

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 18, 2016 at 2:00 P.M.

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1.	<a href="#">13-32603</a> -C-13	IGNACIO/ISABEL NAVARRO	OBJECTION TO CLAIM OF LIBERTY
	DPC-1	Mark Wolff	MUTUAL INSURANCE COMPANY, CLAIM
			NUMBER 17
			8-24-16 [ <a href="#">44</a> ]

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**Final Ruling: No appearance at the October 18, 2016 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 24, 2016. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

<p><b>The Objection to Proof of Claim Number 17-1 of Liberty Mutual Insurance Company is sustained and the claim is disallowed in its entirety.</b></p>
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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 6, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

**Chapter 13 Trustee Objection**

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

1. Debtor is delinquent in plan payments in the amount of \$5,985.48 which is one month of payments. Debtor had case converted from Chapter 7 to Chapter 13 on August 2, 2016 and have made only one of the two payments that have come due in that time.

**Chapter 7 Trustee Objection**

The Chapter 7 Trustee also objects to confirmation of the Debtor's modified plan on the following two grounds:

1. The plan proposes to revest the Debtor's property, 106 Scotia Avenue, San Francisco, in the Debtor. Before the case had been converted, the Debtor and Chapter 7 Trustee had agreed to sell the property and pay off creditors in full. Therefore, this Chapter 13 plan proposes to pay off creditors with a 100% dividend. The Trustee is concerned that the modified plan can be used as a tool to further delay sale of the property in the event that the Debtor is unable to complete a Chapter 13 plan.

2. The Trustee opposes the plan to the extent that it affects or alters the agreement the Trustee and Debtor made while the case was a chapter 7 case.

## **DISCUSSION**

The Debtor must become current on her payments before a modified plan can be confirmed.

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 without prejudice 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)(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 3, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The plan indicates that the duration of the plan will be 12 months whereas Debtor's motion and the accompanying declaration state the duration will be 13 months. Trustee indicates that this can be rectified in the order confirming.
2. Debtor's plan is contingent upon the sale of property. The Debtor has not received permission to sell the property nor does it appear that a Motion to Sell has been filed.

**DISCUSSION**

Debtor's modified plan proposes to change the duration of the plan from 60 months to 12 or 13 months. Additionally, the modified plan proposes to fully pay unsecured creditors while the current plan indicates a 33%

dividend to unsecured creditors. However, Debtor has not filed a Motion to Sell and does not have court approval to sell his property. Until then, the modified plan is merely speculation and cannot be confirmed.

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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

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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, parties requesting special notice, and Office of the United States Trustee on September 28, 2016. Fourteen days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of Toyota Motor Credit Corporation, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject property, a 2013 Toyota Prius with 85,000 miles. The Debtor seeks to value the property at a fair market value of \$12,624.00 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).

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

Creditor filed an opposition to the motion on October 17, 2016. Under Local Rule 9014-(f)(1)(ii), an opposition need be filed 14 days prior to the hearing. The opposition is filed late and is therefore not considered.

#### **DISCUSSION**

Toyota Motor Credit Corporation has a secured debt on the collateral in

the amount of \$17,487.13. The creditor's secured claim is determined to be in the amount of \$12,624.00. 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 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Toyota Motor Credit Corporation, secured by an asset described as a 2013 Toyota Prius, is determined to be a secured claim in the amount of \$12,624.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the vehicle is \$12,624.00 and is encumbered by liens securing claims which exceed the value of the asset.

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**Final Ruling:** No appearance at the October 18, 2016 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 September 2, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 2, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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6. [16-21208](#)-C-13 MELISSA TEUSCHER  
MMM-2 Mohammad Mokarram

OBJECTION TO NOTICE OF  
POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
8-31-16 [[39](#)]

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**Tentative Ruling:** The Objection to Notice of Post-petition Mortgage Fees, Expenses and Charges 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 31, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

**The Objection to Notice of Post-petition Mortgage Fees, Expenses and Charges is overruled.**

Debtor "finds it hard to believe" that Claimant, Redwood Residential Acquisition Corporation, spent \$900.00 on attorney fees. Debtor believes that the charges are improper and requests that Claimant provide an explanation for the charges.

