

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 28, 2014 at 2:00 p.m.

1. [12-22801](#)-C-13 SUK KIM MOTION TO MODIFY PLAN
CAH-7 C. Anthony Hughes 8-29-14 [[139](#)]

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 29, 2014. 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

October 28, 2014 at 2:00 p.m.

Plane because Trustee is uncertain Debtor can make the proposed plan payments. Under Debtor's confirmed plan, payments made totaled \$3,629.46 through May 2012, and then \$1,910 for fifty-seven (57) months. Debtor's modified plan proposes plan payments of \$53,379.46 total paid in through month thirty (30), and then \$606.00 for thirty (30) months.

Debtor's Motion and Declaration state that Debtor is modifying the plan due to a loan modification and lowered salary. Debtor filed Amended Schedules I & J to reflect his current budget (Dkt. 142).

Debtor's Amended Schedule I reflects reduced net income of \$2,628.43, as compared to net income of \$4,100.68 per Debtor's prior Schedule I (Dkt. 63).

Debtor's Amended Schedule J reflects increased monthly expenses of \$2,019.02 as compared to original monthly expenses of \$1,995.68 (Dkt. 92). Debtor's Declaration outlines the changes to Debtor's budget, specifically, the budget now includes the mortgage payment due on the loan modification (Dkt. 149), and reductions to food, gas, personal care, and recreation.

The following reflects the changes Debtor made:

Expense	As of 11/20/2013	As of 08/29/2014	Difference
Mortgage	\$0.00	\$765.34	+\$765.34
Food/Supplies	\$852.00	\$300.00	-\$552.00
Personal Care	\$113.00	\$40.00	-\$73.00
Transportation	\$400.00	\$235.00	-\$165.00
Recreation	\$50.00	\$0.00	-\$50.00
Vehicle Insurance	\$0.00	\$98.00	+\$98.00

Debtor's household consists of himself, his non-filing spouse and two sons, ages twenty-two (22) and twenty-seven (27), who are in school and unemployed. Trustee is not certain Debtor will be able to maintain a monthly plan payment of \$606.00 based on the proposed budget. The Allowable Living Expense National Standards for a family of four for food is \$794.00, for apparel is \$244.00 (Debtor scheduled \$60.00), for personal care is \$70.00, and for miscellaneous expenses is \$300.00.

The court shares the Trustee's concerns and does not find the modified plan feasible based on Debtor's unlikely ability to maintain the proposed plan payments. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Modified

October 28, 2014 at 2:00 p.m.

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)(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 15, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Trustee is not certain Debtors have the ability to make the plan payments. No current Schedules I and J are filed, co-Debtor may need medical care for a heart valve complication, and while Debtors have two 401K retirement loans that may be paid off during the life of the plan, Debtors are also paying \$377.00 per month to their son for renting his car.

Under the confirmed plan, Debtor's plan payments are \$340.00 for six (6) months, \$540.00 for twenty (20) months, and \$770.00 for thirty-four (34) months. Trustee filed a Notice of Default on August 12, 2014 (Dkt. 31) and Debtors are currently delinquent \$2,190.00 under the terms of the confirmed plan.

Debtors' Modified Plan proposes payments of \$259.00 for ten (10) months, \$250.00 for five (5) months, and \$550.00 for forty-five (45) months.

Debtors' Motion and Declaration state that after filing their case, Debtor Julie Bumanglang's job in Stockton was terminated due to commuting costs. Debtors' vehicle, a 1989 BMW, is beyond repair and Debtors are now renting a car from their son. Debtor Mr. Keinath was out of work and on disability for one-and-a-half months earlier this year. Debtor has now return to work, but was laid off again for health reasons and may have medical heart valve complications. Debtors state they can afford only \$250.00 per month for the rest of the year before attempting to pay \$550.00 per month commencing January 25, 2015.

Debtors did not file Amended Schedules I & J to support their Motion. The most recently filed Schedules contain out of date information that contradicts Debtors' Motion and Declaration in support of Modification.

The court agrees with the Trustee's concerns regarding Debtors' ability to make the plan payments. Further, the evidence presented in the form of Debtors' Declaration contradicts the Schedules on file. Debtors need to present a coherent and complete evidentiary record for the court to rule on modification. 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 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 October 1, 2014. 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 Debtor's plan may not be his best efforts. 11 U.S.C. § 1325(b). Debtor is over median income and proposes to pay \$1,869.00 per month for sixty (60) months with a dividend of 100% to unsecured claims. Joint Debtor's retirement loan obligation completes on May 7, 2016, which is approximately two years into the five year plan; however, Debtors do not propose increasing the plan payment by \$601.75 (retirement loan payments amount) after the loan is paid-off. If all disposable income is contributed toward the plan, Debtors' plan will complete in forty-seven (47) months as opposed to sixty (60) months.

