUTO FINANCE
MET-1 Mary Ellen Terranella — 8-5-15 [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 Debtor and Debtor's Attorney on August 5, 2015. Fourteen days' notice is required. This requirement was met.

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

The Motion to Value secured claim of California Republic Bank Auto Finance ("Creditor") is granted.

The Motion filed by Eric Raymond Price and Cleofe Castro Price ("Debtor") to value the secured claim of California Republic Bank Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford F150 Pickup ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $24,600.00 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 lien on the Vehicle's title secures a purchase-money loan incurred in April 12, 2013, which is less than 910 days prior to filing of the petition.

The remaining balance of the loan as of the date of filing was approximately $28,267. Movant is requesting that the loan held by Creditor be

determined to be secured in the amount of $24,600, the replacement value of the vehicle, as may be permitted by the set off of the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of $3,869, and that the remaining balance be determined an unsecured claim.

DISCUSSION

The Creditor filed a Proof of Claim No. 3 on July 6, 2015, claiming a secured claim in the amount of $28,267.41. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 3 and as an exhibit to the instant motion, Dckt. 20, shows that the total amount financed by the Movant was $34,769.77. There was a net trade-in of <-$3,869>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in vehicle, and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 11.1% of the amount financed and the remaining 88.9% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, $3,137.68 of the amount financed is to the negative net equity from the trade-in. The remaining $25,129.73 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant may only value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

The creditor's secured claim is determined to be in the amount of $25,129.73. *See* 11 U.S.C. § 506(a). The remaining $3,137.68 is determined to be a general unsecured claim arising from the negative equity from the trade-in. 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 Eric Raymond Price and Cleofe Castro Price ("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 California Republic Auto Finance secured by an asset described as a 2013 Ford F150 Pickup ("Vehicle") is determined to be a secured claim in the amount of $25,129.73, 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 $24,600 and is encumbered by liens securing claims which exceed the value of the asset.

****

26. 15-25172-C-13 ERIC/CLEOFE PRICE
MET-2 Mary Ellen Terranella

CONTINUED MOTION TO VALUE COLLATERAL OF INFINITI FINANCIAL SERVICES
8-5-15 [23]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 5, 2015. Fourteen days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Infiniti Financial Services ("Creditor") is granted.

The Motion filed by Eric Raymond Price and Cleofe Castro Price ("Debtor") to value the secured claim of Infiniti Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Infiniti EX37 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $40,170.00 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 lien on the Vehicle's title secures a purchase-money loan incurred in October 28, 2013, which is less than 910 days prior to filing of the petition.

The remaining balance of the loan as of the date of filing was approximately $47,185.00. Movant is requesting that the loan held by Creditor be determined to be secured in the amount of $40,170, the replacement value of the vehicle, as may be permitted by the set off of the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of $11,401.00, and that the remaining balance be determined an unsecured claim.

DISCUSSION

The Creditor filed a Proof of Claim No. 2 on July 6, 2015, claiming a secured claim in the amount of $46,981.57. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 2 and as an exhibit to the instant motion, Dckt. 26, shows that the total amount financed by the Movant was $52,267.40. There was a net trade-in of <-$11,401>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in vehicle, and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 21.8% of the amount financed and the remaining 78.2% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, $10,241.98 of the amount financed is to the negative net equity from the trade-in. The remaining $36,739.59 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant may only value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

Finally, 11 U.S.C. § 506(a) permits that a secured claim of a creditor may be bifurcated, and that the appropriate measure of the secured claim is the replacement value of the property. 11 U.S.C. § 506(a)(2). Thus, while the negative equity arising from the trade-in at 21.8% results in $36,739.59 as the amount loaned to secure the purchase of the vehicle, the creditor's secured claim cannot be determined to be below the replacement value of the Vehicle, which Debtors aver to be $40,170.

The creditor's secured claim is determined to be in the amount of $40,170. *See* 11 U.S.C. § 506(a). The remaining $6,811.57 is determined to be a general unsecured claim arising from the negative equity from the trade-in. 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 Eric Raymond Price and Cleofe Castro Price ("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 Infiniti Financial Services secured by an asset described as 2013 Infiniti EX37 ("Vehicle") is determined to be a secured claim in the amount of $40,170, 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 $40,170 and is encumbered by liens securing claims which exceed the value of the asset.

****

27. 14-28273-C-13 JOHNNY LE
UST-2 Pro Se

MOTION FOR RELIEF FROM UNAUTHORIZED AND FRAUDULENT BANKRUPTCY FILING
8-4-15 [23]

DEBTOR DISMISSED: 08/25/2014

Tentative Ruling: The Motion for Relief From Unauthorized and Fraudulent Bankruptcy Filing 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 Debtors (*pro se*), Chapter 13 Trustee, and parties requesting special notice on August 4, 2015. 28 days' notice is required. This requirement was met.

