

# Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

# Sacramento, California

**November 18, 2014 at 2:00 p.m.**

1. [14-21801](#)-C-13 ROSE SPAHN MOTION TO MODIFY PLAN  
BLG-5 Chad M. Johnson 10-7-14 [57]

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 7, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on October 29, 2014. 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.

**November 18, 2014 at 2:00 p.m.**

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 7, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [14-29903](#)-C-13 BIENVENIDO/PRISCILA DE LA MOTION TO VALUE COLLATERAL OF  
BLG-1 CRUZ JPMORGAN CHASE BANK, N.A.  
Pauldeep Bains 10-16-14 [[16](#)]

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 16, 2014. 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 JP Morgan Chase Bank, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtors' declaration. The Debtors is the owner of the subject real property commonly known as 1107 Jack London Drive, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$203,309 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$284,835.78. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$142,569.47. 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 J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 1107 Jack London Drive, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$203,309 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. [14-29005](#)-C-13 MARIE WILLIAMS  
JMC-1 Joseph M. Canning

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
10-20-14 [[23](#)]

Final Ruling: No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 20, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2011 Crew Dodge Durango. The Debtor seeks to value the property at a replacement value of \$25,375 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 2011, more than 910 days prior to the filing of the petition, with a balance of approximately \$29,758.34. Therefore, the respondent 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 \$15,675.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a 2011 Crew Dodge Durango, is determined to be a secured claim in the amount of \$25,375, 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 \$25,375 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 30, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Value secured claim of OneMain Financial, Inc., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2005 VW Jetta. The Debtor seeks to value the property at a replacement value of \$6,500 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 an automobile refinance debt incurred prior to June 2013, more than a year prior to the filing of the petition, with a balance of approximately \$15,300. Therefore, the respondent 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 \$6,500.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is

granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of OneMain Financial, Inc. secured by a 2005 VW Jetta, is determined to be a secured claim in the amount of \$6,500.00, 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 \$6,500 and is encumbered by liens securing claims which exceed the value of the Property.



**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the 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  
October 6, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the

**November 18, 2014 at 2:00 p.m.**

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

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 3, 2014. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on October 29, 2014. 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  
3, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the

**November 18, 2014 at 2:00 p.m.**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 4, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The motion seeks permission to enter into a lease agreement with Ford Motor Credit for a 2014 Ford F-150 Truck. Debtors assert that at the time of filing, they were leasing a 2012 Ford F-150 from Ford Motor Credit (Sch. G, Dkt. 1). The lease expired and Debtors have decided it is in their best interest to enter into a lease for a 2014 Ford F-150. Debtors state they require reliable transportation for medical visits and treatment.

Debtors seek authority to enter into a similar lease. Payments on the lease for the 2012 Lease were \$440.00 per month. Payments for the 2014 lease will be \$450.31. Further, Debtors assert they can afford the \$3,000 down payment. Debtors state that their income is substantially the same as it was at the time they filed their petition and the increase of \$10.31 is affordable by Debtors.

This is the Debtors' second motion to enter the lease agreement. The court denied the first motion (TOG-2) at the hearing on October 7, 2014 because Debtors did not provide the court with sufficient evidence that the subject vehicle was the most reasonable choice.

In support of their Motion, Debtors offer the Declaration of Luis Malott, that testifies to the following under penalty of perjury:

- A. At the time of filing Debtors were leasing a 2012 Ford F-150 from Ford Motor Credit.
- B. Debtor was not able to find a smaller vehicle that would be more suitable for his needs because of his disability. Debtor, Luis, broke his back, has bolts in both hips, and has no tail bone. It is very difficult for him to transition in and out of a smaller vehicle. Debtor is unable to turnaround and requires a vehicle with a back-up camera. Debtor asserts the truck is the most reasonable option to accommodate his needs.
- C. Debtor uses the vehicle to pick-up his grandchild from school everyday, transport his mother to dialysis on a regular basis, and attend treatments for his back.
- D. Debtors plan on replacing the 2012 Truck with a 2014 Truck of similar design.
- E. Debtors declare they can afford the \$3,000 down-payment and the monthly lease payments of \$450.31. The \$3,000 is from a trade-in vehicle and not cash.
- F. Debtors have investigated other lease prices and have concluded that this lease meets their budget and needs.
- G. The proposed lease agreement is attached as Exhibit A, Docket. 43.
- H. Debtor receives social security benefits and the family income is substantially the same as it was when the petition was filed.
- I. Debtor's prior lease cost \$440.00 per month. The payment of the proposed lease is \$450.31. The increase of \$10.31 is affordable.