Trustee argues that Debtor is not proposing to pay all unsecured claims immediately upon the effective date of the plan, but is proposing ot

stretch the payment over sixty (60) months with no interest payment proposed to unsecured creditors.

DEBTORS' RESPONSE

Debtors argue in response that other courts have held that interest is not required under 11 U.S.C. § 1325; but that they are amenable to paying 2% interest on unsecured claims if the court determines interest is required.

DISCUSSION

The case law on 11 U.S.C. § 1325(b)(1) is sparse and limited. In full, section 1325(b)(1) provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan -

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Here, the Trustee lodged an Objection to confirmation that triggered § 1325(b)(1). Debtor is requesting the court confirm a plan that does not propose to pay all of Debtor's disposable income into the plan over the 60 months term.

Trustee argues that the amount of the claim under subsection A should include interest on the allowed claim amount.

Trustee supports his argument that Debtor must pay interest with the unpublished opinion *In re Braswell*, 2013 WL 3270752 (Bankr. D. Or. 2013). *In re Braswell* adopts an opinion out of the Bankruptcy Court for the Northern District of Indiana and holds that if after the Trustee objects to confirmation, Debtor moves forward pursuant to 11 U.S.C. § 1325(b)(1)(A), then unsecured claims must be paid in full with interest. 2013 WL 3270752, *4 (citing *In re Hight-Goodspeed*, 486 B.R. 462 (Bankr. N.D. Ind. 2012)). The court in *Hight-Goodspeed* determined that the language: "as of the effective date of the plan" preceding subsections (A) and (B) is present in other sections of the code and routinely interpreted to require a present value analysis of the proposed payments, meaning the debtor is required to pay interest to compensate for the delay. See 486 B.R. 462, 464 (citing 11 U.S.C. §§ 1129(b)(2)(A)(i)(I, II), 1225(a)(5)(B)(ii), 1325(a)(5)(B)(ii), 1129(a)(7), 1225(a)(4), 1325(a)(4), 1129(a)(9)(C)(i)).

The court finds the reasoning of *In re Hight-Goodspeed* and *In re Braswell* persuasive and finds it necessary to compel Debtor to set an interest rate to be paid on the allowed unsecured claims.

The court will apply the "formula approach" to determine the appropriate rate. The approach was adopted in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), where the Supreme Court adopted it to determine the appropriate amount of interest due to be paid on secured creditors subject to cramdown in a Chapter 13 case. As unsecured creditors are expected to bear a greater risk of failure in the proposed plan, because they are to be paid over a greater time period, the court concurs with the *Braswell* court and will apply the same approach here. *In re Braswell*, 2013 WL at *4.

The "formula approach" was described as follows:

Taking its cue from ordinary lending practices, the approach begins by looking to the national prime rate, reported daily in the press, which reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relatively slight risk of default. Because bankrupt debtors typically pose a greater risk of nonpayment than solvent commercial borrowers, the approach then requires a bankruptcy court to adjust the prime rate accordingly. The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan. The court must therefore hold a hearing at which the debtor and any creditors may present evidence about the appropriate risk adjustment. Some of this evidence will be included in the debtor's bankruptcy filings, however, so the debtor and creditors may not incur significant additional expense.

Till, 541 U.S. at 478-79.

As to the amount of interest, the district has a practice of applying the prime rate in effect at the commencement of the case plus a risk adjustment. *In re Cachu*, 321 B.R. 716, 719 (Bankr. E.D. Cal. 2005) (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)). The prime rate in effect at the commencement of the instant case is 3.25%, plus a 2% risk adjustment, 5.25% interest rate is appropriate adequate protection for the unsecured creditors here. A 2% interest as proposed by Debtor is inadequate.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor the Chapter 13 Trustee, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Motion to Value secured 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Capital One, National Association, "Creditor" is granted pursuant to the terms of the Stipulation located on the court's Docket at ECF #56.

The Motion filed by Ahisha Lewis "Debtor", to value the secured claim of Capital One, National Association, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Infinity G35, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of \$7,523.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in May, 2010 which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately

\$15,289.13. Therefore, the Debtor argues that the Creditor's claim secured by a lien on the asset's title is under-collateralized, and that the creditor's secured claim should be determined to be in the amount of \$7,523.00. See 11 U.S.C. § 506(a).

