

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

November 17, 2015 at 2:00 P.M.

---

1.	<a href="#">15-20502</a> -C-13	MICHAEL/ANGELA CRAIK	CONTINUED MOTION TO CONFIRM
	CMO-12	Cara O'Neill	PLAN
			8-3-15 [ <a href="#">73</a> ]

\*\*\*\*

**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 August 3, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the 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).

<b>The court's decision is to grant the Motion to Confirm the Plan.</b>
---

**Creditor's Objection**

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

## **Discussion**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. A Chapter 13 plan need not provide for secured claims. 11 U.S.C. § 1325(a)(5).

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 3, 2015  
is confirmed, and counsel for the Debtor shall  
prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to  
the Chapter 13 Trustee for approval as to form,  
and if so approved, the Chapter 13 Trustee will  
submit the proposed order to the court.

\*\*\*\*\*

\*\*\*\*\*

**Tentative Ruling:** The Motion to Sell Property 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 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, creditors, and Office of the United States Trustee on October 30, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was not met.

The Motion to Sell Property 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 Sell Property is granted.**

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

4793 Madrid Ridge, Las Vegas, Nevada

The proposed purchaser of the Property is Chris Smart and Ingrid Smart. The offer to purchase is \$358,000.00. The escrow is scheduled to close on November 25, 2015.

The first mortgage lienholder is Seterus securing \$34,025.92 against the property. The second mortgage lienholder is Bank of America securing \$58,893.15 against the property. The total broker fees is \$19,690.00. Additional fees and costs of this sale is \$6,576.06. After the two mortgage liens, broker fees, and fees and costs have been paid through the escrow, the Debtor anticipates about

\$239,146.17 from the sale of the property.

The remaining proceeds will be paid directly from the escrow company to the Chapter 13 Trustee to disburse according to the confirmed plan.

All creditors with liens and security interest encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Sell Property filed by Evangeline Marakas, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Evangeline Marakas, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Chris Smart and Ingrid Smart or nominee ("Buyer"), the Property commonly known as 4793 Madrid Ridge, Las Vegas, Nevada ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$358,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit , Dckt. A, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

\*\*\*\*

3. [14-25512](#)-C-13 VISHAAL VIRK  
PGM-4 Peter Macaluso

MOTION TO RECONSIDER AND/OR  
MOTION TO VACATE  
9-30-15 [[143](#)]

\*\*\*\*

**Tentative Ruling:** The Motion to Reconsider Judgment on Objection to Claims 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, and Office of the United States Trustee on September 30, 2015. Twenty-eight days' notice is required.

The Motion to Reconsider Judgment on Objection to Claims 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 Vacate Dismissal.**

Debtor moves the court to reconsider judgment on objections to claims: Case No. 13-25369-C-7; Claim #8, and Case No. 14-25512-C-13C; Claim #9, and requests to vacate orders on said claims.

The background of this case was a consolidation of two Adversary Proceedings filed by Plaintiffs/Creditors, Ronny & Sunita Dhaliwal (hereinafter "Creditors"), as well as Debtors' Objections to Claim #8 and Claim #9, respectively (hereinafter collectively referred to as the "Consolidated Matter").

At the trial for the Consolidated Matter, the Court determined with regards to Creditors' adversary proceedings that Debtors had not committed fraud. However, through the course of the trial, it was highlighted that Creditors had themselves committed fraud through Ronny Dhaliwal's individual Arizona Chapter 7 Bankruptcy Case.

Debtor states that the trial exposed evidence, which constitutes "newly

found evidence" under FRCP Rule 60(b). Specifically, Creditor Sunita Dhaliwal stated that on or around the same time Mr. Dhaliwal filed the Arizona Bankruptcy, Mrs. Dhaliwal was allegedly separated with him but remained legally married. Moreover, she had made pre-petition "investments" to Debtors in the amount of \$218,000 (the total amount pre- and post-petition being \$311,000) (hereinafter the "Subject Funds"). These funds came to Creditors as "gifts" from Mr. Dhaliwal's father in order to heal the financial stress of their marriage.

These funds belonging to Creditors' community property were never disclosed in the schedules of the Arizona Bankruptcy. This evidence contributes to the issue of judicial estoppel; an issue that was not deliberated during the trial because the focus was on the nondischargeability claims in Creditors' adversary cases.

Here, the consolidation of the two adversary actions based on the allegation of fraud against Creditors and the two separate objections to claims in each underlying bankruptcy cases allowed for an inadvertent error during the litigation pertaining to the issue of claim preclusion.

Creditors intentionally failed to disclose the Subject Funds in the Arizona Bankruptcy, neither in the initial filing of the schedules nor through any amendment of the schedules. Thus, the Subject Funds which belonged to Mr. Dhaliwal's community property were never exempted within his bankruptcy. Despite this, he was able to discharge \$4,831,053.00 in unsecured debt.

As such, case law supports that the claim is to be precluded in this subsequent action.

Mr. Dhaliwal, in his Arizona Bankruptcy, misrepresented to the Court that he disclosed all community property assets - including, but not limited to, the funds asserted in Claim #8 and Claim #9. While the Arizona Bankruptcy was reopened in 2014, the schedules have not been amended, nor the missing assets exempted. Yet Creditors fraudulently seek this Honorable Bankruptcy Court to sanction the enforcement of the Subject Funds, i.e., these two proof of claims. Here, judicial estoppel is appropriate to inhibit Creditors' ability to further benefit from this fraud.

### **Trustee's Response**

The Debtor identifies two case numbers but does not indicate the date of the judgment in either case or the docket number of the orders the Debtor seeks to vacate. The Trustee opposes the motion unless the Debtor better identifies the judgments and orders for which the Debtor seeks relief.

As to the Chapter 13 matters, the trustee believes the Debtor seeks reconsideration of the order in case 14-25512 (Dkt. 91) and the judgment in the adversary 14-02263 (Dkt. 51).

Relief may be appropriate. The creditor had sought as part of their adversary complain a determination of the amount owed. 14-02263 (Dkt. 1, p. 10) The court in its order on the objection to claim had allowed the amount of \$344,568.66 unless a different sum was determined in the pending adversary proceeding. 14-25512.