## **DISCUSSION**

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

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings,

**November 18, 2014 at 2:00 p.m.**

evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Incur Debt is granted.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor proposes to reclassify the second deed of trust of RBS Citizens, N.A., which has been valued, from a class 7 unsecured claim to a Class 3 surrender. The Order valuing the claim has not been vacated, so the creditor is entitled to an unsecured claim under 11 U.S.C. § 506(a)(1). Creditor filed a secured claim on February 21, 2014 (Claim 4) in the amount of \$107,311.88.
2. Debtors' Modified Plan proposes a percentage to unsecured creditors of .04%, where the plan estimates that total



unsecured at \$215,202 with a dividend of \$86.08. The Trustee show the total unsecured amount at \$168,036.13. To date, Trustee has not made any disbursements to unsecured creditors.

Trustee calculates that Debtors' modified plan will pay approximately 9% to unsecured creditors, or approximately \$15,123

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.

9. [14-29021](#)-C-13 WILLIAM HINTE  
DPC-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-22-14 [[16](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal on November 14, 2014, no prejudice to the responding party appearing by the dismissal of the Objection, the parties, having the right to dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Objection, the court removes this Objection from the calendar.

**Tentative Ruling:** The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 15, 2014. Thirty 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 3007-1(b)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Objection to Claim of Surjit Singh -----.**

Amrik Singh Cheema and Daljit Kaur Cheema, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Surjit Singh ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$84,000. Objector asserts that the security for the promissory note has been surrendered and the debt is no longer secured.

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).

The security for Creditor's claim was "all fixtures and equipment and inventory now owned or herein after acquired for . . . Fulton Liquor and Deli." Fulton Liquor and Deli was a business Debtors owned, that was closed in February 2011. Debtors assert they no longer have possession of any of the inventory, fixtures, and equipment. Debtors consider the collateral as surrendered.

Debtors attached a letter Mr. Singh submitted to the court on September 12, 2014 as Exhibit B, Docket 79. The letter states that in 2007, Debtors purchase Fulton Liquor and Deli from Creditor and that Debtors still owed an amount of \$74,498.55. The letter continues on to state that in 2011, after the store closed, Debtors surrendered all the inventory to Mr. Baljinder singh Johal. Mr. Singh said that he did receive "some leftover inventory" worth approximately \$1,003.00. The letter states that a bank conducted an auction in 2011 and the current owner of the business purchased the fixtures being auctioned. Mr. Singh states that he did receive some equipment from the auction.

The Certificate of Service confirms that Creditor was properly served with notice of this motion and the attached pleadings. Debtors have surrendered the property securing the note and there is no evidence that Debtors are in possession of the collateral that was pledged as security for the subject debt.

Based on the evidence before the court, the creditor's claim is disallowed as a secured claim and allowed in its entirety as an unsecured claim. 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 Surjit Singh, Creditor filed in this case by Chapter 13 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 objection to Proof of Claim Number 4-1 of Surjit Singh is sustained and the claim is disallowed as a secured claim and allowed in its entirety as an unsecured claim.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is not certain that Debtor cannot afford the plan or that the plan reflects Debtor's best efforts. Twenty-six payments have come due in the case and Debtor has made eleven payments to the Trustee. Trustee issues four notices of default and applications to dismiss the case and in each instance the Debtor has filed a modified plan to cure the delinquency.
2. Debtor's current Declaration states that she lost her

employment on July 18, 2014 and is now receiving unemployment of \$1,746.31 monthly. Debtor is living with her brother, rent free, until she obtains employment.

3. On September 23, 2014, Debtor filed a supplemental Schedule J (Dkt. 91). Although she lives with her brother, Debtor claims the following expenses: \$45.00 for home maintenance; \$160.00 for electricity, heat, and natural gas; and \$55.00 for water sewer and garbage collection.