OPPOSITION BY CREDITOR

Capital One, National Association ("Creditor") opposed the Debtor's Motion to Value Collateral (the "Motion"). On or about July 1, 2014, the Creditor filed its Proof of Claim as Claim 2-1 in the amount of \$15,289.13, including arrearage in the amount of \$2,008.08. The claim is secured by the personal property commonly known as: 2005 INFINITI G35, vehicle identification number: JNKCV51E85M224590.

Creditor disputed the fair market value of the subject property cited by Debtor. Debtor argues that the property is valued at \$7,523.00. Creditor states that, according to the NADA Guides, which it claims to be "the reference guide most commonly used for valuation data" by Movant in the ordinary course of its business, the "clean retail value" of the Property is \$10,000.00.

Creditor attached a copy of the purported NADA valuation as Exhibit "2" in support of its valuation and Opposition to the Motion to Value. On the basis of this differing valuation, the Creditor requests that the Property be valued at \$10,000.00, and not \$7,523.00 as proposed by Debtor. In the alternative, the Creditor requests the Debtor's cooperation to make the Property available for an appraisal or other expert valuation.

CONTINUANCE

The court granted Creditor a continuance to October 28, 2014 to submit supplemental pleadings on value.

The Motion was continued to October 28, 2014 at 2:00 p.m. and the creditor was ordered on or before October 14, 2014 to file any supplemental opposition pleadings.

SUPPLEMENTAL PLEADINGS

On October 14, 2014, Debtor and Creditor submitted a Stipulation to the court resolving Creditor's objection to the Motion to Value (Dkt. 54). Specifically, the Stipulation provides that Creditor's claim will be provided for in the plan in the amount of \$8,761.50, at 5.25 interest. The Stipulation provides that upon entry of the Order approving the Stipulation, Creditor's opposition to Debtor's Motion to Value Collateral will be deemed resolved.

On October 16, 2014, the court entered an order approving the Stipulation entered into between Debtor and Creditor. (Dkt. 56).

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 Ahisha Lewis, "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 pursuant to the terms of the Stipulation located on the court's Docket at ECF # 56. The claim of Capital One, National Association secured by a lien against the personal property commonly known as 2005 Infinity G35 is determined to be a secured claim in the amount of \$8,761.50, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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 12, 2014. 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.

The Chapter 13 Trustee opposes confirmation of the plan based on the following:

1. Debtors are \$1,266 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$601.00 is due on October 25, 2014. Debtors have paid \$1,138.00 into the plan to date.
2. The plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over the median income and propose plan payments of \$601.00 for sixty (60) months with a 0.00% dividend to unsecured creditors. Form B22C, line 59 indicates \$1,001.16 for sixty (60) months, totaling \$60,060, is owed to unsecured creditors. However, Trustee's calculations reflect that \$1,955 for 60 months, totaling \$117,300 is owed to unsecured creditors.

Trustee revised the following lines:

- Line 30: Debtor deducted \$2,380.05 for taxes; however Schedule I reflects \$2,138, which is a difference of \$242.00.
- Line 31: Debtor deducted \$383.28 for involuntary retirement and union dues; however, Schedule I reflects \$360.00, which is a difference of \$23.00.
- Line 50: Debtor deducts \$50.00 for childcare; however, Debtor did not provide an explanation as to why a 16-year old and 18-year old required daycare, which is a difference of \$50.00.
- Line 37: Debtor deducted \$320.00 for telecommunications; however, Debtor testified at the 341 meeting that his internet expense was \$60.00 per month, a difference of \$260.00.

Debtor listed a deduction on Schedule I of \$744.00 for voluntary contributions to retirement plans. According to Trustee's review of Debtors' pay advices, \$686.00 of the \$744.00 is for a 401K loan, which Debtors did not disclose. Debtors testified at the 341 Meeting that the loan will be paid off in 2016, but the plan does not propose an increase in the plan payment once the loan ends.

Debtors' original Schedule J was filed May 30, 2014 and Amended Schedule J was filed September 12, 2014. The following changes were made without explanation:

- Class 4 Mortgage payment decreased by \$17.00
- Home maintenance increased by \$50.00
- Telephone/Cell/Internet/Cable increased by \$50.00
- Food and housekeeping increased by \$640.00
- Clothing/laundry/dry cleaning increased by \$90.00
- Personal care increased by \$50.00
- Transportation decreased by \$100.00
- Entertainment increased by \$150.00
- Pet supplies decreased by \$25
- Haircuts/Beauty Salon increased by \$50.00
- Son's Black smithing Classes added at \$220.00
- Pool service added at \$79.00

Debtor also added two additional dependents on Schedule J, a 21-year old family friend and Mrs. Nevers (co-Debtor's Mother). Debtor did not indicate why the dependents were not previously listed or whether they contribute income to the Debtors.