In the event that the amount owed was determined on the basis of the proof of claim, a claim that has been allowed or disallowed may be reconsidered for cause. 11 U.S.C. § 502(j).

Debtor has another pending motion involving the claim (DCN PGM-5, Dkt. 113) currently set for trial on November 9, 2015 before Judge Russell. (Dkt. 139).

## **Legal Standard**

### **Rule 60(b)**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

## **Discussion**

As the Trustee highlights, relief may be appropriate; however the Motion does not indicate the date of the judgment in either case or the docket number of the orders the Debtor seeks to vacate. Before the court may a determination regarding reconsideration, the Debtor must better identify the judgments and orders for which the Debtor seeks relief. Accordingly, the Motion is denied.

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

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

The Motion to Vacate Dismissal 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 to Reconsider Judgment on  
Objection to Claims is denied

\*\*\*\*



\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2015. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on October 9, 2015  
is confirmed, and counsel for the Debtors shall  
prepare an appropriate order confirming the Chapter  
13 Plan, transmit the proposed order to the Chapter  
13 Trustee for approval as to form, and if so  
approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

\*\*\*\*\*

5. [15-25721](#)-C-13 NICHOLAS HUGGINS  
DPC-1 Scott Johnson

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
8-26-15 [[27](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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.

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

#### **Prior Hearing**

At the hearing on August 11, 2015, the parties agreed to continue the matter to September 22, 2015 due to substitution of attorney.

#### **Trustee's Opposition**

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

1. The plan relies on the motion to value collateral of GM Financial, which is set for hearing on September 15, 2015.

#### **Prior**

Before the hearing held on September 22, 2015, the docket reflected that no hearing had been held for debtor's pending motion to value collateral of GM Financial (Dkt. 19). At the hearing held on September 22, 2015, the court set the motion to value for trial on October 27, 2015. Before trial, the Debtor withdrew the motion to value. Dkt. 73.

#### **Discussion**

Debtor has filed an amended plan rendering this Objection and the plan that is the subject of this Objection moot. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Due to mootness, the Objection is overruled 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, due to mootness, the Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is not confirmed.

\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2015. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on September 28,  
2015 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if  
so approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

\*\*\*\*\*

\*\*\*\*\*

**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 21, 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 -----  
-----.

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

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

1. The Plan fails to provide a monthly dividend to pay attorney fees in \$ 2.07 of the Plan.
2. The Plain fails liquidations. Non-exempt assets total \$1,250, and the Debtor is proposing a 0% dividend to unsecured creditors.
3. Debtor has failed to file an attachment to Schedule I showing gross receipts to substantiate business income of \$2,000.

#### **Discussion**

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

The objection is sustained and the Plan is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2015. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted,  
Debtors' Chapter 13 Plan filed on October 2, 2015  
is confirmed, and counsel for the Debtors shall  
prepare an appropriate order confirming the Chapter  
13 Plan, transmit the proposed order to the Chapter  
13 Trustee for approval as to form, and if so  
approved, the Chapter 13 Trustee will submit the  
proposed order to the court.

\*\*\*\*



\*\*\*

**Tentative Ruling:** 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).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, 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). The defaults of the non-responding parties and other parties in interest are entered.

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

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.

### **Prior**

This matter was continued because it came to the court's attention that an opposition had been filed, but not labeled as such.

### **Debtor's Opposition**

The Debtor opposes the Objection via declaration. Dkt. 48. Debtor states that she is disabled and therefore entitled to an exemption pursuant to § 704.730(a)(3)(B). Debtor has filed an application for social security disability (claim number 1578287), which is pending.

### **Trustee's Reply**

The Trustee was not served with the Debtor's opposition/declaration. The Debtor's declaration does not state that she has been approved for social security disability.

### **Discussion**

The court would like to determine whether the Debtor is disabled and therefore entitled to an exemption under § 704.730(a)(3)(B).

At the hearing, the court will inquire as to the status of Debtor's application for social security disability (claim number 1578287), and if pending, will inquire as to the time frame for decision. The court may consider setting the issue of disability for evidentiary hearing.

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

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

The 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 ...

\*\*\*\*

10. [12-33836](#)-C-13 JIM/CAROL NICOL  
PGM-1 Peter Macaluso

MOTION FOR OMNIBUS RELIEF UPON  
DEATH OF DEBTOR  
10-7-15 [[46](#)]

\*\*\*\*\*

**Tentative Ruling:** The Motion for Omnibus Relief Upon Death of a Debtor 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).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on October 7, 2015. 28 days' notice is required.

The Motion for Omnibus Relief Upon Death of a Debtor 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Omnibus Relief Upon Death of a Debtor is granted.**

Debtor and Successor-In-Interest, Carol A. Nicol, moves the court of an order allowing substitution as the representative for or successor to the deceased joint debtor, Jim R. Nicol, under FRCP 25(a); and waiver of the requirements for joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) for Jim R. Nicol.

Debtor gave notice of the death of her husband and co-petitioner on November 3, 2015 by filing Exhibits including a death certificate giving the court and interested parties notice. Dkt. 49, Ex. A.

#### **Trustee's Response**

The Trustee is concerned as to the current financial condition of the Debtor and whether the Debtor can afford the confirmed plan payments. Debtor has not addressed if there are significant changes in the budget or expenses after the death of her spouse.

## Discussion

The Federal Rules of Bankruptcy Procedure allow normal administration of a Chapter 13 case subsequent to the death of a debtor if further administration is possible and in the best interests of parties. Fed. R. Bankr. P. 1016. As the motion has established, further administration of this case is in the best interest of the surviving co-debtor.

The Federal Rules of Civil Procedure Rule 25 made applicable in the Federal Rules of Bankruptcy Procedure allow substitution of a party in contested matters. Fed. R. Bankr. P. 7025, 1018, and 9014. Appointment of a representative for a deceased Chapter 13 debtor in furtherance of case administration is authorized by Federal Rule of Bankruptcy Procedure Rule 1004.1. Accordingly, the court may appoint Carol A. Nicol to represent the deceased joint-debtor in this case and in contested matters related thereto. The court finds such appointment appropriate considering that Carol A. Nicol is administrator of the deceased debtor's estate pursuant to state law.