The court agrees with the Trustee that the above concerns indicate that Debtor cannot afford the plan payments and that Debtor's efforts in prosecuting this Chapter 13 case are not her best. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' Motion and Declaration indicate that Debtors are filing a modified plan to cure post-petition property tax payments that their lender, Beneficial Finance, paid to the tax collector. On October 7, 2014, Debtors filed a secured claim on behalf of Beneficial Finance for \$5,316.83 (Claim 16-1). The creditor on the proof of claim was identified as Beneficial Financial I, Inc., and that name and address where payments should be sent as HSBC Cii-0010140, PO Box 961247, Fort Worth, Texas.

2. Trustee has no objection to Debtors adding the creditor to the plan for post-petition tax payments, where the ongoing payments were already to be paid in the plan; however, Trustee will be objecting to the proof of claim, as Debtors lack authority to file the claim under 11 U.S.C. § 1305.
3. It is not clear that the name and address of creditor are correct. Beneficial Financial I, Inc. filed a proof of claim on September 28, 2011 (Claim 13) and an Amended Claim on October 12, 2011 (Claim 14). These claims indicated that payment should be sent to Beneficial Financial I, Inc., Bankruptcy Department, PO Box 9068, Brandon, Florida.

The Deed of Trust attached to Claim 13 identifies the borrower as Housekey Financial Corporation, a Illinois Corporation, and Beneficial California Inc. as the beneficiary.

Trustee is unable to reconcile the inconsistent evidence presented as to who the proper creditor is in this instance.

4. Solano County filed a Request for Administrative Claim on October 24, 2014 (Claim 17-1) for taxes owed as of December 10, 2011, in the amount of \$7,156.26 plus interest at 18%. It is unclear to Trustee whether this claim is for pre- or post-petition taxes or whether the post-petition taxes purportedly paid by Beneficial Finance are part of the claim now filed by Solano County.
5. Debtors' Declaration does not adequately explain the changes in expenses. Debtors state that various expenses increased due to changing rates and cost of living; however, there are no details as to the specific changes. Of further concern is that the bulk of Debtors' expenses have increased while Debtors' household size has decreased by one person.
6. Schedule B indicates that Debtors have on automobile, a 2002 Hyundai Accent. Debtors' original Schedule J budgeted \$85.00 for vehicle insurance where Debtors' Amended Schedule J now budgets \$200.00. This increase appears excessive, considering the coverage is for one vehicle and the age of the vehicle.
7. Debtors increased their transportation costs by \$131.14 for a total monthly expense of \$600.00. This appears excessive since Debtors both work for Pittsburg Unified School District.
8. Debtors increased their personal care expenses by \$150.00 per month, for a monthly expense of \$250.00, and their phone, cell, cable, and internet by \$112 to \$482 per month. Both of these appear excessive. Additionally, Debtor's original Schedule J budgeted \$160 per month for ongoing property taxes, as does the Amended Schedule J; however, Debtors are now modifying their plan to add post-petition property taxes that were paid by the lender. The Trustee questions how these budgeted funds were spent.



For the many reasons outlined by the Trustee, 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.

13. [12-26935](#)-C-13 DANIEL/EVELYN DOMONDON MOTION TO MODIFY PLAN  
SDB-1 W. Scott de Bie 10-9-14 [[24](#)]  
**Thru #14**

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 9, 2014. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on October 30, 2014. 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, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the

**November 18, 2014 at 2:00 p.m.**

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

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 20, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Motion to Approve Loan Modification filed by Daniel Codog Domondon and Evelyn Halog Domondon ("Debtor") seeks court approval for Debtor to incur post-petition credit. The Bank of New York Mellon, f/k/a The Bank of New York as Trustee, on behalf of the Holders of the Alternative Loan Trust 2005-62, Mortgage Pass-Through Certificates Series 2005-62 and its servicer Select Portfolio Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,646 a month to \$2,194.86 a month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 4.875% for twenty-two years.