3. Debtors' income and expenses are not accurate and Debtors cannot make the payments. Debtors' Amended Schedule I shows total income of \$7,943.29; however, the income listed on Original Schedule I totals \$6,663.11. Trustee is not certain how Debtors came up with the additional income.

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

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

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

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

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

Final Ruling: No appearance at the October 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

On October 21, 2014, the Chapter 13 Trustee filed a statement expressing no opposition to the court granting the requested relief.

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

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

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

IT IS ORDERED that the Motion is

October 28, 2014 at 2:00 p.m.

granted, Debtors' Chapter 13 Plan filed on September 17, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2014. 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 continue the Motion to Confirm the Modified Plan.

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

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

1. Trustee is uncertain of the proposed treatment for American Servicing Company ("Creditor"). Creditor is included in Class 1 of the confirmed plan with a contract installment payment of \$1,654.72. The Class 1 arrears claim is \$7,641.83. Debtor are proposing to add a Class 2 claim for Creditor for post-petition mortgage arrears, totaling \$1,522.12. Trustee has the following concerns with this treatment:

(A) Creditor was originally to be paid directly in the

monthly amount of \$2,730.54 (Dkt. 15). Debtor's prior modified plan provided for the Creditor in the additional provisions as a Class 4 creditor for months one (1) through nineteen (19) and then Class 1 thereafter, with a dividend of \$226.00 for months twenty (20) through fifty-two (52), increasing to \$226 for month fifty-three (53). Trustee shows \$1,610.52 of past due payments on the ongoing mortgage payment, where the Second Modified Plan provides for \$1,522.12.

- (B) Trustee is not certain the proposed amount of \$1,552.12 is correct. Creditor filed three Notices of Mortgage Payment Change in this case. The first was filed on October 26, 2012, and reports a change to \$1,610.52. The second was filed on June 5, 2013 and reflects a change to \$1,627.21. The third was filed on June 5, 2014 and reflects a change to \$1,654.72. The post-petition arrears amount is less than any of the payments specified by Creditor.
- (C) The Additional Provisions appear to set different monthly payments for Creditor. The payments are proposed as follows: \$200.00 for months twenty (20) through thirty-five (35); \$560.00 for months thirty-six (36) through thirty-seven (37); and \$560.03 for months thirty-eight (38) through sixty (60). Trustee believes some of the amounts are for the pre-petition arrears, but the Trustee is not certain.

DEBTORS' RESPONSE

Debtors assert that the amount set forth in the post-petition arrears for American Servicing was incorrect. Debtor is willing to add a special provision to the order modifying that will change the post-petition arrears to \$1,610.52. Post-petition mortgage arrears for American Servicing Company shall be listed as a Class 2a Creditor in months thirty-eight (38) through sixty (6) in the amount of \$71.00.

The current ongoing monthly payment for American Servicing should be \$1,654.72, per the most recent Notice of Mortgage Payment Change. Debtor consents to the Order Modifying clarifying the ongoing monthly payment.

The dividend to American Servicing for pre-petition arrears shall be as follows: \$200 per month for months twenty (20) through thirty-five (35); \$560.03 per month for months thirty-six (36) through thirty-seven (37); and \$145 per month for months thirty-eight through sixty (60).

DISCUSSION

The court will grant Debtor a continuance to propose a further modified plan including the correct treatment for creditor American Servicing Company. The court understands that Debtors intend on representing the proper treatment in the order confirming the plan; however, it is the court's preference to permit changes to plans in the order confirming that are not substantive in nature, but more procedural. The errors Debtors are attempting to remedy concern the substantive treatment of a major secured

creditor in the Chapter 13 case. Proper treatment of the creditor should be included in the plan to be confirmed so that future review by the Trustee, court, or creditors is not misleading or confusing.

The Motion is continued to **[date]** at **[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 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 is continued to **[date]** at **[time]**.

Final Ruling: No appearance at the October 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtor's Chapter 13 Plan filed on
August 28, 2014 is confirmed, and counsel for
the Debtor shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the

October 28, 2014 at 2:00 p.m.