#### **CLAIMANT'S RESPONSE**

Claimant responds that the Notice of Post-Petition Fees includes specifics regarding each claimed expense. Claimant further explains its fees again in its response.

#### **DISCUSSION**

Debtor has offered no evidence as to why the post-petition fees should not be allowed. Claimant has responded by explaining its fees. These fees were incurred during the course of the bankruptcy, however this creditor is being

paid outside the plan. Absent evidence that some or all of the fees were unwarranted, this objection is overruled.

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

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

Objection to Notice of Post-petition Mortgage Fees, Expenses and Charges 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 Objection to Notice of post-petition Mortgage Fees, Expenses and Charges is overruled.

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7. [16-25608](#)-C-13 JILL HADDOX AND BRENDA MOTION TO VALUE COLLATERAL OF  
TAG-1 JORGENSEN CARFINANCE.COM  
Aubrey Jacobsen 9-7-16 [[10](#)]

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

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

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

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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 7, 2016. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of CarFinance Capital, "Creditor," is denied.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject property, a 2010 Ford F150 with 130,000 miles. The Debtor seeks to value the property at a fair market value of \$6,800.00 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).

CarFinance Capital has a secured debt on the collateral in the amount of \$13,848.00.

**Creditor's Objection**

Creditor asserts that the NADA retail value of the vehicle is \$18,350.00. While that is not conclusive of its value, that is a good starting point when valuing personal property under § 506(a). Creditor additionally asserts that Debtor offers no evidence as to why the car should be valued at \$6,800.00

**Debtor's Reply**

Debtor's reply is twofold. First, Debtor asserts that Creditor's valuation is inadmissible evidence because market reports are not determinative in individual circumstances. Second, Debtor includes a declaration describing several defects in the car as proof that the car is far below the NADA retail value.

## **Discussion**

Debtor's argument that Creditor's valuation is not admissible evidence is incorrect. Debtor claims that Creditor's assertion that using NADA is an appropriate starting point should not be admissible because it fails FRE 401(a) ("it has any tendency to make a fact more or less probable than it would be without the evidence"). Debtor asserts that NADA has no probative value because it fails to take into consideration the condition of the vehicle. However, NADA reports are still helpful in determining a starting point, and courts routinely use them as a starting point for determining valuation. See *In re Araujo*, 464 B.R. 15 (Bankr. N.D. California 2011).

Debtor's second argument is that the number of defects is so great as to warrant a valuation of \$6,800.00. It is unclear whether the Debtor agrees that the NADA report for a 2010 Ford F150 is approximately \$18,000.00. If so, it seems unlikely that the list of 8 defects, ranging from a crack in the windshield to broken cup holders, diminishes the value of the vehicle by nearly 65%. If not, the Debtor has still failed to produce any evidence supporting the Debtor's valuation outside of Debtor's personal knowledge. In fact, Creditor had previously valued the property as high as \$23,907.00 based on a Kelly Blue Book suggested retail value in conjunction with its proof of claim.

The court does not have sufficient evidence to grant the Debtor's motion, and the valuation of the vehicle will not be set to \$6,800.00 at this time.

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 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 pursuant to  
11 U.S.C. § 506(a) is denied without prejudice.

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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).**

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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 Debtor and Debtor's Attorney on September 7, 2016. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the Objection until November 22, 2016 at 2:00 p.m.</b>
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor failed to disclose prior case number 10-50998 on the petition.
2. Debtor's plan lists an ongoing monthly mortgage payment in an

amount approximately \$1,500 less than the amount listed on the Notice of Mortgage Payment Change filed by the lienholder. Dkt. 15.

3. The Plan fails the liquidation analysis.
4. The plan payment is insufficient to fund the mortgage payment, mortgage arrears, and Trustee fees.

## **DISCUSSION**

This matter was continued from October 4, 2016. The matter was continued until October 18, 2016 in order to give Debtor and counsel the time to consider the issues the Trustee has. On October 10, 2016, Debtor filed an Amended Plan that is set for hearing on November 22, 2016.