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

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

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

holding that:

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

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

**IT IS ORDERED** that the court authorizes Debtors to amend the terms of the loan with The Bank of New York Mellon, f/k/a The Bank of New York as Trustee, on behalf of the Holders of the Alternative Loan Trust 2005-62, Mortgage Pass-Through Certificates Series 2005-62 and its servicer Select Portfolio Servicing, LLC , which is secured by the real property commonly known as 200 Glenview Circle, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit C in support of the Motion, Dckt. 34.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2014. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor has not filed all pre-petition tax returns required for the four-years preceding the filing of the petition. 11 U.S.C. §§ 1308 and 1325(a)(9). The FTB filed a claim reflecting that no 2013 tax return was filed (Claim 3). The Meeting of Creditors was continued to November 13, 2014 at 10:00 am. The Trustee requests the hearing on this Objection be continued to a date after the Continued Meeting of Creditors.
2. The plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is above median income according to the

Statement of Current Monthly Income. Schedule J lists on line 21 an expense of \$200 for fines and withheld tax for 2014. The Trustee requests proof of the amount of the payments for the fines and proof that the payments are being made.

Trustee objects to certain deductions taken on the Statement of Current Monthly Income, Form 22C. Debtor lists an expense of \$250.00 for telecommunications on line 37. The form calls for expenses other than basic home and cell phone services. Schedule J lists an expense of \$365 for telephone, cell, internet, satellite, and cable. The Trustee requests proof of the actual telecommunication expense applicable to the means test. Line 49 of the form lists an expense of \$200 for payments of pre-petition priority claims, but where not claim has been filed for the IR and the claim filed by the FTB has no amount, the Trustee objects until this Debtor shows proof of the expense.

Per the Trustee's request, the Objection to Confirmation hearing will be continued to November 25, 2014.

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

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

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

**IT IS ORDERED** that the Objection to confirmation of the Plan is continued to November 25, 2014 at 2:00 pm.

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 1, 2014. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on October 29, 2014. 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, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the

**November 18, 2014 at 2:00 p.m.**



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

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the creditors. The Chapter 13 Trustee filed an opposition to the Motion on October 29, 2014 that was subsequently withdrawn on November 7, 2014 (Dkt. 44). 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

**November 18, 2014 at 2:00 p.m.**

October 6, 2014 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.

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 6, 2014. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on October 29, 2014. 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  
6, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the

**November 18, 2014 at 2:00 p.m.**

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2014. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to 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. The plan will complete in more than 60 months, exceeding the maximum time allowed under 11 U.S.C. § 1322(d). Trustee calculates that payments totaling \$51,121 are required to complete Debtor's plan. Debtors' plan includes \$2,368 in attorneys' fees, a \$36,419 secured claim at 8% interest (\$9,676 over the life of the plan), and Trustee's fees of \$2,658. The modified plan proposes to pay \$697 for 19 months, then \$819 for 41 months. Trustee calculates that this totals \$46,822 in overall payments. This is insufficient to fund the plan within the proposed 60 month period.

2. Debtors' modified plan proposes to reduce the monthly dividend for dates in the past where disbursements have been made under the confirmed plan. The plan proposes a monthly dividend to the Class 2 creditor of \$662.00 beginning month 5 for 15 months and then \$783 for the remaining 41 months. Under the confirmed plan, payments to the class 2 creditor are \$740 starting month 5, for 56 months.

#### **DEBTORS' RESPONSE**

In response, Debtors proposed to pay \$108 more for the next 40 months to make-up the payment shortfall and to change language in the confirmation order, as follows:

Debtors will pay \$780 a month for 17 months, zero for two months, \$819 for one month, and \$927 a month for 40 months. Debtors will pay \$740 for attorneys' fees for four months, \$740 for class two claims for 13 months, zero for two months, \$783 for one month, and \$893 for the remaining 40 months for class two claims.

Debtors assert that this resolves the Trustee's concerns regarding the term of the plan and the arrearage dividend.

#### **DISCUSSION**

Based on the court's calculations, it appears that the changes proposed by the Debtors resolve the Trustee's Objection. The court is amenable to the Debtors including the language above in the Order Confirming the Plan.

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 the Motion is granted, Debtors' Chapter 13 Plan filed on September 22, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the

proposed order to the court.



