

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

October 6, 2015 at 2:00 P.M.

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1. [14-29903](#)-C-13 BIENVENIDO/PRISCILA DE LA MOTION TO MODIFY PLAN  
BLG-2 CRUZ 9-1-15 [[46](#)]

Also #2 Paul Bains

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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.**

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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 September 1, 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. The additional provisions of the modified plan are unclear as to the amount the debtors propose to pay. The monthly payments do not amount to the listed totals.

### **Debtors' Response**

The Trustee Opposes the confirmation stating the additional provisions states "As of August 12, 2015 Debtors have paid \$3,392.00 in the their plan". This is correct as shown in Exhibit A in support of Debtors' motion to confirm.

The Trustee goes on to state that the additional provisions indicate the Debtors would be paying \$975 per month starting with the payment due in August 2015. However at the time of the objection the debtors were \$127 short on the August payment. Debtors informed their counsel they were confused on the start date of the increased payment and informed counsel they will pay the trustee the additional \$127.

Debtors request that the Court Confirm the plan filed on September 1, 2015 with the additional provision clarifying the plan with the following addition: "Debtors' have paid \$3,392 into the plan as of August 12, 2015 which accounts for all required payments through July 2015. Debtors' monthly payment will increase starting with the August 2015 payment to \$975 per month."

### **Discussion**

As the Trustee's concern highlights, 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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2. [14-29903](#)-C-13 BIENVENIDO/PRISCILA DE LA MOTION TO VALUE COLLATERAL OF  
BLG-3 CRUZ LAW OFFICES OF KENOSIAN &  
Paul Bains MIELE, LLP AND UNIFIED CCR  
PARTNERS  
8-27-15 [[40](#)]

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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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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 27, 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 Law Offices of Kenosian & Miele, LLP and Unified CCR Partners, A New York Partnership, "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 1170 Jack London Dr, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$203,309 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 \$284,835.78. Law Offices of Kenosian & Miele, LLP and Unified CCR Partners, A New York Partnership's second judgement lien secures a debt with a balance of approximately \$26,638.38. Therefore, the respondent creditor's claim secured by a judgement lien 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 Law Offices of Kenosian & Miele, LLP and Unified CCR Partners, A New York Partnership secured by a judgement lien recorded against the real property commonly known as 1170 Jack London Dr, Vallejo, 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 \$203,309 and is encumbered by senior liens securing claims which exceed the value of the Property.

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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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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 26, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on August 26, 2015  
is confirmed, and counsel for the Debtors shall  
prepare an appropriate order confirming the Chapter  
13 Plan, transmit the proposed order to the Chapter  
13 Trustee for approval as to form, and if so  
approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

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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.**

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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 25, 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. The proposed plan appears underfunded.
2. The proposed plan's calculation of attorney fees paid conflicts with the order confirming the 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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 10, 2015. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-20424) was filed on January 16, 2014 and dismissed on August 28, 2015, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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



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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

In the prior case the Debtors were attempting to keep a rental property and 2007 Honda Civic in addition to bringing current their primary residence, a 2013 Ford Expedition and bring current their. In the present case the Debtors intend to surrender the rental property as well as the 2007 Honda Civic which allows them to create a feasible Chapter 13 plan.

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

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

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

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

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

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

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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.**

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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 21, 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. Trustee requests detailed clarification for the proposed plan payments. It is unclear if the payment posted on August 26, 2015 is a partial payment to the lump sum amount and when lump sum payment should be received.

**Debtors' Response**

Debtors state that they are proposing to reduce the plan term to 18 months.

**Discussion**

As the Trustee's concerns highlight, the modified Plan does not comply

with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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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.**

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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 13, 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. The plan undervalues the priority debt held by the IRS.

#### **Discussion**

As the Trustee's concern highlights, 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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**Tentative Ruling:** The Motion to Incur Debt 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).**  
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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, all creditors, and Office of the United States Trustee on September 16, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is denied.**

The motion seeks permission to purchase a used 2012 Chevrolet Impala that was previously repossessed from the debtors, which the total purchase price is \$12,590, with monthly payments of \$367.72.

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).