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

Tentative Ruling: The 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 24, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Section 2.08, Class 1 includes all "delinquent secured claims that mature after the completion of the plan." Debtor's Class 1 includes a secured debt owed to SMUD with arrears of \$0.00 and a monthly payment of \$115.30. This debt should be provided for in either Class 2A or Class 4.
2. On Schedule F, Debtor lists a debt due to Salle Mae for a co-signed student loan for Debtor's daughter and indicates that the debt is not provided for in the plan. Debtor's plan does not disclose this treatment. The language of section 2.15 of the plan states that "Class 7 consists of all other unsecured

claims not listed as Class 5 or Class 6 claims," and Debtor poses paying these claims a 15% dividend. This means Sallie Mae's claim is to be paid the same dividend as all unsecured claims, unless the treatment is otherwise specified by the plan.

3. Debtor's plan may not be Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's Schedule J (Dkt. 11) lists on line 16 "Estimated Taxes on Income" of \$1,700 per month. A review of Debtor's 2013 federal tax return shows total tax liability for that year of \$2,648.41. Debtor testified at the 341 Meeting that she has not started saving the \$1,700 per month for taxes yet.

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 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on September 3, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Claim of Santander Consumer USA is sustained.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Santander Consumer USA ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$14,591.85. Objector asserts that the amount of the claim is unclear.

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).

Page 1 of the claim sets forth a claim in the amount of \$14,591.85. The claim is no longer secured, which is a change from the original claim 9 (filed on 12/05/11). Pages 3 and 4 of the claim provides a second claim form, claiming a security interest with an amount of \$0.00. These pages assert that the amount of the claim was \$6,754.80 as of the date the case

was filed.

Trustee has disbursed \$1,416.63 on the amended claim, after notice of the claim was provided to Debtor and Debtor's counsel. After the Debtor sent payment to the Trustee with "LAST PMT" written on it, Trustee contacted Debtor's counsel, who advised Trustee of the concern with the proof of claim. The Trustee had previously disbursed \$2,242.07 in principal and \$329.89 in interest on the original claim (See Order Confirming, ECF 45). Trustee argues that in the event Creditor sought to amend its claim to \$6,754.80, the Creditor should only receive \$945.97 on their deficiency balance claim and the Creditor should refund \$470.76.

Based on the evidence before the court, the creditor's claim is allowed as an unsecured claim in the amount of \$6,754.80. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Santander Consumer USA, Creditor filed in this case by 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 to Proof of Claim Number 9 of Santander Consumer USA is sustained and the claim is allowed as unsecured in the amount of \$6,754.80, with no prejudice to the Debtor pursuing the creditor for overpayment.

11. [14-27933](#)-C-13 SATNAM TATLA OBJECTION TO CONFIRMATION OF
Thru #12 David M. Alden PLAN BY WELLS FARGO BANK, N.A.
8-28-14 [[21](#)]

Final Ruling: No appearance at the October 28, 2014 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, Chapter 13 Trustee, and Office of the United States Trustee on August 28, 2014. Twenty-eight days' notice is required. That requirement was met.

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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that Debtor's plan does not provide for repayment of the correct sum for pre-petition arrearage owed to Creditor. The pre-petition arrearage owed to Creditor total \$125,657.16 (Proof of Claim 2). The Debtor's plan provides for arrearage of \$10,604 on the Creditor's claim.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a)(5). 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 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 confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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 24, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not provide for the entirety of Wells Fargo Bank, N.A.'s arrearage claim. If Debtor was to provide for the entire claim of \$125,657, the plan would extend to 175 months, in violation of 11 U.S.C. § 1322(d), which limits plan terms of sixty (60) months.
2. Class 4 of the plan lists a debt owed to Sacramento Sikh Society Bradshaw Temple. Debtor's Schedule D lists the amount of the debt as \$167,500 and indicates it is a judgment lien recorded against Debtor's property. The nature of the debt indicates it is due and payable now and it is not a long-term

debt. The plan also indicates that the debt is to be satisfied by the sale or refinance of Debtor's property. The plan does not specifically call for the sale or refinance of Debtor's property. Schedule A indicates the value of Debtor's real property is \$351,000, subject to a first deed of trust of \$550,789; not leaving sufficient money to pay the judgment lien.

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 is simultaneously sustaining the Objection to Confirmation lodged by creditor Wells Fargo Bank, N.A.

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

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

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

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

Final Ruling: No appearance at the October 28, 2014 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 counsel, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

The Objection to Debtors' Claim of Exemptions 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 Objection to Debtors' Claim of Exemptions is sustained.