The Motion for Relief From Unauthorized and Fraudulent Bankruptcy Filing 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.

The Motion for Relief From Unauthorized and Fraudulent Bankruptcy Filing is granted.

This Chapter 13 Bankruptcy case was filed on August 14, 2014 ("Case 1"), the purported Debtor was Johnny Le. A second case, Case No. 14-30479-A-13 was filed on October 23, 2014 ("Case 2"), which likewise named Johnny Le as Debtor. A separate motion is being filed in that case.

US Trustee provides that Mr. Le did not file or authorize either of these cases, and that Mr. Le is a victim of identify theft. US Trustee asserts that it is possible the perpetrators of the fraudulent filings may be a woman to whom Mr. Le gave extensive personally identifiable information and paid $5,000 to help obtain a loan modification, and that her son or other relative hand-delivered the petitions to the court for filing. Their motivation may have been to forestall the foresclosure sale of Mr. Le's former residence and subsequent eviction of his ex-wife, children, and ex-wife's "tenants."

The UST filed the present Motion for Relief From Unauthorized and Fraudulent Bankruptcy Filing. Essentially, the motion asserts that the bankruptcy was fraudulently filed by someone other than the purported Debtor, Johnny Le, without Mr. Le's authorization or knowledge. Included with the motion are the Declarations of Johnny Le, Susan Wolny, a legal clerk for the Office of the US Trustee, and Judith Hotze, Attorney for the US Trustee, substantiating the above-provided information.

Based on the foregoing, the UST requests that the court make a finding that the case was not authorized by Debtor and occurred as a result of fraud committed by another party, and to make a notation in the case docket that this case was fraudulently filed.

DISCUSSION

As discussed in the moving papers, a fraudulent bankruptcy filing can cause immense harm to the victim of the fraudulent filing. *See e.g.* Peter C. Alexander, *Identity Theft and Bankruptcy Expungement*, 77 Am. Bankr. L.J. 409, 410, 421 (Fall 2003). The most apparent harm to the victim of the fraudulent filing is that the case information is made available to credit reporting agencies, and the credit rating of the victim will be negatively impacted.

Very few cases deal with the issue of how to remedy a fraudulent bankruptcy filing in order to aid the victim in repairing their credit rating, and other financial affairs. *See In re Dick*, 2006 WL 6544157 (Bankr. N.D. Tex. May 19, 2006); *In re Joyce*, 399 B.R. 382 (Bankr. D. Del. 2009); *In re Storay*, 364 B.R. 194 (Bankr. D.S.C. 2006); *In re Buppelmann*, 269 B.R. 341 (Bankr. M.D. Pa. 2001). *In re Buppelmann* discussed the possible remedies the court can fashion:

"First, I could grant the request for expungement and have all documents filed related to this matter destroyed. Second, I could make a notation in this filing that the petition was fraudulent which would allow any entity that was interested in the course of the bankruptcy to conclude that the matter was, in fact, fraudulent and the filing occurred other than at the request of the Debtor. Third, I could order the Clerk to delete all references to the Debtors' names on the case dockets." *In re Buppelmann* at 343.

Movant does not request the court to either expunge the case or order the Clerk to delete all references to the Debtors' names on the case dockets. As the court in *In re Buppelmann* discussed, expungement and deletion of the purported Debtor's name may not be the best solutions to help a victim repair their credit rating after creditors and/or credit reporting agencies have become aware of the filing. *Id.* As the court in *In re Buppelmann* concluded, this court likewise concludes that the best remedy to aid a victim of a fraudulent bankruptcy filing in repairing their credit is to make a finding of fact that the case was fraudulently filed, and to enter this finding on the record.

RULING

The court finds that the testimony of Mr. Le, Ms. Wolny, and Ms. Hotze, through their declarations, to be credible. Accordingly, the court finds that the bankruptcy case was filed by a person other than Mr. Le, without Mr. Le's knowledge or authorization, and that the signatures on the petition filed in this case are not those of Mr. Le. As such, the petition filed in

this case is null and void.

The court will issue an order finding that the bankruptcy petition filed in this case is null and void, and ordering that within thirty (30) days of the purported Debtor, Johnny Le, disputing the reporting of this bankruptcy on his credit report, the credit reporting agency shall either: delete any and all references to the filing of this bankruptcy petition from the purported Debtor's credit report, or seek relief from this court.