**Trustee's Opposition**

The Trustee is not convinced the purchase is in the best interests of the estate due the high interest rate of 24.29%. Debtor's declaration does not offer any details regarding shopping for alternative vehicles.

### **Discussion**

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 24.29%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a car and attempt to borrow money at a 25% interest rate.

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.

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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, Creditor, parties requesting special notice, and Office of the United States Trustee on September 21, 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 -----  
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<b>The Motion to Value secured claim of the Internal Revenue Service, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of personal property listed in Schedule B. The Debtor seeks to value the property at a fair market value of \$4,946.41 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 IRS tax lien is in the amount of \$37,862.66. Therefore, the respondent creditor's claim secured by a tax lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$4,946.41, 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 Internal Revenue Service secured by a tax lien recorded against personal property listed in Schedule B is determined to be a secured claim in the amount of \$4,946.41, and the balance of the claim is an unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$4,946.41.

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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.**

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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 16, 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 grant the Motion to Confirm the Plan.**

**Trustee's Response**

The Chapter 13 Trustee does not oppose confirmation on the condition that the debtors supply bank statements to the Trustee every six months for the life of the plan.

**Discussion**

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 August 16, 2015 is confirmed on the condition that the debtors supply bank statements to the Trustee every six months for the life of the plan, 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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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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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 20, 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 August 18,  
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.

\*\*\*\*

DEBTOR DISMISSED:  
07/24/2015  
JOINT DEBTOR DISMISSED:  
07/24/2015

\*\*\*\*

**Tentative Ruling:** The Motion for Order of Examination 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*), parties requesting special notice, and Office of the United States Trustee on September 18, 2015. 14 days' notice is required.

The Motion for Order of Examination 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 for Order of Examination is granted.**

The U.S. trustee moves for an order requiring Joseph Raquiza to appear and provide testimony at an examination on October 22, 2015 a.m. at the Robert T. Matsui United States Courthouse, 501 I Street, Suite 7-500, Sacramento, California.

This case was dismissed on July 24, 2015 for failure to timely file documents. On July 10, 2015, purported debtor Remedios Raquiza came to the Office of the U.S. Trustee and stated that she did not sign the petition or authorize its filing. Ms. Raquiza stated that she only became aware of this case on July 10, 2015 and that debtor Joseph Raquiza is her brother, not her spouse.

On July 31, 2015, the UST obtained a Rule 2004 order and subpoenaed Mr. Raquiza to appear at a Rule 2004 examination on August 26, 2015. Mr. Raquiza did not appear.

An examination is necessary to determine, among other things, whether purported debtor Ms. Raquiza is the victim of identity theft.

#### **ISSUANCE OF A MINUTE ORDER**

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 for Order of Examination pursuant to Federal Rule of Bankruptcy Procedure 2004(d) filed by the U.S. Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Order of Examination is granted, and Joseph Raquiza is must appear and provide testimony at an examination on October 22, 2015 a.m. at the Robert T. Matsui United States Courthouse, 501 I Street, Suite 7-500, Sacramento, California.

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13. [15-26140](#)-C-13 ANTHONY UMALI AND TAMMY ROM-UMALI  
KK-1 Scott Sagaria  
OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
N.A.  
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.

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.**

JPMorgan Chase Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that treatment of Creditor's secured claim is unclear. Creditor cannot ascertain whether the arrears will be paid monthly or in a lump sum. Additionally, Creditor objects to any sale of the property without payment in full.

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 JPMorgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\*\*\*\*

Also #15

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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.**

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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 September 1, 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. The debtor's declaration fails to provide a specific, detailed reason for plan modification.
2. The declaration is not clear as to whether Debtor's income has changed since the Schedule I was last filed.

**Debtor's Response**

As the debtor stated that she "fell behind on payments significantly due to an illness and only received disability payments in January, February, and March of 2015."

The debtor acknowledges that when she is no longer ill, and set at a "doctor's recommended time base at work".

### **Discussion**

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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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 September 1, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Incur Debt is denied.**

The motion seeks permission to purchase a 2011 Mazda CX7, which the total purchase price is \$13,828.68, with 71 monthly payments of \$298.37 at 15.54% interest rate. The purchase was made to replace 2004 Chevy Trail Blazer.