The Chapter 13 Trustee seeks an order of the court disallowing the \$36,375.00 exemption Debtors claimed under 15 U.S.C. § 1673.

On August 28, 2014, Debtors filed Amended Schedules B and C (Dkt. 108). Schedule B changed the value of a "Complaint for Damages" from "unknown" to \$60,250. Schedule B also added "Settlement in progress: \$75,000, less \$14,500.00 attorney fees."

Debtor's prior Schedule C claimed a \$100.00 exemption in the "Complaint for Damages" under the American with Disabilities Act pursuant to C.C.P. § 703.140(b)(5). Debtors change this exemption and now claim the new amount exempt with the following combination:

1. \$100.00 exempt under C.C.P. § 703.140(b)(5)
2. \$4,250 exempt under C.C.P. § 703.140(b)(10)(c)
3. \$7,500 exempt under C.C.P. §§ 703.140(b)(11)(D) & (E)
4. \$36,375 exempt under 15 U.S.C. § 1673

This amounts to a total exemption of \$48,225.00.

Trustee objects to the last claim of exemption made pursuant to 15 U.S.C. 1673 because this exemption is excepted from bankruptcy.

DISCUSSION

Section 1673 concerns the provisions of the Consumer Credit Protection Act that touch on garnishment restrictions.

Specifically, § 1673(b) provides:

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of -

(A) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11,

(C) and debt due for any State or Federal tax.

In 1974, the United States Supreme Court issued a decision in *Kokoszka v. Belford*, through which it instructed that § 1673 does not create an exemption in bankruptcy. 417 U.S. 642, 651 (1974) ("In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place. However, if, despite its protection, bankruptcy did occur, the debtor's protection and remedy remained under the Bankruptcy Act."). The holding of *Kokoszka* was recently cited and applied by the Tenth Circuit Court of Appeals in *Reinhart v. Gladwell*, when it sustained a Chapter 7 Trustee's objection to a Debtor's exemption claimed

under 15 U.S.C. 1673. 416 Fed. Appx. 761, 763 (2011). While the *Reinhart* decision was not published, this court finds the reasoning of the Tenth Circuit persuasive and similarly applies the reasoning of *Kokoszka* in holding that 15 U.S.C. § 1673 does not apply in the bankruptcy context.

The court's decision is to disallow the exemption of \$36,375 in its entirety on the basis that 15 U.S.C. 1673 garnishment restrictions do not apply in bankruptcy.

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 Debtor's Claim of
Exemption filed by 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 Debtor's
claim of exemption of \$36,375 made pursuant to
15 U.S.C. 1673 is disallowed in its entirety.

14. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND OBJECTION TO CONFIRMATION OF
DPC-1 IRMA CAMPOS PLAN BY DAVID P. CUSICK
Peter L. Cianchetta 9-24-14 [[17](#)]

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 24, 2014. 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 following grounds:

1. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to value the secured claim of Ocwen Loan Servicing on a second deed of trust on Debtors' rental property located at 1045 Carrie Street, West Sacramento, California. Debtors have not filed a Motion to Value as of the date of the Trustee's Objection.
2. Debtors' plan does not provide for the secured debt of

Specialized Loan Servicing on a deed of trust on property located at 9572 Wadena Way, Elk Grove, California. Debtors list the debt on Schedule D for \$45,262, but indicates the entire debt is unsecured. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtors wish to conceal the proposed treatment of a creditor. In the alternative, Debtors may be proposing to pay the creditor in full outside the plan, in which case Debtors are unfairly discriminating against unsecured creditors under 11 U.S.C. § 1322(b)(1).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Debtors have not filed a Motion to Value the secured claim of Ocwen Loan Servicing and have not proposed alternative treatment for the secured claim of Specialized Loan Servicing. 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 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 to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling. The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 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, Chapter 13 Trustee, and Office of the United States Trustee on September 22, 2014. Based on the court's calculation, thirty-seven (37) days' notice was provided. Thirty (30) days' notice is required. (Local Bankr. R. 3007-1(b)(2)) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Claim of Green Tree Servicing is sustained.

Robert & June Miller, Chapter 13 Debtors ("Objector") requests that the court disallow the claim of "Green Tree Servicing" ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$18,360.89. Objector asserts that the claim is unfounded, unsupported by documentation, violates the statute of limitations, the creditor did not mitigate damages, and the claimant did not prove its right to the claim.

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).