It is impossible for the deceased joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q). Waiver of these requirements as to the deceased debtor is therefore appropriate.

The motion is granted and the case may be further administered; Carol A. Nicol may substitute as the representative for or successor to the deceased joint debtor, Jim R. Nicol, under FRCP 25(a) and FRBP 1004.1; and the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) requirements are waived as to Jim R. Nicol.

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 Further Administration of a Case filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case may be further administered; Carol A. Nicol may substitute as the representative for or successor to the deceased joint debtor, Jim R. Nicol; and the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) requirements are waived as to Jim R. Nicol.

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 2, 2015. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-22777) was filed on April 6, 2015 and dismissed on September 16, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

### **Legal Standard**

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

excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

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

1. Why was the previous plan filed?

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

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

### **Discussion**

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

Debtor asserts that Debtor's initial Chapter 13 Plan in the previous case was not confirmed primarily due to a Claim filed by the Internal Revenue Service stating that Debtor had not filed his 2013 income tax return and estimating taxes owed for that year. Debtor believed he had filed his 2013 tax return online. Promptly upon receiving notification that the IRS had not received his tax return, he re-submitted the return, and the IRS amended their Proof of Claim to match only \$83 more than what Debtor estimated he owed in his proposed Chapter 13 Plan. This was resolved after the hearing, and his proposed plan was denied confirmation.

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

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

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

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

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

\*\*\*\*

\*\*\*\*\*

**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 25, 2015. Forty-two days' notice is required. That requirement was met.

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

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

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Section 1.02 proposes to sell real property but does not discuss reasonableness or adequate protection payments.
2. Court Claim 7-1 refers to real property that was not listed in Debtor's Plan or schedules.
3. The Plan fails to provide for the secured debt of Tri Counties Bank.

**Creditor Tri Counties Bank Opposition**

The Plan proposes that Debtor's son with pay both this Creditor's notes. Creditor has yet to receive a payment on the second note since well before the petition date.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11



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

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

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

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

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

\*\*\*\*\*

13. [15-25438](#)-C-13 LISA ORTIZ  
LBG-1 Lucas Garcia

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-2-15 [[40](#)]

Also #14

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 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 October 2, 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.

<b>The Motion to Value secured claim of Bank of America N.A., "Creditor," is granted.</b>
---

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1426 Country Club Drive, Placerville, California. The Debtor seeks to value the property at a fair market value of \$274,348.00 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 first deed of trust secures a loan with a balance of approximately \$326,377.00. Bank of America N.A.'s second deed of trust secures a loan with a balance of approximately \$28,197.90. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America N.A. secured by a second deed of trust recorded against the real property commonly known as 1426 Country Club Drive, Placerville, 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 \$274,348.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

\*\*\*\*

**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 October 2, 2015. Forty-two days' notice is required. That requirement was met.

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

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

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor may not have filed all of their tax returns, and the plan does not provide sufficient money to pay the priority claim of the IRS, which reflects no tax returns for filed for 2012 and 2013.
2. The claim filed by the FTB reflects no tax return for 2014.

**Creditor's Opposition**

Federal National Mortgage Association objects to confirmation on the basis that the Plan does not provide for its secured claim. Creditor holds a first deed of trust with a balance of over \$300,000 secured by Debtor's real property.

**Discussion**

As the Trustee's concerns highlight, the Plan does not comply with 11

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

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

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

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

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

\*\*\*\*\*

15. [15-26548](#)-C-13 DULON STEVENS  
DPC-1 Michael Croddy

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
9-22-15 [[13](#)]

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. 28 days' notice is required. That requirement was met.

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

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

**SUMMARY OF MOTION**

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on March 24, 2014 (Case No. 11-46970). Debtor filed this Chapter 13 case on August 18, 2015.

**DISCUSSION**

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-26548.

\*\*\*\*\*

16. [15-26854](#)-C-13 ANTHONY SIPPPIO  
HLG-2 Kristy Hernandez

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
10-6-15 [[24](#)]

Also #17

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 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 October 6, 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.

<b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b>
---

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$397,392 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 \$463,710. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$85,049. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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



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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8472 Winterberry Drive, Elk Grove, 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 \$397,392 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

17. [15-26854](#)-C-13 ANTHONY SIPPPIO  
HLG-3 Kristy Hernandez

MOTION TO VALUE COLLATERAL OF  
KEY BANK, N.A.  
10-6-15 [[29](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 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 October 6, 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.

<b>The Motion to Value secured claim of Key Bank, N.A., "Creditor," is granted.</b>
---

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$397,392 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 \$463,710. The second deed of trust secures a loan with a balance of approximately \$85,049. Key Bank, N.A.'s third deed of trust secures a loan with a balance of approximately \$46,470. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Key Bank, N.A. secured by a third deed of trust recorded against the real property commonly known as 8472 Winterberry Drive, Elk Grove, 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 \$397,392 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

18. [15-27255](#)-C-13 ROBERT CLAYCAMP  
Lucas Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY FIRST U.S. COMMUNITY  
CREDIT UNION

Also #19

10-22-15 [[62](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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.

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 22, 2015. Fourteen days' notice is required. That requirement was met.

<b>The court's decision is to continue the hearing to January 12, 2015 at 2:00 p.m.</b>
---

The First US Community Credit Union ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Plan relies on the motion to value the collateral of First US Community Credit Union, which is set for hearing on October 20, 2015.

In addition, Creditor joins the Chapter 13 Trustee's Objection (see matter below).

#### **Debtor's Opposition**

Debtor asserts that the motion to value will not be resolved until after an evidentiary hearing to be held on November 30, 2015. After that hearing it may take some time for an order to be issued and the terms of any confirmable plan may be drastically changed by that hearing. Therefore the debtor proposes that the court continue this objection until after the first of the year 2016.

#### **Discussion**

The court's decision is to continue the hearing to January 12, 2015 at 2:00 p.m. to allow for resolution of the motion to value, upon which the Plan relies.

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 January 12,  
2015 at 2:00 p.m.

\*\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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.

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 21, 2015. Fourteen days' notice is required. That requirement was met.