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

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

The 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 of the Plan is continued until November 22, 2016 at 2:00 p.m.

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

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

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

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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 Debtor and Debtor's Attorney on September 12, 2016. Twenty eight days' notice is required. That requirement is met.

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

**The court's decision is to sustain the Objection.**

Creditor, N.102-3584, opposes confirmation of the Plan on the basis that:

1. The plan lacks adequate funding because a proof of claim, not yet filed by the creditor, will approximate \$35,000.00 in arrears at the time of filing. Also, the postpetition amount does not include the escrow component of the loan.
2. The plan lacks feasibility because the plan does not provide for payments to the secured creditor in the amount of \$2,972.09. The creditor does not believe there is available funds to provide for this payment.
3. The plan attempts to modify Creditor's claim by failing to provide for the arrearage amount that was due upon filing.

#### **Debtor's Response**

Debtor responds by asserting that the Debtor entered into a trial loan modification before the filing of the present case. This trial loan modification allegedly cures all pre-petition arrears at the end of the Debtor's loan. Debtor intends to file a motion to approve the loan modification as soon as it has the final paperwork which is being processed by Creditor.

## **Discussion**

Creditor has stated that the plan lacks adequate funds and is not feasible. Debtor has attempted to respond to that by unilaterally asserting that a loan modification agreement exists. Until and unless the court approves that loan modification, a plan that relies upon the loan modification cannot be approved.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor, N.102-3584, 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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**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 22, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is delinquent \$3,700.00 under the terms of the proposed plan. The debtor has paid a total of \$35,396.00 into the plan. The debtor is delinquent \$22,564.00 under the currently confirmed plan.
2. Debtor's explanation for modification is similar to debtor's previous explanation for modification: a renter of the debtor is not paying and the debtor will find a more reliable tenant. Debtor also indicates that rental income will go from \$2,500 per month previously to \$3,000 per month according to the amended plan without explanation.

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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

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11. [16-25112](#)-C-13 JOAN NACHREINER  
DPC-1 Jeffrey Ogilvie

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-14-16 [[14](#)]

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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).**  
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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 Debtor and Debtor's Attorney on September 14, 2016. Fourteen days' notice is required. That requirement is met.

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

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the debtor's plan proposes to pay Bank of America's Coachman Freedom in Class 4 with payments of \$388.00 per month. The claim amount is \$10,500.00. According to the debtor, the loan will mature in 2018, therefore the debt should be provided in Class 2 of the plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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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**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 6, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is attempting to modify the plan to increase plan payments from \$290.00 to \$306.00 per month. The Trustee requests that the debtor file Supplemental Schedules I and J in support of her updated income and expenses. The Trustee also points out that debtor's Schedule J reflects food expenses of \$300.00 per month. Debtor now has two additional grandchildren she takes care of and the national standard for monthly food expenses is \$815.00 for four people.
2. Debtor's motion indicates debtor will file a claim on behalf of Highway Motors regarding a 2004 Mazda Tribute because the creditor did not file one and the bar date has passed. There is no evidence that this claim has been filed in the case.

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 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 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 24, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

1. The plan intends to pay a monthly dividend of \$1,000.00 to the Internal Revenue Service and \$300.00 to the Franchise Tax Board. The IRS has a claim of \$183,225.50 and the Franchise Tax Board has a claim in the amount of \$69,162.42. The plan therefore does not propose to pay these priority creditors in full during the course of the plan and there is no evidence that either of these entities agreed to this treatment.
2. Debtor indicated his intention to sell community property and use the proceeds for the payment of the priority claims. However, dissolution of debtor's marriage is still pending. Debtor has merely speculated as to the value of this property. A plan cannot be confirmed where it is proposing a balloon payment or otherwise is contingent on a speculative event. It is speculative as to what specifically will allow the debtor to increase payments.
3. The debtor's amended schedules and forms indicate a number of changes without any explanation. Additionally, debtor takes a number of excessive deductions. First, debtor's deduction with regards to the priority claims does not take into account the fact that the plan does not propose to pay the full amount of the priority claims. Second, debtor's income tax deduction is approximately 39% of the debtor's gross income, and debtor is proposing to pay

70% more in taxes in 2016 than he paid in 2015.

