

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 27, 2015 at 2:00 P.M.

1. [15-22302](#)-C-13 D JACK
DPC-4 Mark Wolff

DEBTOR DISMISSED: 09/13/2015

MOTION TO AUTHORIZE
DISBURSEMENT OF FUNDS
9-25-15 [[84](#)]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 25, 2015. Twenty-eight days' notice is required.

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

The Motion to Incur Debt is granted.

The motion seeks permission to disburse funds in the amount of \$45,446.50 to Jan P. Johnson, the Chapter 13 Trustee assigned to debtor's pending bankruptcy case (No. 15-27153).

This case (No. 15-22302) was dismissed on September 13, 2015 leaving the standing Chapter 13 Trustee with a current balance of \$45,446.50. The Chapter 13 Trustee moves the court to amend its prior order entered on June 10, 2015 (Dkt. 55), which required the Chapter 13 Trustee to hold funds pending further order, to allow disbursement. The Debtor filed another case with the court on September 11, 2015 (No. 15-27153), and the case was assigned to Trustee Jan P. Johnson.

Discussion

The court finds that the proposed disbursement, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to Authorize Disbursement of Funds 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 Motion is granted and David P. Cusick, standing Chapter 13 Trustee, is authorized to disburse funds in the amount of \$45,446.50 to Jan P. Johnson, the Chapter 13 Trustee assigned to Case No. 15-27153.

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 March 24, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$1,360 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,360 is due on October 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Debtor cannot make the plan payments:
 - a. Schedule J lists net income as \$1,420 where plan payments are listed as \$1,360.
 - b. Class 1, U.S. Bank, is incomplete as it fails to list the arrearage dividend and the monthly contract amount.

- c. The second deed of trust owing to U.S. Bank in the amount of \$1,700 is scheduled but not included in the plan.

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

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

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

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

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

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 23, 2015. 28 days' notice is required.

The Objection to Exemptions 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.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions pursuant to California Code of Civil Procedure §704.730. California Code of Civil Procedure §704.730, subd. (a)(3), provides:

704.730. (a) The amount of the homestead exemption is one of the following:
(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:
(A) A person 65 years of age or older.
(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.
(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross

annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

(emphasis added)

The Trustee reports that:

1. Debtor admitted at the First Meeting of Creditors held on September 17, 2015 that she was 60 years old and not married.
2. Debtor has not provided any documentation that she is physically or mentally disabled.
3. Debtor's Schedule I states that she is a self-employed travel agent and earns \$2,550 gross per month, which totals \$30,600 per year.

Discussion

The Debtor is not entitled to an exemption under California Code of Civil Procedure §704.730(a)(3). A debtor may claim an exemption under §704.730(a)(3) if the debtor is 65 years of age or over, physically or mentally disabled, or 55 years of age with a gross annual income of not more than \$25,000. As the Trustee highlights, the Debtor does not meet any of the forgoing criteria.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the exemptions are disallowed in their entirety.

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 30, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor failed to provide the Trustee with verification of other monthly income listed Line #8h listed on Schedule I of \$500 and \$1000 (respectively Brother, Daughter).
2. Additionally, SoFA, Question 2 fails to list the \$1,500 monthly income.

Debtor's Objection

Debtor states that he provided the Trustee with copies of declarations supporting the additional income on October 1, 2015.

Discussion

The court has considered the Trustee's concerns and finds them legitimate. It appears that the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Further, the Debtor's Objection lacks evidentiary support. The docket does not reflect that Debtor filed a declaration to support the validity of his income. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 September 10, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Creditor Chase had their secured claim valued as \$0 secured. Dkt. 32. The proposed plan lists the creditor as 2.09(d)A Class 2 claims not reduced based on value of collateral, rather than 2.09(d)C Class 2 claims reduced to \$0 based on value of collateral.
2. Under the modified plan, Debtors would need to have paid to the Trustee through September 2015 a total of \$13,280, but the Trustee's records reflect that Debtors have actually paid a total of \$16,220, a difference of \$2,940.
3. There is no current statement of expenses on file.

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

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

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

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

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

Also #7

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 30, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. The proposed plan payments are \$3,360, but the trustee is not certain if the debtor is making sufficient income to afford the payments.
 - a. At the first meeting of creditors, the debtor admitted that monthly rental income is received sporadically as cash deposits into his bank accounts; however, copies of the bank statements do not reflect any cash deposits in the months of June and July 2015.

- b. The plan calls for an undisclosed lump sum payment from the sale of real property. The debtor has failed to file a motion to approve sale of real property.
- c. Debtor's rental properties are not insured which is a violation of Section 5.02 of the plan.
- d. Monthly dividends to Classes 1 and 2 alone total \$5,263.78, but the plan payment is only \$3,630.