<b>The court's decision is to continue the hearing to January 12, 2015 at 2:00 p.m.</b>
---

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

1. The Plan relies on the motion to value the collateral of First US Community Credit Union, which is set for hearing on October 20, 2015.
2. The Plan fails to provide for the secured debt of Central Mortgage Company.
3. Debtor is over the median income and proposes plan payments of \$200 for 60 months with a 1% dividend to unsecured creditors. FormB22C reflects monthly disposable income of \$1,281.22 for 60 months.
4. The Plan fails liquidation. Non-exempt assets total \$5,577. Debtor is proposing a 1% dividend to unsecured creditors, which totals \$867.76.

#### **Debtor's Opposition**

1. Debtor asserts that the motion to value will not be resolved until after an evidentiary hearing to be held on November 30, 2015. After that hearing it may take some time for an order to be issued and the terms of any confirmable plan may be drastically changed by that hearing. Therefore the debtor proposes that the court continue this objection until after the first of the year 2016.
2. Debtor asserts that the budget shows this debt as being paid for directly by the debtor and that the debt should have been rightly classified as Class 4. This

3. could be fixed in an order confirming. However, this should be continued to be resolved after the hearing on the motion to value.
4. Debtor asserts that there are a number of allowable expenses that were not claimed on the Form B22. This was an error but one that can be remedied and would lower these amounts.
5. Debtor asserts that no cost of sale or cost of Chapter 7 trustee administrative expenses has been taken into account. This would likely remove all value to unsecured creditors. However, if a distribution increase was necessary it could be adopted in an order confirming.

#### **Discussion**

The court's decision is to continue the hearing to January 12, 2015 at 2:00 p.m. to allow for resolution of the motion to value, upon which the Plan relies.

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 January 12, 2015 at 2:00 p.m.

\*\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 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 October 6, 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.

<b>The Motion to Value secured claim of Santander Consumer USA, Inc., "Creditor," is granted.</b>
---

The Motion filed by Megan Canady ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Toyota Camry ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,251 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 June 13, 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 \$7,286. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,251. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Megan Canady ("Debtor") having been presented to the court, and



upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc. ("Creditor") secured by an asset described as a 2006 Toyota Camry ("Vehicle") is determined to be a secured claim in the amount of \$6,251, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,251 and is encumbered by liens securing claims which exceed the value of the asset.

\*\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

Local Rule 9014-1(f)(2) 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 30, 2015. 35 days' notice is required. That requirement was met. An Amended Motion to Modify Plan was subsequently filed on October 26, 2015.

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 30, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*\*

22. [15-26368](#)-C-13 ERNEST/SHARON VICTORINE  
DPC-1 Robert Fong

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
9-23-15 [[21](#)]

**Also #23**

\*\*\*\*

**Tentative Ruling:** 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 23, 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 -----  
-----.

<p><b>The court's decision is to overrule the Objection to Confirmation of Plan. The Plan is confirmed.</b></p>
---

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Mirabella Investments Group, set for hearing on October 6, 2015. If the court does not grant the motion, Debtors' plan does not have sufficient monies to pay the claim in full and should be denied confirmation.

#### **PREVIOUSLY**

On October 20, 2015, the court noted that on October 6, 2015, hearing on the Motion to Value the Collateral of Mirabella Investments Group, LLC, Dckt. Control No. RWF-1, came on calendar. At the hearing, Creditor Mirabella Investments Group, LLC, requested a continuance and additional time in which to conduct an appraisal of the collateral. The court continued the motion for 30-45 days in order to permit Creditor time to obtain the verified appraisal. Dckt. 29.

#### **DISCUSSION**

The court has granted Debtors' Motion to Value the Collateral of Mirabella Investments Group, and thus resolves the Trustee's basis for objection.

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

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

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

counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is overruled, and the plan filed August 11, 2015 is confirmed.

\*\*\*\*\*

23. [15-26368](#)-C-13 ERNEST/SHARON VICTORINE  
RWF-1 Robert Fong

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

\*\*\*\*\*

**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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 4, 2015. Twenty-eight days' notice is required. This requirement was met.

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

**The Motion to Value secured claim of Mirabella Investments Group, 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 8845 Brittany Park Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$252,250 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$264,094.31. Mirabella Investment Group, LLC's second deed of trust secures a loan with a balance of approximately \$53,463.43. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

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

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

#### **PREVIOUSLY**

On October 13, 2015, the court granted the Creditor's request and

continue the instant motion for 30-45 days in order to permit Creditor time to obtain a verified appraisal and submit the appraisal to the court.

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

On November 2, 2015, Creditor submitted to the court a supplemental opposition to Debtors' motion. Creditor states opposition on two grounds. First, Creditor notes that Debtors represent there is a senior lien encumbering the property in favor of Ocwen in the amount of \$264,094.31, yet Debtors have not provided evidence to support the alleged amount owed and Ocwen has not filed a proof of claim in this case. Second, Creditor states that an appraisal has been obtained and the appraisal value is \$260,000.

### **DISCUSSION**

The Creditor has submitted an appraisal of the real property at issue, commonly known as 8845 Brittany Park Drive, Sacramento, California, asserting that the real property is valued at \$260,000 on the date of the filing of the bankruptcy petition, according to the appraisal of Dennis L. Costello, certified real estate appraiser.

Creditor also voices concern that the first senior lien on the real property at issue has not been substantiated by a proof of claim or exhibits. However, Debtors have, on multiple occasions, including in their schedules, declarations to motions, etc., under penalty of perjury, that the Ocwen loan exists and have consistently stated the owing balance on the loan is \$264,094.31. The court notes that even if the court were to rely upon Creditor's valuation of the property, the Creditor's junior deed of trust is entirely under-collateralized.

The senior in priority first deed of trust secures a claim with a balance of approximately \$264,094.31. Creditor's second deed of trust secures a claim with a balance of approximately \$53,463.43. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Ernest Jordan Victorine and Sharon Fern Victorine ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Mirabella Investments Group, LLC secured by a second deed of trust recorded against the real property commonly known as 8845 Brittany

Park Drive, Sacramento, 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 \$260,000 or less and is encumbered by senior liens securing claims in the amount of \$264,094.31, which exceeds the value of the Property which is subject to Creditor's lien.