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).

**TRUSTEE'S OPPOSITION**

Chapter 13 Trustee, David Cusick, opposes Debtor's motion. Debtor's Motion to Use Credit seeks approval to purchase the Vehicle nunc pro tunc, where the vehicle was purchased on November 20, 2014. Debtor's confirmed plan provides that Debtor shall not incur new debt aggregating \$1,000 with first obtaining court authorization.

First, Trustee asserts that Debtor does not qualify for nunc pro tunc relief. In the Ninth Circuit, a Debtor must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankruptcy estate significantly. *In re Harbin*, 486 F.3d 510, 522-23 (9th Cir. 2007).

Trustee points out that Debtor entered into this financing arrangement in November of 2014, and then subsequently filed a plan in December 2014, Dckt. 46, and another in May of 2015, Dckt. 65. Debtor filed a previous Motion to Incur Debt filed May 11, 2015, Dckt. 71, denied by the court. Debtor now provides that she misinterpreted her attorney's advice, and was under the impression that she did not need court approval on any purchase under \$15,000. Debtor did not explain this in the previously proposed plans of the previous Motion to Incur Debt.

Second, Trustee asserts that Debtor lacks credibility. The Motion to Modify, Dckt. 96, states that Debtor fell behind on plan payments because of reduced income, major home and car repairs, and family obligations. However Debtor does not specify the dates involved, the home repairs needed, what types of obligations occurred, or contain any verification of reduction in income. No supplemental evidence was provided.

#### **DEBTOR'S RESPONSE**

Debtor responds to Trustee's opposition, again reasserting that Debtor did not understand the advice of previous counsel, and that Debtor requires the vehicle for her transportation needs.

#### **DISCUSSION**

Debtor previously applied to this court to receive approval to incur debt on May 11, 2015, Dckt. 71. In that Motion to Incur Debt, Debtor failed to disclose to the court that the financing agreement which the Debtor sought to enter into had already been executed by Debtor in November 2014. The court denied the motion. Dckt. 87.

Now, Debtor applies for nunc pro tunc relief. The court agrees with Trustee that Debtor's explanation as to Debtor's failure to receive prior judicial approval is unsatisfactory. The explanation Debtor advances in her declaration describes, nearly one year after having entered into the financing agreement, a bare bones explanation of the situation substantiating her failure to receive prior judicial approval, and does not address at all why this explanation was not forthcoming in the two prior proposed plans in December 2014, Dckt. 46, May 2015, Dckt. 65, or in the previous Motion to Incur Debt in May 2015, Dckt. 71. The court also agrees that Debtor's credibility is lacking, and has not substantiated the reasons underlying her failure to meet plan payment obligations.

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 and Debtor Tanya Barnard is not authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 104.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, parties requesting special notice, Chapter 13 Trustee, and Office of the United States Trustee on September 21, 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 -----  
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<b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b>
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The Motion filed by Douglas Ian Scott Woodward and Diem Phoung Nguyen Woodward ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of furniture purchased from Beck's Furniture Store ("Property"). The Debtor seeks to value the Property at a replacement value of \$250.00 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 of 2011 to secure a debt owed to Creditor with a balance of approximately \$5,026.20. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$250.00. See 11 U.S.C. § 506(a). The

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as furniture purchased as Beck's Furniture Store ("Property") is determined to be a secured claim in the amount of \$250.00, 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 \$250.00 and is encumbered by liens securing claims which exceed the value of the asset.

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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.**

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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 September 1, 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 . . . the Motion to Confirm the Modified Plan.**

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

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

1. The plan does not comply with 11 U.S.C. § 1325(b). Debtor's modified plan proposes to reduce the commitment period from 60 months to 42 months when Debtor was over median income when the case was filed. Debtor's chapter 13 statement of monthly income and calculation of commitment period and disposable income indicates Debtor is over median income and commitment period if 5 years. Debtor states she is reducing her plan term because she can no longer commit to 60 months due to loss of income from child support.
2. Trustee has disbursed \$35,863.02 to Bank of America for ongoing mortgage payments. Proposed plan only authorizes \$33,863.02. Additionally, Trustee has disbursed approximately 6.5% to class 7 unsecured claims while the proposed plan states no less than a 5% dividend. Trustee requests all disbursements made under previously confirmed plans be authorized.