4. The plan fails the liquidation analysis. The chapter 13 plan proposes a 0% dividend to unsecured creditors. It appears that the debtor has non-exempt equity in excess of \$170,000.00.

5. Debtor did not answer question #27 on the SoFA.

6. Debtor has previously paid \$2,000.00 to debtor's counsel. The plan proposes to pay an additional \$2,000.00 to debtor's counsel.

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

Debtor asserts that he is in divorce proceedings and will have enough money to make payments and completely pay off the tax debts through a sale of property once it is determined what his interest in the community property is.

#### **DISCUSSION**

The Debtor may be able to complete this plan, depending on what his interest in the community property is. However, at this time, the court lacks the evidence that this instant plan is feasible.

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 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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14. [16-25224](#)-C-13 JARED/JESSICA KIERNAN  
DPC-1 Pro Se

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
8-26-16 [[14](#)]

**Also #15**

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**Final Ruling:** No appearance at the October 18, 2016 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 Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 26, 2016. 28 days' notice is required. That requirement is met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

Debtor Jared M. Kiernan received a discharge in case number 13-33921 on February 18, 2014. This objection to discharge applies to Jared Kiernan only.

<b>The Objection to Discharge is sustained.</b>
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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 21, 2016. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the Objection until October 25, 2016.</b>
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Jared Kiernan, debtor, failed to appear and be examined at the First Meeting of Creditors held on September 15, 2016.
2. Debtor has failed to provide Employer Payment Advices.
3. Debtor has failed to provide the Trustee with a tax transcript or copy of Federal Income Tax Return.
4. Debtors Schedules B, C, and the Statement of Financial Affairs appear unchanged from those filed in conjunction with an earlier filed bankruptcy petition by the Debtors.

The court will continue the objection to plan confirmation until a

reasonable amount of time after the next meeting of creditors which is to take place on October 13, 2016. Therefore, the objection will be continued until October 25, 2016.

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

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

The 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 of the Plan is continued until October 25, 2016.

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**Tentative Ruling:** The Objection to Claim 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 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 27, 2016. By the court's calculation, 21 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d) (2). Creditor, Debtor, 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 Objection to Proof of Claim Number 5-1 of Wendy Ritz is overruled.</b>
-------------------------------------------------------------------------------

Gary Ritz, the Debtor, requests that the court disallow the claim of Wendy Ritz, ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be a priority unsecured claim in the amount of \$1,500 for spousal support. Objector asserts that he has already paid this amount.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the

creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, Debtor asserts that he has already paid the spousal support. However, Debtor introduces no evidence to support his claim.

Based on the evidence before the court, the creditor's claim is not disallowed. The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Wendy Ritz, Creditor, filed in this case by Gary Ritz, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 5-1 of Wendy Ritz is overruled and the claim is allowed in its entirety.

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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 29, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is delinquent \$630 under the terms of the proposed modified plan. The debtor has paid a total of \$8,135.00 into the plan to date.
2. Trustee believes the plan is not the debtor's best effort. Debtor indicates that his income will increase due to his father moving in and contributing an additional \$300 to rent. This increase is not reflected in proposed plan.
3. Debtor's plan indicates that on September 25, 2016 or the eleventh (11th) month of the plan, the payments will become \$1,280 per month. Trustee asserts that September 2016 is month 10 and this can be corrected in an order confirming.

## Debtor's Reply

Debtor asserts that he is delinquent only \$30 due to a mistaken payment in September 2016. The additional \$600 delinquency is in reference to the 2016 state tax refund. Debtor has not received that refund yet. Debtor does not respond to the best effort's argument.

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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18. [16-23745](#)-C-13 SCOTT/MELANIE MACKNIGHT CONTINUED MOTION TO VALUE  
FF-1 Nekesha Batty COLLATERAL OF WELLS FARGO BANK,  
N.A.  
8-12-16 [[23](#)]

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

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

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

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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 August 12, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," will be set for evidentiary hearing.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2013 Volkswagen Passat TDI SE. The Debtor seeks to value the property at a replacement value of \$9,375.00 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).