\*\*\*\*\*



24. [14-22879](#)-C-13 TIMOTHY CASEY AND  
HLG-1 JENNIFER REUTHER- CASEY  
Kristy Hernandez

MOTION TO MODIFY PLAN  
9-28-15 [[31](#)]

\*\*\*\*\*

**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 28, 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. Debtors do not propose a plan payment for September 2015. As it is listed in the additional provisions of proposed modified plan, states "The debtors have paid a total of \$22,049.00 to trustee through August 31, 2015. Commencing October 2015 monthly plan payments shall be \$1,360 for the remainder of the plan." Debtors have not mentioned if Trustee should expect a September 2015 payments. However, a payment was made.
2. The proposed modified plan lists \$0.00 for monthly plan payments due for administrative expenses. According to Trustee's records, there appears to be a remaining balance of \$1,566 owed to Debtors' attorney to be paid the Chapter 13 plan. Currently, Trustee disburses a monthly payment in the amount of \$38.00 towards this

balance.

## **DEBTOR'S RESPONSE**

Debtors respond to Trustee's opposition, and suggest adding language in the Order confirming plan: "IT IS FURTHER ORDERED that the debtors have paid a total of \$24,643.00 to the trustee through September 30, 2015 and commencing with the October 2015 plan payment, the debtor's monthly plan payments shall be \$1,360.00 for the remainder of the plan. The remaining balance of \$1,566 owed to Debtor's attorney shall be paid in a monthly dividend of \$38.00."

## **DISCUSSION**

Debtors have proposed that language be included in the order confirming plan, resolving Trustee's basis for objection.

Accordingly, 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 Plan filed September 28, 2015 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language: "IT IS FURTHER ORDERED that the debtors have paid a total of \$24,643.00 to the trustee through September 30, 2015 and commencing with the October 2015 plan payment, the debtor's monthly plan payments shall be \$1,360.00 for the remainder of the plan. The remaining balance of \$1,566 owed to Debtor's attorney shall be paid in a monthly dividend of \$38.00." Counsel for Debtors 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.

\*\*\*\*

\*\*\*\*\*

**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 October 6, 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 on the basis that Debtor is delinquent \$230 under the proposed plan.

**DEBTOR'S RESPONSE**

Debtor responds to Trustee's opposition, stating that she has remitted the old payment amount and is currently delinquent \$230 for October 2015. Debtor states she will be current on or before the date of hearing.

**DISCUSSION**

Although Debtor has stated intent to be current by the date of hearing, she has not provided evidence to the court that she is actually current. To date, no evidence has been presented that the Debtor has cured the delinquency. In contending that Debtor would be "current" by the time of the hearing, the Debtor has not provided any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by

Debtor's counsel.

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 21, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Patelco Credit Union in Class2(C), but has not filed a motion to value collateral.
2. Debtor is unfairly discriminating against unsecured creditors. Debtor is proposing to pay Sierra Central Credit in Class 2 in full at \$13,148, however Debtor has listed the value of this claim on Schedule D as \$6,891 and debt was incurred on 08/01/11.
3. Debtor testified at the First Meeting of Creditors that she is currently employed, however her wages are not listed on her schedule I.

Trustee's concerns are well-taken. Given the inconsistencies in representations made in Debtor's schedules, testimony, and the proposed plan, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

\*\*\*\*\*

27. [15-26986](#)-C-13 LISA SWINNEY  
SW-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY ALLY FINANCIAL  
9-29-15 [[15](#)]

\*\*\*\*\*

**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 29, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditor, Ally Financial, has a perfected security interest in Debtor's 2014 Nissan Altima, under which Debtor was obligated to pay Creditor \$25,115.63 at a 22.44% interest rate over 72 monthly payments of \$643.59. The remaining balance as of the petition date was \$24,953.51, and the plan proposes to value the vehicle in full, payable at 4% with a monthly payment of \$450.00. Creditor opposes confirmation of the Plan on the basis that Creditor wishes to receive at least 6.25% interest on its secured claim instead of the proposed 4%. Creditor states that the national prime rate is 3.25%, and that this rate deserves an upward adjustment of at least 3% in order to compensate Creditor for the greater risk of nonpayment that Debtor poses.

#### DISCUSSION

Creditor argues that this interest rate of 4.75% is outside the limits

authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. In contending that the proposed interest rate is too low, Creditor asserts the following in the Objection to Confirmation:

- a. The Vehicle is a "rapidly depreciating asset."
- b. Secured Creditor is at greater risk of nonpayment than Debtor now poses.
- c. Therefore, the court should set the plan interest rate at 6.25%.

Objection to Confirmation, Dckt. 15.

Creditor has provided no evidence to support the Objection to Confirmation. As such, Creditor does not provide any testimony as to why, how, and how much this Vehicle is rapidly depreciating, why Debtor poses such a risk of nonpayment that a 3% increase is warranted, and has not pointed to any information in Debtor's schedules or the plan to substantiate this position. If this four model year old vehicle is subject to such rapid depreciation, then possibly the court should revisit its decision on valuation. FN.1.

-----  
FN.1. The grounds for the opposition stated by Creditor in the Objection to Confirmation are subject to the provisions of Federal Rule of Bankruptcy Procedure 9011. When a party makes an affirmative statement, such as this vehicle being subject to rapid depreciation, and then providing no evidence to support the contention, the court questions whether that portion of the Objection, as well as the balance of the Objection, are made in good faith. Rather, it appears that making such an unsupported contention may merely be a litigation strategy intended to mislead the court, law clerks, and externs, hoping that in the press of judicial business the court would just take it as true.  
-----

Because the Creditor has proffered no basis for risks posed for nonpayment specific to Debtor's circumstances, the court can only surmise that it is due to only to factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a .75% risk adjustment, for a 4.00% interest rate. This is the rate that was provided for in the plan by the Debtors. Therefore, the objection to confirmation of the Plan on this basis is therefore overruled. See 11 U.S.C. § 1325(a)(5)(B)(ii).

The Objection on this ground is overruled.



Therefore, the objection by Creditor based on this ground is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by Mercedes-Benz Financial Services USA LLC, a 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 is overruled, the proposed plan filed September 3, 2015 is confirmed.