The court has considered the Trustee's concerns and finds them legitimate. It appears the debtor cannot afford to make plan payments or comply with the plan in violation of § 1325(a)(6). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 24, 2015. Twenty-eight days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that:

1. The proposed plan payments are \$3,360, but the debtor cannot afford the payments. Secured Creditor Wells Fargo Bank, N.A. holds a claim in the amount of \$378,604.29 including arrearage in the amount of \$63,898.48. The plan under-calculates the arrearage as \$52,000.

The court has considered the Wells Fargo Bank, N.A.'s concern and finds it to be legitimate. It appears the debtor cannot afford to make plan payments or comply with 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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 29, 2015. 28 days' notice is required. This requirement was 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.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on September 29, 2015. Dckt. 20x.

The Objector argues that Laura L. Brennan ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on November 2, 2012. Case No. 12-39444. The Debtor received a discharge on September 10, 2013, Case 12-39444, Dckt. 61.

The instant case was filed under Chapter 13 on August 22, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 10, 2013, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of

the instant case (Case No. 15-26654), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-26654, the case shall be closed without the entry of a discharge.

9. [15-26366](#)-C-13 LINDA LOVELACE AND GLORIA MOTION TO VALUE COLLATERAL OF
NBC-1 HOUSTON THE BANK OF NEW YORK MELLON
Eamonn Foster 9-30-15 [[21](#)]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 11, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of The Bank of New York Mellon f/k/a The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Back Certificates, Series 2006-S8, as serviced by Nationstar Mortgage LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 145 Walton Avenue, Red Bluff, California. The Debtor seeks to value the property at a fair market value of \$169,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$229,130. Nationstar Mortgage's second deed of trust secures a loan with a balance of approximately \$30,030.04.

CREDITOR'S RESPONSE

Creditor The Bank of New York Mellon f/k/a The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Back Certificates, Series 2006-S8, as serviced by Nationstar Mortgage LLC, responds to Debtors' Motion to Value. Creditor does not oppose Debtors' motion, however notes that the avoidance of Creditor's lien is contingent upon Debtors' completion of the chapter 13 plan and receipt of discharge. Creditor requests the inclusion of protective language to the effect that Creditor's lien be retained to the extent recognized by applicable non-bankruptcy law if the case is dismissed,

converted to any other chapter, sold, refinanced, or foreclosed upon prior to Debtors' completion of the chapter 13 plan.

DISCUSSION

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon f/k/a The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Back Certificates, Series 2006-S8, as serviced by Nationstar Mortgage LLC, secured by a second deed of trust recorded against the real property commonly known as 145 Walton Avenue, Red Bluff, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$169,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Also #11

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 Dismiss

PREVIOUSLY

The court continued the matter from September 9, 2015, then to September 22, 2015, to permit Debtor additional time to prepare and file a modified plan.

MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not provide for the priority claim of the Internal Revenue Service of \$1,995. This is a breach of the plan. Debtor was provided a Notice of Filed Claims on June 18, 2014, Dckt. 16, which listed this claim on Page 6 as a priority and not provided for in the plan, and indicated that a motion to modify was required.
2. Debtor does not appear to be able to make payments under 11 U.S.C. § 1325(a)(2). Debtors are delinquent \$745. Payments totaling \$14,700 have become due through July 25, 2015. Debtors have paid a total of \$13,955 with the last payment of \$780 posted August 10, 2015. Another payment of \$780 will become due August 24, 2015.

DEBTORS' RESPONSE

Debtors responds, explaining that Debtor Monay Lawrence has been placed on disability and is no longer receiving employment income. Debtors have thus experienced a lapse in income from the transition. Debtors and counsel are preparing a modified plan and motion to confirm plan to be set on the court's first available hearing date. Should Debtors and counsel be unable to file and serve the modified plan and motion to confirm plan prior to the date of hearing on the instant motion, Debtor request one additional week from the hearing date in which to file the modified plan.

DISCUSSION

Debtor has filed, served, and set for hearing a modified plan. Although the court has not granted the Motion to Modify Plan, the court is satisfied that Debtors are prosecuting their case and attempting to modify their plan in efforts to resolve the Trustee's basis for dismissing this case.

Cause does not exist to dismiss this case. The motion is denied and the case is not dismissed.

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

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

The Motion to Dismiss the Chapter 13 case 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 Motion to Dismiss is denied and the case is not dismissed.

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 September 22, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b).
 - a. Under the confirmed plan, Debtors' payments are \$630 for 6 months, then \$780 for 54 months. Debtor is currently delinquent \$1,525 and now proposes to reduce plan payments to \$600. Debtor proposes plan payments of \$13,955 total paid in through August 10, 2015, then \$600 for the remainder of the plan beginning September 25, 2015. Debtor has paid a total of \$13,995 through August 10, 2015, but then paid \$780 on September 10, 2015, and \$600 on October 9, 2015. Debtor has paid in \$180 more than proposed in the plan. This can be corrected in the order confirming.