3. According to Trustee's calculations, the plan will take 53 months to complete, not the proposed 42. \$3,300 in attorney's fees remain to be paid through the plan. The proposed plan payment of \$265 is \$247.77 net of Trustee fees. Thus \$3,300 divided by \$247.77 amounts to 14 months. Debtor has completed 39 months as of August 2015.
4. Trustee is uncertain the Debtor has the ability to pay \$265 per month. Debtor reports mortgage payments of \$1,659.16 on schedule J. Creditor filed on May 22, 2015 with the court a Notice of Mortgage Payment Change indicating mortgage payments of \$1,851 effective 08/01/15.

#### **DEBTOR'S RESPONSE**

Debtor responds to Trustee's objections and concerns, providing the following:

1. Debtor was over the median income based on her additional income from child support, which she will no longer be receiving. As such, Debtor has requested a reduction in her mandatory term of commitment.
2. Debtor has requested that the payments be authorized to Bank of America in the amount of \$35,863.02 in the order granting.
3. Debtor acknowledges that the term of the plan must be extended to a total of 53 months, not the proposed 42 months.
4. Debtor's counsel will file a motion to challenge the increased mortgage payments. Based on the \$191.84 increase, Debtor would have been short \$2,302 in payments, which were included in the loan modification.

#### **DISCUSSION**

The court notes the Trustee's concerns and the Debtor's response. The court will hear oral argument and render its decision at hearing on October 6, 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 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 . . .

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**Tentative Ruling:** The Motion to Substitute 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 September 22, 2015. 14 days' notice is required. This requirement was met.

The Motion to Substitute 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 -----  
-----.

<b>The Motion to Substitute is denied without prejudice.</b>
--------------------------------------------------------------

Joint Debtor, Robbie Jean Arnold, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Johnnie Warren Arnold. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on March 23, 2012. On June 20, 2014, the Debtor's Chapter 13 Plan was confirmed. Dckt. 112. On August 23, 2015, Debtor Johnnie Warren Arnold passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on September 22, 2015. Dckt. 119. Joint Debtor is the surviving spouse of the deceased party and is the successor's heir and lawful

representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

### **TRUSTEE'S OPPOSITION**

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

1. First, Trustee states that Debtor has not stated the legal authority for the motion as required by Local Bankruptcy Rule 9014-1(d)(5).
2. Debtor has not provided a copy of the death certificate as required by LBR 1016-1(a).
3. Debtor has not disclosed any life insurance benefits. It appears the deceased debtor had a term life insurance policy as disclosed in Schedule B for \$10,000 and exempted on Schedule C. No additional life insurance benefits have been disclosed.
4. The motion does not address any survivor benefits. Cal Pers Retirement was reported on Schedule B in the amount of \$120,377 and exempt on Schedule C at the time of filing. Schedule I indicated the deceased debtor received social security and City of Redding Retirement/Cal Pers.
5. Debtor has not submitted current Schedules I and J in support of the motion. Trustee is concerned as to the current financial condition of Debtor and whether Debtor can afford confirmed plan payments. Debtor has not addressed if there are significant changes in the budget or expenses after the death of her spouse or how she is able to continue the administration of the case. The most recent schedule I indicated the deceased debtor had an average monthly income of \$2,662.55 and the spouse had a monthly income of \$2,501.56.
6. The substitution of attorney filed 09/22/15 does not comply with LBR 2017-1(h) as to deceased Johnnie Arnold. It was filed after his death.

### **DISCUSSION**

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90

days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16<sup>TH</sup> EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to

the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

*See also, Hawkins v. Eads, supra.* While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, the Trustee's concerns are well taken. Robbie Jean Warren has not provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. While the Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death, surviving Debtor has not stated any legal authority upon which the instant motion relies. The court is unable to determine based on the evidence provided, whether further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor may continue to administer the case on behalf of the deceased debtor. The court denies the Motion to Substitute Party without prejudice.