\*\*\*\*\*

Thru #30

\*\*\*\*\*

**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 10, 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).

<b>The court's decision is to deny the Motion to Dismiss.</b>
---

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$45,457.05 with the last payment received June 24, 2015. Trustee shows \$48,293.15 is due, and thus debtor is delinquent \$2,836.10 in plan payments. Debtor's monthly payment is \$1,222.55. Prior to the hearing, an additional \$1,222.55 will become due, and as a result debtor will need to pay \$4,058.65 to be current by the hearing.

**DEBTOR'S RESPONSE**

Debtor responds Trustee's motion, providing that a substitution of attorney is pending and that Debtor's new attorney requires additional time to analyze and determine if an amended plan is necessary. Debtor requests that the court continue the instant motion for thirty (30) days.

**PREVIOUS HEARINGS**

At two separate hearings on September 9, 2015 and on October 14, 2015, the court continued this matter to permit time for Debtor's new attorney to analyze and determine if an amended plan was necessary.

The court docket reflects that Debtor filed a Motion to Modify Plan, Dckt. 73, and Modified Plan, Dckt. 77, on the docket on September 30, 2015. The

hearing on the Motion to Modify has been set for November 17, 2015 at 2:00 p.m.

Additionally, on September 30, 2015, Debtor's surviving spouse Jamall Corker filed a Notice of Death and Motion for Omnibus Relief, Dckt Control No. PGM-1, Dckt. 68, providing that Debtor Christina M.E. Corker died on February 10, 2013 and that the surviving spouse is the successor in interest in this case, moving for further administration of the case. Hearing on the Notice of Death and Motion for Omnibus Relief is set for hearing on November 17, 2015. The court continued the instant motion to take place concurrently with the Motion to Modify Plan and Notice of Death and Motion for Omnibus Relief.

#### **DISCUSSION**

The court having granted Debtor's Motion for Omnibus Relief and granted Debtor's Motion to Modify Plan, the court will deny the Motion to Dismiss.

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.

\*\*\*\*\*



\*\*\*\*\*

**Tentative Ruling:** The Motion to Substitute 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, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 30, 2015. 28 days' notice is required. This requirement was met.

The Motion to Substitute 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 for Omnibus Relief Upon Death of Debtor is granted.**

Successor-In-Interest and surviving spouse, Jamall Corker, seeks an order approving the motion to substitute the Successor-In-Interest for the deceased Debtor, Christine M.E. Corker. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on March 12, 2012. On September 17, 2012, the Debtor's Chapter 13 Plan was confirmed. On February 10, 2013, Debtor Christine M.E. Corker passed away. The Surviving Spouse asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Surviving Spouse requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on September 30, 2015. Exhibit A, Dckt. 71. Successor-In-Interest is the surviving non-debtor spouse of the deceased party and is the successor's heir and lawful representative. Surviving Spouse states that he will continue to prosecute this case in a timely and reasonable manner.

Next, Movant seeks a waiver of the requirements of 11 U.S.C. § 1328 for Debtor, Christine M.E. Corker, as she is deceased.

## DISCUSSION

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

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

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

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

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule

25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § a Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Jamall Corker has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 71. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Jamall Corker, as the surviving non-debtor spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Christine M.E. Corker. The court grants the Motion to Substitute Party.

Next, Movant moves the court for an order waiving the requirement of a Debtor Education Certificate in granting a discharge to Christine M.E. Corker, now deceased.

Section 109(h) states,

(h) (1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved

nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

Pursuant to 11 U.S.C. § 1328(g),

(g) (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

Therefore, in order to receive a discharge in a chapter 7 or chapter 13 case, an individual debtor must complete a personal financial management course after the petition is filed unless certain exceptions apply. 9 COLLIER ON BANKRUPTCY ¶ 1007.03[vi] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) The exceptions excuse debtors who are incapacitated, disabled, or on active military duty in a combat zone. *Id.*

Here, Debtor Christine M.E. Corker passed on February 10, 2013, before being able to complete the Debtor Education course. Therefore, the court waives the requirement as to Christine M.E. Corker to complete the Debtor Education Course.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and Jamall Corker is substituted as the successor-in-interest to Christine M.E. Corker and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

**IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor Christine M.E. Corker is granted.



\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2015. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 30, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*\*

\*\*\*\*\*

**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 October 6, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain of Debtor's intentions for the proposed post-petition arrears. The proposed modified plan provides for post-petition arrears in the amount of \$4,160.79 to be paid as a class 1 ongoing mortgage. According to Trustee's records, the ongoing mortgage is current with the last disbursement of \$2,675.98 on 09/30/15 and reflects a \$0.00 amount due for post-petition arrears.
2. Debtor is delinquent \$173 in plan payments proposed.

**DEBTOR'S RESPONSE**

Debtor responds to Trustee's opposition, stating that: first, Debtor requests that class 1 post-petition arrears be stricken, if Trustee's records evidence that the post-petition arrears have since been paid. Next, Debtor states that he has remitted the delinquent payment of \$173.00 to the

Trustee on November 3, 2015, and is now current.

## **DISCUSSION**

Although Debtor has conceded to Trustee's accounting of the proposed post-petition arrears raised, thus resolving Trustee's first basis for objection, Debtor has provided no actual evidence upon which the court may rely to substantiate that the proposed plan payments are current. Instead, what Debtor has submitted is at best merely an argument stated by Debtor's counsel.

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.

\*\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

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

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 28, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*\*

33. [15-24192](#)-C-13 ERIC FRANCOIS  
DPC-1 Richard Jare

CONTINUED MOTION TO DISMISS  
CASE  
9-15-15 [[46](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

\*\*\*\*\*

34. [12-40294](#)-C-13 HENRY APODACA  
PGM-6 Peter Macaluso

MOTION TO WAIVE DEBTOR'S 11  
U.S.C. REQUIREMENT AND/OR  
MOTION FOR EXEMPTION FROM  
FINANCIAL MANAGEMENT COURSE  
10-16-15 [[95](#)]

\*\*\*\*\*

**Tentative Ruling:** The Motion for Exemption from Financial Management Course was 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.

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 October 16, 2015. Twenty-eight days' notice is required. That requirement was met.