Debtor originally scheduled the vehicle with a value of \$10,095.00. Debtor now asserts the vehicle has a fair-market value of \$9,375.00 based on an appraisal. Dkt. 26.

**Creditor's Objection**

Wells Fargo Bank, N.A., Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$12,700.00 based upon NADA guidelines.



**The Trustee filed a statement of non-opposition.**

**Discussion**

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$16,161,86.

Creditor has filed an appraisal listing the price of the vehicle at \$15,060.00. Both parties have submitted appraisals with greatly differing valuations.

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, disputed material factual issues appearing to exist, an evidentiary hearing will be scheduled with respect to the Motion to Value.

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19. [13-32449](#)-C-13    ARNULFO CHAVEZ AND MARIA    MOTION TO APPROVE LOAN  
JMC-6    ALMANZA    MODIFICATION  
Joseph Canning    9-20-16 [[130](#)]

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**Final Ruling:** No appearance at the October 18, 2016 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 20, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Arnulfo Chavez and Maria Almanza ("Debtors") seeks court approval for Debtors to incur post-petition credit. Wells Fargo, ("Creditor"), has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,576.17 a month to \$1,552.53 a month. The modification will cure all arrearages. The modification reduces the principle amount owed on the loan from \$355,000.00 to \$296,818.51.

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

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

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

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

The Motion to Approve the Loan Modification filed by Arnulfo Chavez and Maria Almanza, 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 court authorizes Arnulfo Chavez and Maria Almanza ("Debtors") to amend the terms of the loan with Wells Fargo, which is secured by the real property commonly known as 248 Millbrook Way, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 133.

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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 21, 2016. Fourteen days' notice is required. That requirement is met.

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

**The court's decision is to sustain the Objection.**

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

1. The Plan will complete in 82 months as opposed to the 60 months proposed. The cause of this is the proof of claim filed by the Internal Revenue Service on September 2, 2016.
2. Debtor has not filed tax returns during the 4-year period preceding the filing of the petition.

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. [14-28668](#)-C-13 PLEASANT/SUSAN BREWER  
NBC-4 Eamonn Foster

MOTION TO VACATE DISMISSAL OF  
CASE  
9-12-16 [[75](#)]

DEBTOR DISMISSED:  
09/09/2016  
JOINT DEBTOR DISMISSED:  
09/09/2016

**Final Ruling:** No appearance at the October 18, 2016 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 and Office of the United States Trustee on September 12, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Vacate Dismissal of Case 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 Vacate Dismissal of Case is granted.</b>
-----------------------------------------------------------

**Also #23**

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 January 6, 2016. Forty-two days' notice is required. That requirement was met.

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

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

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

1. Debtor's plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income. It appears that the tax deductions reported on schedule J may be unnecessary. Debtor deducts on schedule J \$1,250 per month for self-employment income tax. Debtor also deducts \$650 per month for past due tax payment. Debtor fails to provide any documentation supporting the payments of \$650 per month to tax authorities, no evidence of need to save \$1,250 per month for self-employment tax or bank statements showing the setting aside and saving of tax funds. Debtors also offer no evidence of past due tax liabilities owed or the balance owed by non-filing spouse.
  - a. Debtor files as exhibit L and exhibit M 2013 and 2012 tax returns. The 2013 return shows that Debtors overpaid their federal taxes by \$3,732 and their state taxes by \$781. Debtor provides a second copy of the 2013 tax return for an unknown reason. Th 2012 return shows debtors overpaid federal taxes by \$7,573. No state return is provided. There was a federal overpayment of \$1,615 and state overpayment of \$436.
  - b. Trustee questions what if any balance is owed on past tax debt considering after filing 2012, 2013, and 2014 returns the IRS would have kept a combined about of \$12,920 in refund

the Debtor would have otherwise been entitled to and FTB would have kept at least \$1217 for the same reason.