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 Relief From Unauthorized and Fraudulent Bankruptcy Filing filed by the United states 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 Chapter 13 petition filed in this case is null and void, the court having determined that it was not filed by Johnny Le.
>
> **IT IS FURTHER ORDERED** that the information concerning this bankruptcy case shall not be listed as information on any consumer report, 15 U.S.C. § 1681a(d), or consumer credit report, Cal. Civ. Code § 1785.3(c), or related to Johnny Le on any such report except as permitted by the this court pursuant to further order. Within 30 days after receiving a copy of this order, any consumer reporting agency, 15 U.S.C. § 1681a(f), or consumer credit reporting agency, Cal. Civ. Code § 1785.3(d), shall cease disclosing or including information about this bankruptcy case on consumer report or consumer credit report, for Johnny Le, or file a motion for an order authoring such disclose.
>
> This court retains jurisdiction for all purposes relating to this order, including, without limitation the enforcement of this order and violations thereof, and granting relief from this order.
>
> No other or additional relief is granted.

28. 15-21474-C-13 CHRISTOPHER DEAN MOTION TO CONFIRM PLAN
PGM-3 Peter Macaluso 7-31-15 [67]

****

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 July 31, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Plan is . . . .

Chapter 13 Trustee, David Cusick, opposes the motion for the following reasons:

1. The additional provisions of the plan state "Trustee shall disburse $3,190 from the money on hand to class 1 claim of Cenlar FSB/San Francisco Fire Credit Union for the mortgage arrears on the first deed of trust." Trustee has a balance on hand of $3,197.10, however the mortgage arrears cannot be paid until the plan is confirmed.

2. This plan does not appear to be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under median income and proposes plan payments of $10,940 current through June 25, 2015, then $1,900 for 1 month, then $3,105 for 55 months with a 0% dividend to unsecured creditors. The Debtor's projected net disposable income listed on schedule J reflects $3,105 per month, however Debtor only proposes $1,900 for 1 month, and according to Debtor's amended schedule I, filed on July 31, 2015, line 13 states "The last three month my gross income has increased about $300 per month and I anticipate this trend."

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition, stating that the lower payment

for one month of $1,900 was to ensure that Class 1 mortgage lender received distribution each month. This also gave the Debtor the ability to make necessary adjustments in his daily expenses to make the increase in plan payments. Debtor is current, and states that the plan is ripe for confirmation.

DISCUSSION

The court will resolve this matter upon hearing the oral arguments of the parties.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 ... .

****

29. 15-25480-C-13 MARK/ANNETTE THIBODEAU — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 C. Anthony Hughes — 8-20-15 [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 Debtor and Debtor's Attorney on August 20, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor unfairly discriminates against unsecured creditors under 11 U.S.C. § 1322(b)91). Section 2.09 of Debtors' plan lists a class 2A debt to 1st investors for a 2008 Jeep Patriot and proposes to pay this debt in full. Schedule D lists the value of the vehicle at $3,000 and the amount of the claim is listed at $7,834. Creditor filed a proof of claim on July 29, 2015 indicating a purchase date of May 9, 2012. Based on the purchase date, the vehicle appears to be eligible for valuation under 11 U.S.C. § 506(a). The plan proposes 0% to unsecured creditors, while proposing to pay 1st investors in full.

2. Debtors' schedule F lists unsecured debts totaling $8,035.75. A review of Debtors' prior case, Case No. 13-23473, shows tha the

schedule F in that case listed unsecured debts totaling $18,667.67. Debtors testified at the first meeting of creditors held on August 13, 2015 that unsecured debts have been omitted from the schedule in the instant case in error.

DEBTORS' RESPONSE

Debtor states that he will file, set, and serve an amended plan on or before the date of hearing to resolve Trustee's concerns.

DISCUSSION

Debtor, through Peter Macaluso, not the attorney of record, assures that court that Debtor will file an amended plan on or before the date of hearing. The docket reflects that no amended plan has been filed 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.

****

30. 12-38989-C-13 MARTIN/GREGORIA LOMELI MOTION TO MODIFY PLAN
TOG-12 Thomas Gillis 8-3-15 [123]

****

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 August 3, 2015. 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 because Debtor is delinquent in plan payments under the proposed plan. Thirty-five payments have become due since this case was filed on October 26, 2012. The additional provisions propose plan payments of $1,600 for months 1 through 22, $1,670 for months 23 through 30, then $1,860 for months 31 through 60. Under these terms, the Debtor would have needed to pay Trustee through August for a total of $56,00. Debtor has actually paid a total of $51,830 leaving a delinquency of $4,170. The last sentence of the additional provisions states "The aggregate amount that shall be paid into the plan as of 6/17/15 will be $50,160. Trustee's records reflect that through June the Debtor paid a total of $50,160. In July, the thirty-fourth month, Debtor paid $1,670 and no payments have been made in August to date. The Debtor appears delinquent $2,050 under the proposed plan.