<b>The Motion for Exemption from Financial Management Course is denied without prejudice.</b>
---

Debtor moves the court for an order waiving the requirement of a Debtor Education Certificate in granting a discharge to Henry Apodaca, now deceased. The case was filed on November 20, 2012, and Debtor passed away of February 11, 2014. Debtor's counsel provides that Debtor has completed plan payments, as evidenced by the "Notice to Debtor of Completed Plan Payments and Obligation to File Documents," filed with the Court on September 15, 2015. The clerk of the court being unable to enter discharge without completion of the Financial Management Course Certificate, the Debtor here requests waiver to obtain discharge.

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

Chapter 13 Trustee, David Cusick, responds to Debtor's motion. Trustee asserts that counsel does not have standing to present the instant motion. Based on the motion, Debtor died on February 11, 2014. Trustee does not show that Counsel notified Trustee or the court of the death until the instant motion was filed on October 16, 2015.

Debtor has died, and counsel does not represent Debtors. Trustee is not certain what standing he is asserting by filing this motion other than a Motion for Omnibus Relief upon the Death of a Debtor. Trustee's office was contacted by Debtor's daughter on July 24, 2015 who said that she had mailed the final payment to complete the plan. This indicates there is a surviving party who may have hired counsel, however Trustee and the court were not made aware of this. If the court finds that counsel does have standing,

Trustee is not opposed to the relief requested.

## **DEBTOR'S REPLY**

Debtor responds to Trustee's opposition, stating that Debtor's counsel notified the court when this information became available to him, and that counsel has not been hired by another person or persons other than the debtor and to which motions such as these are contemplated as services under the local rules.

## **DISCUSSION**

The docket reflects, as does Debtor's voluntary petition filed on November 20, 2012, that Peter Macaluso is the attorney of record for Debtor. Trustee states that "Debtor has died, and counsel does not represent Debtor." The court docket reflects that while Debtor is represented by counsel in an attorney/client relationship, Trustee is correct in pointing out that the appropriate course is to appoint a legal representative in place of deceased debtor, which has not been done in this case.

Section 109(h) states,

(h) (1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

Pursuant to 11 U.S.C. § 1328(g),

(g) (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

Therefore, in order to receive a discharge in a chapter 7 or chapter 13 case, an individual debtor must complete a personal financial management course after the petition is filed unless certain exceptions apply. 9 COLLIER ON BANKRUPTCY ¶ 1007.03[vi] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) The exceptions excuse debtors who are incapacitated, disabled, or on active military duty in a combat zone. *Id.*

Here, Debtor Henry Apodaca passed on February 11, 2014, before being able to complete the course. The court docket reflects that no notice of death was filed, nor has there been a Motion to Substitute as the Personal Representative filed. While Debtor's attorney is Debtor's counsel, he is not Debtor's legal personal representative following Debtor's death.

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 Exemption from Financial Management Course filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.



35. [15-26596](#)-C-13 MANUEL/STEPHANIE DOWDEN CONTINUED OBJECTION TO  
DPC-1 Mohammad Mokarram CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
9-30-15 [[22](#)]

WITHDRAWN BY M. P.

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.

-----  
The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was overruled as moot, and the matter is removed from the calendar.**

\*\*\*\*\*

36. [11-34997](#)-C-13 GLEN/KATRINA ROBERTSON MOTION TO SELL  
DBJ-2 Douglas Jacobs 10-8-15 [[39](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation was overruled as moot, and the matter is removed from the calendar.**

\*\*\*\*\*

37. [15-26897](#)-C-13 TERESA HOUSTON  
KK-1 Richard Sturdevant

OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
N.A.  
9-25-15 [[14](#)]

\*\*\*\*\*

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

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

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

Creditor, JPMorgan Chase Bank, N.A., is holder of a claim secured by an interest in real property commonly known as 8888 Serravilla Way, Elk Grove, California, Debtor's principal residence. The amount due and owing under the promissory note is approximately \$219,179.44, and the pre-petition arrears owed amount to \$14,576.25. [FN1]

-----  
FN.1. The court notes that Creditor has not filed a Proof of Claim or declaration in support of this objection to confirmation. Local Rule 9014-1(d)(7) requires that all motions must be accompanied by evidence establishing the factual allegations demonstrating that movant is entitled to relief requested. Although Creditor has not here provided such declaration in this instance, the court notes that the Objection has been

signed and served on parties, and will proceed on the information provided therein. Parties will have the opportunity to present opposition to this objection orally at hearing.

-----

Creditor opposes confirmation of the Plan on the basis that Debtor's plan understates the pre-petition arrears owed to Creditor. As the Debtor's plan does not provide for the cure of the full amount of pre-petition default owed, it does not satisfy § 1322(b)(5) or § 1325(a)(5).

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor JP Morgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\*\*\*\*\*

38. [14-31199](#)-C-13 BRIAN LUMPKINS  
EJS-1 Eric Schwab

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 1  
9-24-15 [[34](#)]

Also #39

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2015. twenty-eight days' notice is required. That requirement was met.

The Objection to Claim 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 Objection to Proof of Claim Number 1-1 of Calvary SPV I, LLC is sustained and the claim is disallowed in its entirety.**

Brian Lumpkins, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Creditor Calvary SPV I, LLC, ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$464.35. Objector asserts that the Claim has expired.

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).

California Code of Civil Procedure 337 provides that a creditor has four years from the breach of a written contract to act upon said breach. In this case, Creditor has not filed any lawsuit, nor has judgment been entered against Debtor. The last transaction to occur on the account upon which Proof of Claim 1 is based was in October 2010, and this account was "charged off" on May 31, 2011. It is thus barred by the statute of limitations.

Chapter 13 Trustee has filed a statement of non-opposition.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Calvary SPV I, LLC, Creditor filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 1 of Calvary SPV I, LLC is overruled and the claim is disallowed in its entirety.

\*\*\*\*\*

39. [14-31199](#)-C-13 BRIAN LUMPKINS  
EJS-2 Eric Schwab

OBJECTION TO CLAIM OF BREMER  
FINANCIAL SERVICES,, CLAIM  
NUMBER 3  
9-24-15 [[39](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the November 17, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2015. twenty-eight days' notice is required. That requirement was met.