- b. Debtor's motion and declaration indicates that Debtors have recently gone on disability. Debtors state Michael Lawrence has gone on disability due to an undiagnosed medical condition and has not received an award on disability, but will file amended schedules I and J once his income is determined, which should be before the hearing date on the Motion to Modify. Debtor's declaration states that Monay Lawrence has been awarded monthly amounts of \$2,530.67. Debtors state Michael Lawrence had a hearing with the state the week of September 28, 2015 regarding his current employment and potential retirement, and that once a determination is made, they would file amended schedules. Debtors' combined average monthly income was \$6,048.89 according to the most recent schedule I filed November 4, 2013.
 - c. Debtors' most recent schedule J was filed on March 27, 2015 in conjunction with the Debtors prior motion to modify, dckt. 21. This schedule reflected total monthly expenses of \$5,240.81 leaving a monthly net income of \$808.08. Trustee objected to Debtor's prior Motion to Modify partly due to Debtors' failure to adequately explain the changes in their expenses with the most notable being a \$480.81 increase in car payment where Debtors had previously scheduled this expense at \$0. Debtors now propose to reduce their plan payments from \$780 to \$600 without providing any form of documentation to support this reduction. Trustee has no way of knowing if the plan as proposed is Debtors' best efforts. To date debtors have not filed an amended schedule I or J.
2. The proposed plan decreases the percentage to unsecured creditor from 15.82% to 0% based on Debtors' income and expenses. The percentage to unsecured creditors under the confirmed plan is 0%. Debtors' proposed an increase to 15.82% in their prior proposed modified plan, dckt. 25, which was denied. Therefore, the instant modified plan proposes to alter the percentage to unsecured creditors, which is incorrect.

The court agrees that Debtors have failed to sufficiently document their best efforts to the court. Although Debtor Michael Lawrence states in his declaration that he will file an amended schedule I reflecting the most up-to-date income of debtors by the date of hearing, the docket shows that no such amended schedule has been filed. 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of Debtor's plan on the basis that the plan as proposed will not complete within 60 months as required by 11 U.S.C. § 1322(d). Section 2.08 of Debtor's first amended plan lists a class 1 debt to PNC Mortgage for arrears of \$16,826.21. On September 2, 2015, creditor PNC Bank N.A. filed a proof of claim #3 showing arrears of \$21,713.77. The plan in section 2.15 proposes to pay 24% to unsecured creditors. According to Trustee's calculations, the plan will take 78 months to complete as proposed with the higher arrears claim. Trustee believes that plan may be confirmable if unsecured creditors receive approximately 8% within 60 months, not the 24% proposed.

Debtor has filed no response addressing Trustee's concerns or Trustee's proposal to adjust the amount distributed to unsecured creditors to 8% instead of 24%. The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is **not** confirmed.

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

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

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

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

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 Dismiss

PREVIOUSLY

The court continued the matter from September 9, 2015, then to September 22, 2015, to permit Debtor additional time to prepare and file a modified plan.

MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis the Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$16,577.99 with the last payment received April 20, 2015. Trustee shows \$18,390 is due, and thus debtor is delinquent \$1,812.01 in plan payments. Debtor's monthly payment is \$613. Prior to the hearing, an additional \$613 will become due, and as a result debtor will need to pay \$2,425.01 to be current by the hearing.

DEBTOR'S RESPONSE

Debtor responds to Trustee's motion, stating that Debtor became unemployed in October 2014 and began to receive unemployment. Debtor is actively seeking new employment. Debtor and counsel are preparing a modified plan and motion to confirm, to be set on the court's first available hearing date. Should Debtor and counsel be unable to file and serve the modified plan, Debtor requests one additional week from the hearing date to file said plan and motion.

DISCUSSION

Debtor has filed, served, and set for hearing a modified plan. The court has granted the Motion to Modify Plan, Dckt. 65.

Cause does not exist to dismiss this case. The motion is denied and the case is not dismissed.

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

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

The Motion to Dismiss the Chapter 13 case 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 Motion to Dismiss is denied and the case is not dismissed.