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

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

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

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

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

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

<b>The Motion to Value secured claim of Green Tree Servicing, LLC, "Creditor," is denied.</b>
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 11 Mencia Court, Sacramento, California. The Debtors seeks to value the property at a fair market value of \$259,477.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

**CREDITOR IDENTIFICATION**

From the evidence presented, the court cannot identify the correct Creditor subject to the instant Motion. Debtor filed the Motion as against Green Tree Servicing, LLC. In support of the Motion, Debtor attached a Deed of Trust recorded May 26, 2006 between Debtor, as Trustor, Housekey Financial Corporation, as Borrower, and Beneficial California Inc. as

beneficiary. Debtor did not supply a copy of the Note. There is no proof of claim filed for the secured claim at issue. Debtor did not provide evidence that the Note and Deed of Trust were transferred to Green Tree Servicing, LLC or that Green Tree Servicing, LLC is a servicer with authority to act on behalf of the loan holder.

Debtor's Declaration asserts that Beneficial California, Inc. is now a subsidiary of HSBC Bank USA, N.A. The court is aware of the relationship between these two institutions, but Debtor has not demonstrated there is a relationship between HSBC Bank USA, N.A. and Green Tree Servicing, LLC.

The court cannot to adjust the legal rights of a secured creditor when it cannot determine who is the property secured creditor subject to the motion. For this reason, the motion is denied without prejudice.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 14, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b) and it does not appear that all disposable income has been proposed to be paid into the plan. Debtors are below median income. According to Debtors' Schedule I, Debtors are repaying a 401K loan in the amount of \$107.66 per month in addition to voluntary contributions of \$83.98 and \$239.45. Debtors have not specified an end date of the payments made on the 401K loan, Debtors plan can be increased by \$107.66 upon payoff of the loan.
2. The plan relies on the pending Motion to Value the secured

claim of Americredit (NBC-1), which is set for hearing on November 21, 2014. If the motion is not granted, Debtors' plan lacks sufficient money to pay the claim in full and should also be denied confirmation. Debtors plan further relies on the Motion to value the secured claim of Credit Acceptance (NBC-2), which was heard and denied on October 7, 2014. Debtors plan lacks sufficient monies to pay the claim in full.

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

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

22. [14-27476](#)-C-13 EDUARDO/MARIE ORTEGA  
APN-1 Michael David Croddy  
**Thru #23**

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
9-11-14 [[44](#)]

**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, Debtor's Attorney, Chapter 13 Trustee, and United States Trustee on September 11, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that Debtors have listed the monthly payment amount to Creditor as \$0.00 and have attempted to avoid paying the secured claim and interest on the secured claim.

Debtors and Creditor entered into a EquityLine with FlexAbility Agreement on January 16, 2006, which evidenced Creditor extending a line of credit to Debtors in the sum of \$78,100, with interest accruing at a variable rate. The Agreement was secured by a Deed of Trust against 2481 Bent Tree Drive, Roseville, California.

Debtors listed Creditor as a Class 2C claims without a basis to do

so. Creditor is further led to believe that a lien secured by a Second Deed of Trust against the property was released due to a government program and; accordingly, the loan that Debtors obtained from Creditor is more property described as a Second Deed of Trust and not subject to avoidance due to available equity.

Creditor asserts that it is not an unsecured claim. Pursuant to Debtors' Schedules, the first deed of trust on the property is \$494,000 and the value of the property is \$578,537. This leaves sufficient equity for the lien of Creditor to be secured.

## **DISCUSSION**

The court's decision is to sustain the objection. The court is sustaining the simultaneously pending Objection to Confirmation of Plan filed by the Chapter 13 Trustee. Ultimately, the court is sustaining Creditor's objection on the ground that Debtor is attempting to modify the secured claim without having filed a Motion to Value and without a granted motion, the Debtors cannot afford the plan payments. The status of Creditor's Deed of Trust (whether it is in second position or not) remains unresolved and will be addressed, if necessary, with other valuation issues in the future. 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter13 Trustee opposes confirmation of the Plan on the following basis:

1. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claims of Wells Fargo Bank, N.A. and the Internal Revenue Service but has not filed motions to value such claims.
2. Debtors testified at the First Meeting of Creditors on October 16, 2014 that they intend to file an amended plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Given the lack of Motions to Value and the stated intent of the Debtors to file an

Amended Plan, the objection is sustained and the Plan is not confirmed.