The Objection to Claim 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 Objection to Proof of Claim Number 3 of Bremer Bank, N.A., Bremer Financial Services is sustained and the claim is disallowed in its entirety.**

Brian Lumpkins, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Creditor Bremer Bank, N.A., Bremer Financial Services ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$7,192.16. Objector asserts that the Claim has expired.

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).

California Code of Civil Procedure 337 provides that a creditor has four years from the breach of a written contract to act upon said breach. In this case, Creditor has not filed any lawsuit, nor has judgment been entered against Debtor. The last transaction to occur on the account upon which Proof of Claim 3 is based was in April 6, 2010. It is thus barred by the statute of limitations.

Chapter 13 Trustee has filed a statement of non-opposition.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Bremer Bank, N.A., Bremer Financial Services, Creditor filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 3 of Bremer Bank, N.A., Bremer Financial Services is overruled and the claim is disallowed in its entirety.

\*\*\*\*\*



40. [15-27153](#)-A-13 D JACK  
GLM-1 Mark Wolff

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LINDA  
HOLLOWAY AND JAMES HOLLOWAY  
10-22-15 [[24](#)]

\*\*\*\*\*

**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 22, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditors, Linda and James Holloway, oppose confirmation of the Plan on the basis that Debtor's chapter 13 plan was not filed in good faith under 11 U.S.C. § 1325(a)(7), and the plan and chapter 13 petition were submitted in violation of 11 U.S.C. § 727(a). Furthermore, Creditors assert Debtor is not entitled to a discharge pursuant to 11 U.S.C. § 1328(f) because he received a chapter 7 discharge within the four years preceding this case on December 28, 2011.

Creditors present a harried and complicated history with Debtor, stating that they elderly "dependent adults" under California Welfare and Institutions Code. Creditors wished to construct a home on their property located at 1901 55th Street, Sacramento, California. In June 2011, Creditors entered into a written contract with Debtor and his company Douglas Construction to construct the home for \$362,000.

On September 9, 2011, Debtor entered into chapter 7 bankruptcy. This bankruptcy sought to discharge several arbitration awards that had been found in favor of Jack's former customers arising out of Jack's breaches in contract and negligence.

Over the course of the year following the execution of the Jack/Hollaway contract, Creditors cut several checks to Debtor for purported reimbursements of engineering, material, and supplies for work he was purportedly performing. The checks that Debtor received were either cashed directly by Debtor or deposited into a separate bank account he opened but did not disclose in the chapter 7 bankruptcy filing. Creditors paid Debtor a total amounting to \$206,636 in 2011, which was not disclosed in the chapter 7 bankruptcy for which he received a discharge on December 28, 2011. Debtor also did not disclose the \$362,000 in income he anticipated receiving from Creditors.

In 2012, Debtor refused to provide invoices, receipts or documentation to demonstrate where the \$206,636 had gone. Due to failure to receive an accounting for their money and Debtor's refusal to return the unspent money, along with Debtor's demands for further funds, Creditors terminated their agreement with Debtor in October 2012 and retained counsel to recover monies paid to Debtor.

In May 2013, Creditors filed a complaint against Debtors in Sacramento Superior Court. In September 2013, parties agreed to undergo arbitration. In June-July 2014, the parties' dispute was tried before the arbitration judge. Debtor was found guilty of negligence and found to be in breach of contract. The judge also found that the Hollaways were "dependent adults" under the Elder Abuse and Dependent Adult Civil Protection Act. The judge found that Debtor is guilty of financial abuse because Debtor retained at least a portion of the \$206,636.18 "without a basis in law or contract." Debtor was ordered to return \$149,800.56 to Creditors, plus prejudgment interest, plus bear the costs of escrow, plus \$113,980.40 in attorneys fees.

On March 24, 2015, a hearing on Creditor's petition to confirm and correct arbitration award with the Sacramento County Superior Court was scheduled to be heard. On the day of that hearing, Debtor's attorney announced that Debtor filed chapter 13 bankruptcy on March 24, 2015. The Superior Court stayed the confirmation hearing.

First chapter 13 bankruptcy was filed on March 23, 2015, Case No. 15-22302. On June 2015, the court granted Creditor's and Trustee's objection to plan, in part concluding that the money Debtor was intending to disburse under the plan was part of the constructive trust that had been established in the arbitration proceedings, and that Debtor had failed to properly account for the extent of his interest in the community property of himself and his wife. Case No. 15-22302, Dckt no. 72. Debtor did not submit an amended plan, and as a result, Trustee brought a motion to dismiss, Case No. 15-22302, dkct. 75, for undue delay and prejudice which the court granted orally on September 9, 2015. Case no. 15-22302, Dckt. no. 81.

Second and instant chapter 13 bankruptcy was filed on September 11, 2015. The plan proposed in this plan is substantially identical to the one rejected during the last bankruptcy filing, which was rejected by the court.

Creditors assert numerous basis for objecting to Debtor's plan.

1. First, that Debtor's chapter 13 petition and plan were not filed in

good faith in violation of 11 U.S.C. § 727(a).

2. Second, Debtor is not entitled to a chapter 13 discharge pursuant to 11 U.S.C. § 1328(f) as he has received a chapter 7 discharge within the four year preceding this case, 11 U.S.C. § 727.
3. Third, Debtor's bad faith and actions are an attempt to frustrate Creditors' attempts to claim secured creditor status.
4. Fourth, Debtor's submitted plan is substantially identical to the rejected plan in case number 15-22302, and Debtor has not cured the defects identified by the court--(1.) failing to account for community property assets; (2.) failing to demonstrate sufficient income to afford plan payments; (3.) inappropriately utilizing funds paid by Creditors held in constructive trust for disbursement to all creditors.
5. Debtor has abused the bankruptcy process in the past.
6. Debtor has failed to disclose all income and/or bank accounts in this action.
7. Debtor is attempting to, through this action and plan, misappropriate Creditor's property and fund his plan through monies that does not belong to Debtor.
8. Debtor's plan is not feasible because Debtor does not have sufficient monies to carry out this plan.
9. Debtor's plan may not be in the best interest of creditors.

#### **DISCUSSION**

The court's decision is to . . . .

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 Creditors Linda and James Hollaway 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 . . . .

\*\*\*\*