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

#### **CHAPTER 13 TRUSTEE'S SUPPLEMENTAL OPPOSITION**

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

1. The matter was previously continued from May 24, 2016 based on Debtor's motion, stating that "Until the debtor can resolve this adversary proceeding . . . the debtor cannot confirm her chapter 13 plan." A motion to dismiss the adversary is pending on the same calendar and opposed by Debtor. As such, unless Debtor changes her position, if the adversary proceeding is dismissed, the motion to confirm should be denied.
2. Trustee has previously objected to confirmation on the basis that the plan is not Debtor's best efforts based on tax expenses. Trustee no longer asserts this objection.
3. Debtor may be attempting to reduce the previous term of the 60 months to a plan term ending August 2016. However the specific number of months in the plan is not clearly designated. The 60th month of the plan appears to be September 2016 and Trustee objects to verify this plan length.



## **JUNE 28, 2016 HEARING**

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

## **AUGUST 30, 2016 HEARING**

Debtor reported that she has the signed loan modification, which can be executed without resolution of the adversary, where the only remaining issue is the amount of reasonable attorneys' fees for the prevailing party.

The Trustee concurred in continuing this hearing to allow the Debtor to get a motion on file to approve the loan modification.

## **DISCUSSION**

The court notes that on July 20, 2016, the motion to dismiss set for hearing on August 23, 2016, filed was withdrawn in the adversary proceeding, Dckt. 47, Case 15-2248. The Defendant in the adversary proceeding instead filed an answer to the complaint.

The debtor filed a motion to approve loan modification also on calendar on October 18, 2016. Dckt. 396.

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 . . . .

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on September 20, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is denied.**

The Motion to Approve Loan Modification filed by Corinne Sauve ("Debtor") seeks court approval for Debtor to incur post-petition credit. Select Portfolio Servicing Inc., ("Creditor"), has agreed to a loan modification which will reduce Debtor's mortgage payment from the current approximately \$3,240.04 a month to approximately \$1,472.07 a month for the first 60 months, \$1,710.21 for the next 12 months, and then \$1,802.37 for the remaining 191 months. Additionally debtors will pay \$463 per month for property taxes. The modification will reduce the interest rate from the current 4.475% to 2.0% for the first sixty months, 3.0% for the next twelve months, and 3.375% for the remaining maturity.

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

**TRUSTEE'S OPPOSITION**

The Trustee objects to the loan modification on the grounds that this loan modification request contains the same problems that existed in the

previously denied loan modification filed by the debtors. The court held that "[t]he parties will have to accurately and correctly identify the Creditor who is entering into this Loan Modification Agreement, have the Agreement properly identify the creditor, and if the agreement is being executed by an agent, that the agent be correctly identified and proof of its authority provided 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 to Approve the Loan  
Modification filed by Corinne Sauve having  
been presented to the court, and upon review  
of the pleadings, evidence, arguments of  
counsel, and good cause appearing,

**IT IS ORDERED** that the court does not  
authorize Corinne Sauve, ("Debtor"), to amend  
the terms of the loan with Select Portfolio  
Servicing Inc.

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**Final Ruling:** No appearance at the October 18, 2016 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 September 3, 2016. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is denied.**

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. However, this is likely because the case was dismissed pursuant to court order issued October 5, 2016.

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

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

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

**IT IS ORDERED** that the Motion is denied.  
Debtor's Chapter 13 Plan filed on September 3,  
2016 is not confirmed as the case has been  
dismissed pursuant to court order entered  
October 5, 2016.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is delinquent \$12,535.00 under the terms of the proposed modified plan. Debtor has paid a total of \$21,675.00 into the plan.
2. Debtor's plan indicates that the debtor will pay a total of \$255,210.00 during the life of the plan, based on a 100% disbursement to unsecured creditors. Trustee, however, computes that to fully repay unsecured creditors, Debtor will need to pay \$319,657.42 over the course of the plan.
3. Debtor's amended plan does not propose to pay any attorney's fees, however, there are \$337.50 in attorney's fees that remain unpaid.