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

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

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

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



24. [14-27878](#)-C-13 JOYCE ATKINS  
MRL-1 Mikalah R. Liviakis

MOTION TO VACATE DISMISSAL OF  
CASE  
10-27-14 [[44](#)]

**CASE DISMISSED 10/20/14**

**Tentative Ruling:** The Motion to Vacate 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 October 29, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Vacate 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 Vacate is granted**

Federal Rule of Civil Procedure 60, incorporated here through Fed. R. Bankr. P. 7024 provides that the court can grant relief from an order for various reasons, including mistake, inadvertence, surprise, or excusable neglect. FRCP 60(b)(1). Here, Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the Debtor's case.

Two Orders to Show Cause for failure to pay filing fees ("OSC") were pending at the time Debtor's case was dismissed. The first OSC was issued on September 5, 2014 for an amount due of \$77.00 due on September 2, 2014. ECF 20. The hearing for the first OSC is clearly indicated as October 15, 2014 at 10:00 a.m.

The second OSC was originally issued on October 6, 2014 for a fee of \$77.00 due on September 30, 2014, and stated that the hearing for the OSC was set for October 28, 2014. ECF-30. The clerk's office issued an Amended OSC for the fee due September 30, 2014 that moved the hearing date to November 12, 2014. ECF-31.

Debtor did not attend the hearing for the OSC scheduled on October 15, 2014 and had not paid the delinquent filing fee by the hearing date. As a result, the court sustained the OSC and dismissed the case (Dkts. 40 and 41).

Debtor's Counsel argues that the Amended Order to Show Cause was not clear as to what hearing was being continued. Debtor's Counsel was under the impression that both pending OSC hearings were continued to November 12, 2014 and did not attend the October 15, 2014 hearing. Counsel asserts he would have attended the October 15, 2014 if he believe it was still scheduled and that this qualifies as either a mistake or excusable neglect. Counsel further notes that the filing fees were paid, although late, and were entered on the docket on October 17, 2014, prior to the dismissal.

## **DISCUSSION**

Counsel's argument that the Amended Order to Show cause was unclear fails to impress the court. Each OSC for failure to pay fees is connected with the date that a delinquent fee was due. The Amended Order plainly states that it concerns the fee that was due on September 30, 2014 and makes no mention of the fee due on September 2, 2014.

The court recognizes; however, that Debtor's Chapter 13 case was making positive progress at the time it was dismissed. As Debtor's counsel noted, Debtor paid the delinquent filing fees on October 17, 2014. Moreover, the Chapter 13 Trustee's Objection to confirmation was overruled because Debtor brought plan payments current and filed amended pleadings causing the Trustee to support confirmation.

The court will accept Counsel's oversight concerning the Orders to Show Cause as a mistake and vacate the dismissal of Debtor's case.

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

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

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

**IT IS ORDERED** that the Motion is  
granted and the dismissal order entered  
October 21, 2014, CF 40, is vacated.

25. [14-28479](#)-C-13 KENNETH WELKER  
DPC-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-14-14 [[28](#)]

**CASE DISMISSED 10/21/14**

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
-----

The case having previously been dismissed, the Objection is overruled as moot.

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

**IT IS ORDERED** that the Objection is  
overruled as moot, the case having been  
dismissed.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 Not 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 15, 2014. By the court's calculation, thirty-three days' notice was provided. Forty-two days' notice is required. That requirement was not 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 continue the Motion to Confirm the Plan.**

The Motion to Confirm the plan was set for hearing on November 18, 2014 with notice of the hearing being issued on October 15, 2015. The Rules required Motions to Confirm to be hearing on forty-two days' notice. LBR 3015-1(d)(1).

The court will continue the hearing to December 2, 2014, for adequate notice.

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 continued to December 2, 2014 at 2:00 pm.

**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, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

3. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtors propose a plan payment of \$1,06.00 per month. Debtors' Schedule J lists on line 16 an expense of \$500.00 for an installment arrangement with the IRS. Class 5 of the plan provides for the IRS to be paid as a priority debt through the plan.

Line 17a of Schedule J lists an auto payment of \$440.86. Class 2 of the plan lists Hyundai Auto Finance and Schedule D describes the collateral as Hyundai Elantra Touring with monthly payments of \$440.86.

Line 17c lists a trailer storage expense of \$67.00. Line 21 lists a second trailer storage expense of \$76.00.

In addition, line 13 lists an entertainment expense of \$600.00 per month. This amount may be excessive, and the Trustee objects to the expense absent written proof, such as receipts.