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

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

The Motion for Substitute After Death 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 without prejudice.

19. [12-25952](#)-C-13 CARMINE VISCUSI  
PGM-1 Peter Macaluso

MOTION TO RECONSIDER DISMISSAL  
OF CASE  
9-4-15 [[52](#)]

DEBTOR DISMISSED: 03/25/2015

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**Tentative Ruling:** The Motion to Reconsider Dismissal 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 September 4, 2015. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Reconsider Dismissal of the Case is denied, and the case will remain dismissed.</b>
------------------------------------------------------------------------------------------------------

The Debtor, Carmine N. Viscusi, Jr. moves the court to reconsider dismissal of the instant Chapter 13 bankruptcy case, and requests that the order dismissing the case entered on March 25, 2015 be vacated, pursuant to 11 U.S.C. § 350 and Federal Rules of Civil Procedure 59 and 60.

Debtor's case was dismissed for failure to make plan payments. Debtor explains that the original attorney of record, John A. Tosney, suddenly passed, at which point the case was transferred to Hughes Financial Law and managed by C. Anthony Hughes. No substitution of attorney was ever filed in that instance. Now, Peter Macaluso is substituting into this case pending approval of this motion.

Debtor states that he had no knowledge of Trustee's Motion to Dismiss Case, DPC-1, as Debtor was served at a previous address, and no address change was ever communicated to the court or Trustee. Debtor states no knowledge of dismissal until notified by a creditor via a collections call,

and instead continued to make plan payments. Debtor would now be entering month 42 of a 60 month plan.

#### **TRUSTEE'S OPPOSITION**

Chapter 13 Trustee, David Cusick, does not oppose hearing on this matter, however opposes on the basis that the motion does not address what caused Debtor to become delinquent in plan payments or how Debtor will cure the delinquency and complete the plan. Trustee's notice of default was filed on February 13, 2015. The Notice state Debtor was delinquent \$1,204 in plan payments with \$403 coming due. The court entered the order dismissing on March 25, 2015. Since the case has been dismissed, Trustee has generated Debtor refund checks in the amounts of \$806 and \$79.80 on March 29, 2015.

As of today, Debtor is delinquent \$4,428 in plan payments under the confirmed plan. Debtor has not addressed where the funds are, how Debtor will become current by the date of hearing on this motion, and only provides that Counsel is currently holding the funds pending approval of this motion.

#### **DISCUSSION**

The court shares the Trustee's concerns. First, the court notes that the case was closed in March 25, 2015. Although Debtor asserts that allowing the case to proceed would be in the best interest of creditors, Debtor states in the declaration that he was informed in May 2015 of the dismissal of the bankruptcy case when a creditor informed him as such in efforts to collect payment on an account. Dckt. 54.

Moreover, Debtor states that he was made aware of the dismissal in May 2015, Dckt. 54. Now, nearly five months after he was made aware of the dismissal and seven months after the actual dismissal itself, he urges the court to vacate the dismissal of the case. This suggests that creditors, having received notice of dismissal of the case in March 2015, would indeed be prejudiced if the court were to vacate dismissal of the case. The declaration submitted by Debtor indicates that at least one creditor has proceeded on the basis that the case has been dismissed.

Second, the court agrees that Debtor, now delinquent in plan payments of at least \$4,428, has not sufficiently explained how he expects to be current on plan payments by the date of hearing.

For these reasons, the court will deny the Motion to Vacate Dismissal.

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

**IT IS ORDERED** that the Motion is denied.

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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 September 9, 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 -----  
-----.

<b>The court's decision is to sustain the Objection.</b>
----------------------------------------------------------

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

1. Debtor did not appear at the first meeting of creditors on September 3, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor's plan reports that counsel was paid \$1,000 prior to filing and there is a balance owed of \$3,000 for total fees of \$4,000. On August 3, 2015, Debtor filed Rights and Responsibilities which indicates that fees total \$1,000 which was paid prior to filing. Trustee is uncertain of which document is correct.