Noncompliance with Local Rules

Local Bankruptcy Rule 3007-1(a) provides that an objection to a proof of claim is to include the following:

1. Name of the claimant
2. The date the proof of claim was filed
3. The amount of the claim
4. The number of the claim as it appears on the claims register
5. The objection shall also be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim shall be disallowed.

Here, Debtors' Objection lacks reference to the amount of the claim and the date the claim was filed. The Objection is supported with no evident concerning the factual allegations Debtors argue demonstrate the claim should be disallowed. For example, Debtors argue the claim violates the statute of limitations but presents no evidence regarding the last action taken on the subject account.

Debtors do not cite any legal authority for disallowing the claim generally or supporting the individual arguments to disallow the claim.

Here, Debtors provide no legal authority to object to Creditor's claim. Debtors cite no statute, case law, secondary legal source or otherwise for the contention that Creditor does not have a claim. The court declines to offer its services as law clerk or associate attorney and provide the requisite research for either party. The Debtor being the moving party with the burden to provide sufficient argument and evidence to seek their requested relief, the court should overrule the objection without prejudice. However, upon review of the documents supporting the Proof of Claim, the court is compelled to review the substance of the Claim and the supporting documents.

Claim Number 5 Overview

Claim No. 5 was filed on November 4, 2013 by Green Tree Servicing, LLC asserting an unsecured claim of \$18,360.89 for "money loaned."

The claim is supported by documents evidencing a Note and Deed of Trust executed between Debtors and "Unicor Funding, Inc." in 2005. There is an Assignment of Note from Unicor Funding, Inc. to First National Bank of Keystone, dated February 7, 1995.

Also attached to the Proof of Claim is a Power of Attorney granted to Green Tree Servicing, LLC by Pinta, LLC.

The court see's no evidence connecting Green Tree Servicing, LLC to

the Note and Deed of Trust originally executed between Debtors and Unicor Funding, Inc.

Based on the evidence before the court, the court finds the Creditor's claim unsupported and disallows the claim in its entirety.

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 Santander Consumer USA, Creditor filed in this case by 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 to Proof of Claim Number 5 of Green Tree Servicing, LLC is sustained and the claim is disallowed in its entirety.

16. [14-27671](#)-C-13 RAUL/ALMA ANGEL
JME-2 Julius M. Engel

MOTION TO VALUE COLLATERAL OF
OCWEN FINANCIAL SERVICES
S.R.L., LLC
10-9-14 [[31](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 9, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Ocwen Financial Services S.R.L., LLC, "Creditor," is denied without prejudice.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4553 Bomann Drive, Olivehurst, California. The Debtor seeks to value the property at a fair market value of \$111,964.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The court is unable to discern the actual creditor subject to the instant motion. The Debtors' Motion seeks to modify the legal rights of "Ocwen Financial Services, S.R.L., LLC;" however, Debtors' Declaration identifies the subject creditor as "Ocwen Loan Servicing." Moreover, Debtors' Schedules list the creditor on the subject deed of trust as "Ocwen

Loan Servicing." The court cannot discern from the pleadings which named entity is correct.

Further, the court cannot determine from the pleadings whether the subject creditor is in fact the actual creditor or merely a loan servicer. No proof of claim has been filed on the second deed of trust held against the subject property. Debtors list the holder of the second deed of trust on their Schedules as "Ocwen Loan Servicing," suggesting to the court that Ocwen is merely the servicer and not the actual creditor. Either way, the court lacks sufficient evidence to make a determination as to who the subject creditor really is in this matter and cannot make a ruling on the Motion.

As a result of these pleading deficiencies and the court's inability to determine who the real creditor is, the court will deny the motion without prejudice.

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

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

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

IT IS ORDERED that the Motion is
denied without prejudice.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 24, 2014. 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 following grounds:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not paid the filing fee installment of \$77.00 due on September 11, 2014.