Adjusting Schedule J for the expenses listed above causes the net monthly income to be \$1,881.82.

Debtors have substantial net monthly income of more than \$11,000 and propose to pay 28% to unsecured creditors, which amounts to approximately \$50,121. Form 22C shows disposable income of \$1,061.39 per month. If Debtors paid all disposable income, they could pay 54% to unsecured creditors, or approximately \$96,810.00.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 10, 2014. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to continue the hearing on the Objection to November 18, 2014 at 2:00 p.m.</b>
---

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

1. At the First Meeting of Creditors, Debtors admitted they have not filed all tax returns during the four-year period preceding the filing of the petition. See 11 U.S.C. §§ 1308 & 1325(a)(9).
2. The plan does not reflect the Debtors' best efforts under 11 U.S.C. § 1325(b):
  - a. Debtors are over the median income and propose plan payments of \$3,760 for 58 months with a 0% dividend to

**November 18, 2014 at 2:00 p.m.**



unsecured creditors.

- b. The plan proposes to retain rental property located at 127 Loma Vista, Vallejo, California. The Class 1 claims lists the ongoing mortgage payment as \$2,110 with an arrears dividend of \$841.12. The monthly dividend for the Second Deed of Trust in Class 2 is \$515.73 per month. The total mortgage and arrear payments are \$3,467.85.

Currently, Debtors receive \$1,000 per month in rental income, creating a negative cash flow of (\$2,467.85). Schedule J states that Debtors expect rental income to increase from \$1,000 to \$2,400 following the completion of repairs to the property; however, no declaration as to the status or cost of the repairs appears to have been submitted. Debtors' retention of this property is not a reflection of Debtors making best efforts a confirming a feasible. chapter 13 plan of reorganization.

3. The plan relies on the pending Motions to Value the secured claims of Ally Bank and Umpqua Bank.
4. Sections 2.06, 5.01, and 6 of the plan contain the following: "Error! Reference source not found." Information required in these sections is missing.
5. Debtors are not entitled to receive a discharge in this case. 11 U.S.C. § 1328(f). Debtors filed a Chapter 7 bankruptcy on April 14, 2013 and received a discharge on July 29, 2013 (Case No. 13-25096). Debtors' plan does not state they are waiving a discharge in this case.

The Chapter 13 Trustee requested the court continue the hearing on the Objection to November 18, 2014 at 2:00 p.m., to be heard after the continued First Meeting of Creditors set for October 30, 2014 at 10:30 a.m.

#### **DEBTORS' RESPONSE**

Debtors provide the following in response to the Trustee's Objection to Confirmation:

1. On October 3, 2014, Debtors filed their 2013 tax returns and the Chapter 13 Trustee was provided a copy of the tax filings on or about October 8, 2014.
2. Debtors state that there are no unsecured creditors affected by the Plan and all secured creditors will receive the full value of its secured interest. Debtors received a Chapter 7 discharge on July 29, 2013 (Case No. 13-25096).
3. Debtors argue that Schedules I & J, filed on August 1, 2014, reflect that Debtors' income is sufficient to sustain plan payments, notwithstanding negative cashflow associated with the rental amount received from 127 Loma Vista, Vallejo, California. Debtors affirm they have the ability to make the plan payments in the attached Declaration.

4. The Motions to Value the secured claims of Ally Bank and Umpqua Bank were granted on October 7, 2014.
5. Debtor proposes to make amendments to the sections of the plan containing Error references. None of the proposed amendments impact the treatment of any class of claims and do not impact the rights of individual creditors.
6. Debtors will execute a waiver of discharge in this proceeding.
7. Debtors assert that completion of this plan will permit them to renovate the rental property and provide for payment of the full value of the secured claims of all creditors holding an interest in the property. Without the plan, Debtor argue it is doubtful that any secured creditor would receive the full value of its security interest and Debtors can only surmise that this is the reason that no secured creditor has objected to the Debtors' plan.