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 September 22, 2015. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to grant 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. Section 6 of Debtor's modified plan proposes a plan payment of \$16,577.99 total paid through April 20, 2015, then \$80 per month commencing October 25, 2014, which should be 2015. Debtor does not indicate what the payments are for the period beginning April 25 through September 25, 2015. Trustee does not object to a clarification of this in the order confirming.
2. Debtor's plan filed on September 22, 2015 is not properly signed and does not comply with LBR 9004-1(c). Counsel and debtor's names are typed beneath the signature line, but the proposed modified plan has not been signed.
3. Debtor's modified plan proposes to increase the minimum percentage

to unsecured creditors from 0% to 15% where the plan estimates the total unsecured at \$10,729.74 and thus the dividend would be \$1,609.57. The Trustee's records reflect the total unsecured claims filed are \$10,729.74. To date, Trustee has disbursed 40.43%, amounting to \$4,337.61. Thus, \$2,728.04 has been disbursed over the dividend proposed in the modified plan. Trustee does not oppose the modified plan percentage so long as Debtor is not attempting to limit prior disbursements.

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition, proposing that the court include the following clarifying language in the order confirming:

"Section 6 Additional Provisions shall be amended to read as follows: 'The Debtor has paid a total of \$16,577.99 to the trustee through April 20, 2015. As Debtor has been unemployed since that time, monthly payments shall be suspended from April 25, 2015 through August 25, 2015. Commencing September 25, 2015 monthly plan payments shall be \$80.00 for the remainder of the plan.'"

DISCUSSION

In addition to the proposed clarifying language in the order confirming, Debtor has provided a signed version of the proposed plan as Exhibit B, Dckt. 77. The court notes that Debtor has not yet addressed Trustee's third basis for objection: clarifying whether Debtor is attempting to limit prior disbursements to general unsecured creditors. The court will infer from Debtor's silence that Debtor is not attempting to do so. Trustee's objections having thus been resolved, the court will approve the motion.

The modified 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 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 granted and the proposed Chapter 13 Plan filed on September 22, 2015. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the Additional Provisions to state "Section 6 Additional Provisions shall be amended to read as follows: 'The Debtor has paid a total of \$16,577.99 to the trustee through April 20, 2015. As Debtor has been unemployed since that time, monthly payments shall be suspended from April 25, 2015 through August 25, 2015. Commencing September 25, 2015 monthly plan payments shall be \$80.00 for the remainder of the plan.'" Counsel for Debtor shall transmit the proposed

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

Final Ruling: No appearance at the October 27, 2015 hearing is required.

Final 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 30, 2015. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to continue the Objection to November 17, 2015 at 2:00 p.m.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the first meeting of creditors on September 24, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor does not appear able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$900. To date, Trustee has received no plan payments from Debtor. The next payment of \$900 on October 25, 2015.

3. Debtors appear to be over the median income and propose plan payments of \$900 per month for 60 months, with a 25% dividend to the unsecured creditors.

- a. Trustee is uncertain if Debtor's plan is the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtors' schedule I list gross income of \$12,664. A review of the pay advices provided to Trustee indicate that Debtors' gross income is \$13,863, \$1,199.20 more than listed on schedule I. Salary in the amount of \$6,931.60 is paid twice a month, and the net income according to Trustee's calculations appears to be \$8,414.62 or \$415.61 higher than the \$7,999.01 listed in schedule I.
- b. Debtors received a refund of \$10,224 for tax year 2014. No future tax refund income is projected on schedule I. Debtors received \$10,224 in federal tax refunds. It is unknown if Debtors received a state refund from their 2014 return. Trustee requested a copy of the California state return, and debtors have not provided a copy.

Trustee requests that the court continue this motion to November 17, 2015 at 2:00 in order to see if Debtor appears for the continued meeting of creditors on October 22, 2015. The court will grant this request.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is continued to November 17, 2015 at 2:00 p.m.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 17, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 550 West Broad Street, Nevada City, California. The Debtors seeks to value the property at a fair market value of \$3235,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$264,309.91 with arrears owed of \$81,120.82. First US Community Credit Union's second deed of trust secures a loan with a balance of approximately \$58,978. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

First U.S. Community Credit Union, Creditor, objects to Debtor's Motion

to Value, estimating the value of the subject property to be closer to \$340,000.00. Creditor argues that under 11 U.S.C. § 506(a), the value of a property is a factual issue and, in this instance, requires the admission of expert testimony. Based upon an appraisal conducted by Mr. Terry Kennington of River Valley Appraisals, Creditor believes that as of November 11, 2014, the actual value of the Property is \$340,000.

DISCUSSION

Creditor adamantly objects to Debtor's basis for the valuation of the property at issue, stating that the court should not consider debtor's opinion of value as it is inadmissible hearsay. However, Creditor should be reminded that as the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004). Creditor has submitted the appraisals of a California State Certified Appraiser, and carefully provided Ms. Terry Kennington's method of appraisal.

The court will set this matter for evidentiary hearing to resolve the contested matter of the valuation of the real property at issue.

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

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

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is set for evidentiary hearing on [DATE] at [TIME].