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.

****

31. 15-21889-C-13 KIMBERLY STIENER-MURPHY MOTION TO CONFIRM PLAN
CAH-1 Peter Macaluso 7-29-15 [24]

****

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 July 29, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee, David Cusick., objects to Debtor's motion on the basis that Debtor is $7,781 delinquent in plan payment to the Trustee to date and the next scheduled payment of $7,781 is due September 25, 2015. The case was filed on March 11, 2015 and the plan calls for payments to be received by the Trustee not later than the 25th days of each month beginning the month after the order for relief under chapter 13. Debtor has paid $20,800 into the plan to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the

proposed Chapter 13 Plan is not confirmed.

****

32. 15-23593-C-13 SANSONIA WRIGHT CONTINUED MOTION FOR CONTEMPT
SJS-1 Scott Sagaria 7-17-15 [18]

****

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the United States Trustee; the Chapter 13 Trustee; Capital One, National Association; all creditors; and all other parties in interest on July 17, 2015. 28 days' notice is required.

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

The Court's decision is to . . . .

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Susan Wright, the Chapter 13 Debtor, ("Movant"). The Claims are asserted against Capital One, N.A. ("Respondent").

LEGAL STANDARD

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009).

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge

also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

Attorneys' fees may only be recovered for work involved in bringing about an end to the stay violation, not for pursuing an award of damages. *Sternberg v. Johnston*, *id.*, 947-48 (9th Cir. 2011) ("[P]roven injury is the injury resulting from the stay violation itself. Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)."), *cert. denied*, 2011 U.S. LEXIS 6502 (2011). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

REVIEW OF MOTION

Grounds Asserted in the Motion

In asserting this claim pursuant to 11 U.S.C. § 362(k), Movant states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief:

A. On April 30th, 2015 Debtor filed a voluntary Chapter 13 bankruptcy petition.

B. Capital One, National Association (hereinafter "Creditor") was listed in Schedule F of the petition as a pre-petition unsecured debt.

C. Pacer indicates the Bankruptcy Noticing Center sent Creditor notice of the bankruptcy petition on May 12th, 2015. Exhibit "A".

D. On June 17th, 2015, Creditor sent debtor a collection notice with a balance of $570.72 due immediately. This is a pre-petition debt that was included in debtors Chapter 13 bankruptcy. Exhibit "B".

E. On June 17th, 2015, Creditor sent debtor a collection notice with a balance of $1,069.69 due immediately. This is a pre-petition debt that was included in debtors Chapter 13 bankruptcy. Exhibit "C".

Debtor prays for:

1. An Order holding Creditors in civil contempt;

2. An award of compensatory damages in the amount of $2,000;

3. Awards of mild deterrent sanctions not to exceed $3,000;

4. An award of the reasonable attorney's fees and costs necessary to prosecute the motion;

5. Such other equitable relief as may be warranted in the interests of justice.

DISCUSSION AND RULING

The court will reserve judgment on the instant motion to hear parties' oral arguments at the hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Damages for Violation of the Automatic Stay by Susan Wright, "Movant," 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 . . . .

33. 15-25193-C-13 CONCHITA ZAPANTA
DPC-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-12-15 [26]

****

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 (pro se) on August 12, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor failed appear at the first meeting held on August 6, 2015. The meeting was continued to October 1, 2015. Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

2. Debtor is $100 delinquent in plan payments to the Trustee to date and the next scheduled payment of $100 is due on August 25, 2015. Debtors has paid $0 into the plan to date.

3. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C.
4. § 521(e)(2)(A). This is required 7 days before the date set for the

meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).

5. Debtor has failed to provide Trustee with proof of income for the 60 days preceding filing of their bankruptcy. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I).

6. Debtor failed to disclose prior bankruptcy cases on her petition. Case No. 14-32265 filed on December 22, 2014.

7. Debtor lists no creditors on Schedule F and has failed to filed Schedules D and E. It appears Debtor has not properly scheduled all debts. On June 29, 2015, Debtor filed Master Address List listing Select Portfolio Servicing, Inc.

8. Plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). On July 9, 2014, Debtor filed her plan proposing to pay $100 per month for 36 months. She does not propose to pay any claims in the plan Class 1, 2, 3, 4, 5, 6, and blank dividend to general unsecured in Class 7. Debtor has not disclosed any payment of attorneys fees in section 2.06.

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.

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