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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26. [14-30376](#)-C-13 MICHELE MCFERRAN  
PGM-3 Peter Macaluso

OBJECTION TO CLAIM OF INTERNAL  
REVENUE SERVICE, CLAIM NUMBER  
1-3  
9-2-16 [[85](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 2, 2016. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

#### **DISCUSSION**

The IRS filed a response claiming that the objection is moot because the IRS filed an updated proof of claim. However, Debtor's motion requested that the IRS claim be reduced to a general unsecured claim in the amount of \$49,249.33. The amended proof of claim 1-4 indicates an unsecured claim in the amount of \$35,238.73 as well as an unsecured priority claim of \$18,413.09.

**The Objection to Proof of Claim Number 1-3 of the Internal Revenue Service is sustained and the claim is shall be reduced to a general unsecured claim in the amount of \$49,249.33.**

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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).**  
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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 Debtor and Debtor's Attorney on September 21, 2016. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

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

1. Debtor has made 0 plan payments and is delinquent \$2,321.00.
2. Debtor admitted at the First Meeting of Creditors that her daycare income has declined. Additionally, Debtor asserted that she will have \$800.00 per month from roommate income. Debtor has not updated her Schedule I.
3. The monthly dividend to Class 1 creditor Solano First FCU must be at least \$15.00.

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 of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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28. [16-25181](#)-C-13 LIONEL/SHIRLEY JACKSON  
DPC-1 Candace Brooks

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-21-16 [[17](#)]

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**Final Ruling:** No appearance at the October 18, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, 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 Objection to Confirmation of Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation of Plan.**

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that Debtor did not appear at the First Meeting of Creditors held on September 15, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Debtor advised the Trustee that she would be out of town on the September 15, 2016 date. The meeting of creditors was continued to October 13, 2016. Debtor appeared at that meeting of creditors and the Trustee withdrew the instant motion.

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

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

An Objection to Confirmation of Plan, having been filed by the Chapter 13 Trustee, 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 Objection to Confirmation of Plan, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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29. [16-25184](#)-C-13 PETE MANAS  
DPC-1 Michael Croddy

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-21-16 [[14](#)]

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**Final Ruling:** No appearance at the October 18, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, 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 Objection to Confirmation of Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan, having been filed by the Chapter 13 Trustee, 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 Objection to Confirmation of Plan, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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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 28, 2016. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-23904) was filed on March 10, 2016 and dismissed on August 8, 2016, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

In determining if good faith exists, the court considers the totality

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

1. Why was the previous plan filed?

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

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

Here, the prior case was a joint case and was infeasible due to the dissolution of the marriage of the joint debtors. After that case was dismissed, debtor reorganized her finances in order to be able to comply with the provisions of Chapter 13 as a solo debtor.

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 September 27, 2016 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 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).**  
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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 Debtor and Debtor's Attorney on September 14, 2016. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to sustain the Objection.**

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

1. Debtor's attorney of record, Martin Rajabov, failed to appear at the First Meeting of Creditors held on September 8, 2016. The Debtor appeared but was not examined. The Meeting has been continued to October 13, 2016.
2. Debtor's plan payment is \$126.00 per month, however the Plan calls for a monthly dividend of \$1,000.00 to be paid to Debtor's attorney.
3. The plan provides for mortgage payments of \$1.00 per month. The Trustee has no evidence of a contract calling for this payment amount. Additionally, the Trustee would request that, if this is the correct contract amount, the Debtor pay that dividend directly.

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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32. [16-25197](#)-C-13 LISA SCOTT  
DPC-1 Michael Hays

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-14-16 [[16](#)]

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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).**  
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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 Debtor and Debtor's Attorney on September 14, 2016. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to overrule the Objection.</b>
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor has failed to file a motion to value collateral.

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

Debtor responds that she was able to reach a stipulation with Ally Financial that will change the amount paid to Ally to \$11,350.00 with \$214.00 monthly dividend from \$10,612.00 with \$200.26 monthly dividend. The total plan payments will increase from \$280.00 to \$295.00.

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

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



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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 8, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, amended to reflect the stipulation between Debtor and Ally Financial, 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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