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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21. [15-26368](#)-C-13 ERNEST/SHARON VICTORINE  
RWF-1 Robert Fong

MOTION TO VALUE COLLATERAL OF  
MIRABELLA INVESTMENTS GROUP,  
LLC  
9-4-15 [[14](#)]

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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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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 September 4, 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.

<b>The Motion to Value secured claim of Mirabella Investments Group, LLC, "Creditor," is continued to November 17, 2015 at 2:00 p.m..</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8845 Brittany Park Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$252,250 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 \$264,094.31. Mirabella Investment Group, LLC's second deed of trust secures a loan with a balance of approximately \$53,463.43. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

#### **CREDITOR'S LIMITED OPPOSITION**

Creditor, Mirabella Investment Group, LLC, responds to Debtor's Motion to Value, stating a limited opposition. Creditor states that they have not had the opportunity to conduct an exterior and interior appraisal of the Property in order to obtain a professional opinion of value. Without waiving objections, Creditor requests time to conduct an appraisal.

#### **DISCUSSION**

The court shall grant the Creditor's request and continue the instant motion for 30-45 days in order to permit Creditor time to obtain a verified appraisal and submit the appraisal to the 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 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 November 17, 2015 at 2:00 p.m.

**IT IS FURTHER ORDERED** that a Creditor's verified appraisal, supplemental opposition, or withdrawal of opposition be filed and submitted to the court 14 days prior to the continued hearing date, by November 3, 2015.

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Also #23

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**Tentative Ruling:** The Objection to Plan was not properly set for hearing on the notice required by Local Bankruptcy Rules. 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 9, 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 -----  
-----.

<b>The court's decision is to overrule the Objection.</b>
-----------------------------------------------------------

Creditor, CitiFinancial Servicing LLC, holder of the note and first deed of trust for real property commonly known as 1138 Benecia Road, Vallejo, California, opposes confirmation of the Plan on the basis that Debtor's plan does not provide for Creditor's claim or fully account for the total amount of arrearages owed. Thus, Debtor's plan does not comply with §§ 1322(b)(5) and 1325(a)(5). Creditor also points out inconsistencies in Debtor's schedules concerning her income that the income of her spouse.

#### DISCUSSION

While the court believes Creditor's objection to be meritorious, Creditor has not properly noticed the parties or submitted evidence upon which the court may rely establishing the factual allegations asserted. The Local Bankruptcy Rules provide the standards and guidelines for the contents

of the notice and evidence required.

Local Bankruptcy Rule 9014-1(d)(4) provides: "The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition."

Local Bankruptcy Rule 9014-1(d)(7) provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Here, the notice provided to parties, Dckt. 21, provides only the date, time, and location of hearing on the instant objection. The notice does not provide to potential respondents whether written opposition must be filed. Next, Creditor has submitted no declaration to substantiate the objections submitted.

For the aforementioned reasons, the court will overrule the instant objection. However, because Chapter 13 Trustee has submitted an objection, which the court has sustained, the plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor, CitiFinancial Servicing LLC, 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, however because the court has sustained the Chapter 13 Trustee's objection, the proposed Chapter 13 Plan is not confirmed.

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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 September 9, 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 to appear at the First Meeting of Creditors held on September 3, 2015. Trustee does not have sufficient information to determine whether the case is suitable for confirmation pursuant to 11 U.S.C. § 1325.
2. All sums required by the plan have not been paid. Debtor is \$2,780 delinquent in plan payments to Trustee to date and the next scheduled payment of \$2,780 is due on September 25, 2015. Debtor has paid \$0 into the plan to date.

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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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.

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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 14, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on August 14, 2015  
is confirmed, and counsel for the Debtors shall  
prepare an appropriate order confirming the Chapter  
13 Plan, transmit the proposed order to the Chapter  
13 Trustee for approval as to form, and if so  
approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

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25. [12-41786](#)-C-13 JAMES LANINI  
SDH-9 Scott Hughes

MOTION FOR COMPENSATION FOR  
SCOTT D. HUGHES, DEBTORS  
ATTORNEY(S)  
8-25-15 [[160](#)]

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**Final Ruling: No appearance at the October 6, 2015 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. 28 days' notice is required. That requirement was met.