3. Debtor's petition lists Debtor's name as "Gipson, Jacqueline F" and does not indicate any other names. At the 341 Meeting, Debtor provided identification to the Trustee indicating a middle name of Regina. The petition does not reflect Debtor's full name.
4. The proposed plan contains the following defects:
 - a. Section 2.06 indicates attorneys' fees of \$0.00 to be paid through the plan; however, section 2.07 lists administrative fees of \$30.22 per month.
 - b. Section 2.08, Class 1 claims, lists AL Financial arrears of \$10,901. Schedule D indicates this debt is for a 2010 Chrysler vehicle. This is the same debt listed in section 2.09, Class 2, with no interest rate or monthly dividend. The debt should be in class 2 and provided an interest rate and monthly payment. Class 1 also lists Richard Megihan arrears of \$3,603. Schedule D indicates this debt is for "Rent/Atty fees/Court Costs." Debtor testified at the meeting of creditors that this debt is for back rent which she had not paid. Trustee is not certain this is secured debt.
 - c. Section 2.15 does not indicate the percentage to be paid to unsecured creditors and the total of unsecured debts. Schedule F, lists unsecured debts totaling \$40,146, though adding the scheduled amounts together results in total debts of \$40,126.
 - d. Section 5.01 does not indicate if property of the estate does or does not revert in the Debtor upon confirmation of the plan.
 - e. Section 6 does not indicate if Additional Provisions are appended to the plan, though none are attached.
5. The Trustee is unable to determine if the plan is feasible because the plan is silent as to treatment of unsecured debts and is ambiguous as to treatment of other debts.
6. Debtor is not able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Schedule I lists unemployment compensation of \$1,410 per month and at the 341 Meeting Debtor testified that her unemployment compensation was denied and she is not receiving this income currently. Debtor has not other income listed.
7. Debtor lists \$851 in rent on Schedule J, but at the 341 Meeting Debtor testified that she has not been paying this rent.
8. The Statement of Financial Affairs does not list Debtor's business. Debtor testified that she does subcontracting work as an administrative/typing/bookkeeping service.

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 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2014. By the court's calculation, xx days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on
September 23, 2014 is confirmed, and counsel for
the Debtors shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the

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

Tentative Ruling: The 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 October 1, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan because it does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b) or because Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).

Debtor lists business income on Schedule I of \$3,800 from "On-line retail;" however, the Debtor did not provide an attachment to Schedule I detailing Debtor's gross income and expenses. The Trustee cannot determine whether the income is net or gross.

Debtor admitted at the 341 Meeting that she has a second unscheduled job with income of \$1,500. Debtor testified that the \$1,500 was included in the \$3,800 listed on schedule I.

Trustee argues that the plan does not pass Chapter 7 Liquidation

Analysis under 11 U.S.C. § 1325(a)(4). Debtor admitted at the 341 Meeting that she did not list business assets on Schedule B, which includes furniture, inventory, and a trademark.

Finally, Debtor did not complete question 14 on the Statement of Financial Affairs, which concerns "Property held for another person." Debtor testified at the 341 Meeting that she drives her mother's 1993 Pontiac Firebird.

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 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 25, 2014. 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 overrule the Objection.

Wells Fargo Auto Finance ("Creditor") opposes confirmation of the Plan on the basis that Creditor takes issue with the value assigned to its collateral under the plan.

The Debtors' plan proposes to value the secured claims of Creditor as to two items of collateral: a 2004 Infiniti G35 and a 2007 Chrysler 300C. Creditor's objection is to the proposed values of these secured claims.

The court issued two orders on October 14, 2014, valuing the secured claims of Creditor pursuant to two Motions to Value filed by the Debtors. The court held that the 2004 Infiniti G35 loan is secured in the amount of \$5,625 (Dkt. 70) and that the 2007 Chrysler 300C loan is secured in the amount of \$8,872.

The court's decision is to overrule the Objection to Confirmation as the valuation issue is the only issue Creditor argues and that matter was determined via the two orders entered by the court on October 14, 2014.

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

IT IS ORDERED that Objection to confirmation the Plan is overruled.

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 24, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured lien of Wells Fargo/Cash LLC, but has not filed a Motion to Avoid the Lien.
2. The plan will not complete in sixty (60) months, as required by 11 U.S.C. § 1322(d). Section 2.15 of Debtor's plan proposes to pay 100% of unsecured claims. Total unsecured debt in the plan is \$5,465. Debtor's Schedule F totals \$5,654, and the lien of Wells Fargo/Cash LLC is listed on Schedule D as \$5,330. The plan proposes to strip this lien,

making unsecured debts \$10,984. Additionally, the priority proof of claim of the IRS totals \$12,202.38. Schedule E lists this debt at \$5,812. According to Trustee's calculations, the plan will take 159 months to pay 100% of the unsecured debts.

3. While the plan in section 2.06 indicates that fees are to be approved under LBR 2016-1, the Disclosure of Compensation of Attorney for Debtors lists in item 6 that the services do not include some required services under LBR 2016-1, such as dischargability actions, judicial lien avoidances, and relief from stay actions. The Trustee believes the attorney is effectively opting out of 2016-1 and will oppose attorney fees being granted under that section.

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.