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
------------------------------------------------------------------

Scott D. Hughes, the Attorney for Debtors, ("Applicant") for James Robert Lanini, ("Client"), applies to the court for additional attorney's fees.

The period for which the fees are requested is for the period September 2014 through August 2015. Applicant requests additional fees in the amount of \$3,225 and expenses of \$21.25.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

*Id.* at 959.

Applicant provides that one prior interim award was granted, other than the in the Order confirming the original plan approving the original fees of \$4,000, in August 14, 2014 for \$3,425 in fees and \$49.96 in costs. A review of the application shows that the services provided by Applicant related to the

estate enforcing rights and obtaining benefits. Applicant provides that Debtor's case was confirmed on April 16, 2013, and that work done in connection with a Trustee's Motion to Dismiss and response to Trustee's Objection to Motion to Modify Plan were unanticipated, and that the work was unanticipated because Debtor's home was burglarized in 2014. Additionally, Debtor was falsely accused of assault in 2014 and incarcerated. Finally, in March 2015, Debtor was in a car accident involving a Class 2 car claim. Applicant anticipates plan completion with the payment due to Trustee on July 25, 2016.

The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees and Costs**

Applicant provides a task billing analysis and supporting evidence for the services provided, for work done in connection with Debtor's incarceration, the car accident described, reviewing, responding, and appearing for Trustee's Motion to Dismiss, filing a Motion to Modify Plan, responding to Trustee's objection to Motion to Modify Plan, appearing for the Motion to Modify Plan, and preparing the instant motion. The total hours spent on these tasks amounts to 12.0 hours.

The total number of hours expended in this case for which applicant seeks compensation is 12.9 hours at a rate of \$250/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case: Fees of \$3,225 and fees of \$21.25.

The Chapter 13 Trustee filed a statement of nonopposition on August 27, 2015.

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

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

The Motion for Allowance of Fees and Expenses filed by Scott D. Hughes ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Peter Macaluso is allowed the fees in the amount of \$3,225 and fees of \$21.25 as a professional of the Estate.

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**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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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 26, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 26, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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27. [15-25188](#)-C-13 KATHY ASHLEY  
DPC-2 Richard Jare  
8-12-15 [[22](#)]

CONTINUED MOTION TO DISMISS  
CASE

\*\*\*\*\*

**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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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.**

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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 26, 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 . . . 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. Debtor does not appear to be able to make payment. Debtors filed amended schedules I and J in support of the plan. The declaration filed by Debtors indicates one Debtor changed employment in August 2014, and no longer receives restricted stock options. Debtor has not provided Trustee with copies of pay stubs to verify income or receipts to verify expenses.
2. Trustee notes a substitution of attorney for Debtors was filed with the court on August 24, 2015. This substitution was signed by Debtors but not dated. The Declaration and Modified Plan were filed August 26, 2015, but dated August 21, 2015 and were signed electronically, prior to the substitution of attorney form. A balance of \$1,156 appears owing to the prior attorney of record

based on the Court's prior order. Trustee opposes any change to the attorney fees provisions absent a specifically noticed motion.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's opposition, stating that they are above the median income with a positive CMI of \$2.24 per month. Debtors' confirmed plan called for an additional \$808 per month beginning when their 401k loan was paid off in July of 2015, and Debtors were to sell the "stock units" and pay trustee \$12,000 every year in May. Since confirmation, Debtors made two full payments in May of 2013 and 2014. However, the Debtors changed jobs in August of 2014 and no longer received stock units in May of 2015.

Debtors reassert their ability to make plan payments, stating they have forwarded the July 2015 paystubs for Trustee's review, and filed amended schedules I and J.

As to Trustee's second concern, Debtors state they signed the substitution form on August 13, 2015 at 11:59 a.m., after which present counsel prepared and filed this Motion to Modify Plan.

#### **DISCUSSION**

The court is satisfied that Debtors have sufficiently addressed the concerns raised by Chapter 13 Trustee. However, the court will postpone rendering its decision until the hearing on October 6, 2015 in order to verify that Trustee has received the materials that Debtors assert they submitted.

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 . . .

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