## **DISCUSSION**

The court's decision is to overrule the Objection to Confirmation and confirm the Chapter 13 plan. Debtors filed the missing tax returns and provided copies to the Trustee. Debtors filed a waiver of discharge and clarified that there are no unsecured creditors as Debtors received a Chapter 7 discharge on July 29, 2013. The pending Motions to Value were granted and Debtors will correct the sections of the plan containing the Error message. Finally, Debtors submitted a supplemental Declaration discussing the repairs needed to be made to the rental property and explaining that the purpose of the plan is to provide for the secured claims against the rental property while renovating the home to increase the cash flow.

The court is satisfied that the Trustee's concerns are resolved and that 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 7, 2014 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 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 30, 2014. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to set the Motion to Confirm the Plan for an evidentiary hearing on [date] at [time].</b>
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The Chapter 13 Trustee objects to confirmation of the plan because Debtors' plan is not filed in good faith. 11 U.S.C. § 1325(a)(3). Debtors are below median income and propose a plan of \$83.00 per month for 36 months, with a 2.4 dividend to unsecured creditors. The unsecured creditors are the only parties to receive payment in this case.

Trustee asserts that it appears the Debtors do not wish to contribute their disposable income into the plan. The current motion is an attempt to confirm the third plan filed by the Debtors. With each plan, the Debtors have failed to fully and completely disclose information pertaining to their income, their business operations, their health and the disposable income available to be paid to unsecured claims.

**HISTORY**

Original Plan

Debtors' original plan was filed on December 26, 2012 and proposed to pay \$75.00 per month for 36 months. After the 341 Meeting, Trustee determined that Debtors had an additional \$1,250 per month available to contribute to plan payments. On February 5, 2014, Trustee filed an Objection to Confirmation based on excessive attorneys' fees and the plan not being Debtors' best efforts. Debtors had double deducted their housing expense of \$1,000 and utilities costs of \$250 on both their household expense budget and on their business expense reports.

On February 25, 2014, Debtors withdrew their plan and indicated they would file an amended plan addressing the Trustee's concerns. On March 4, 2014, the court issued an order sustaining the Trustee's objection.

On June 2, 2014, Trustee filed a Motion to Dismiss because Debtors did not file an Amended Plan (Dkt. 46).

On June 25, 2014, Debtors filed a First Amended Plan to avoid dismissal of the case. This resulted in the Trustee withdrawing his Motion to Dismiss.

#### First Amended Plan

In the First Amended Plan, the Debtors proposed to pay \$75.00 per month for 36 months, the plan was identical to the original plan except that counsel reduced his fees. Debtors explained in their Declaration that as of April 24, 2014, they have closed their business, losing their primary source of income, due to health conditions of "diabetes and prostate surgery." (Dkt. 54).

Debtors filed Amended Schedules I & J in support of their plan. Schedule I shows that Debtors receive help with bills from Jose Diaz of \$2,000 per month and rental income of \$1,000 per month. Schedule I also includes that the business was closed on April 24, 2014. No documentation was submitted in support.

On Schedule J, Debtors removed their expense for electricity, heat and natural gas of \$250; changed water/sewage/garbage from \$125 to \$149; changed food from \$800 to \$550; removed \$754 for clothing \$50 for personal care; and decreased transportation from \$300 to \$200. Debtors removed \$100 in entertainment and the business expenses of \$1,774. Debtors added the expense of the rental mortgage of \$729.

On August 5, 2014, Trustee filed his opposition to the plan, arguing that Debtors were not eligible for Chapter 13 relief, were not prosecuting their case in good faith, and that the plan was essentially a disguised Chapter 7 case.

On August 12, 2014, Debtors withdrew the First Amended Plan and the court dismissed the Motion without prejudice.

On September 19, 2014, trustee filed his second Motion to Dismiss. Trustee withdrew the Motion on October 9, 2014, after Debtors filed the pending plan and motion to confirm.

#### Current Plan: Second Amended Plan

On September 30, 2014, Debtors filed the current plan with supporting documents. The plan calls for payments of \$83.00 per month for thirty-six months.

and a 2.4% dividend to general unsecured claims. The only change is a payment increase of \$8.00 per month.

Debtors' declare that they have stopped receiving help with payments and have opened the business as of August 8, 2014 and that they believe the income will be steady, into the future. Debtors state that changes to the budget are necessary in order to assist Debtors in repaying their debts.

The Profit and Loss Statement shows Debtors' incomes is approximately the same as originally reported, but the business budget now shows that \$1,839 (Exh. B., Dkt. 81, Pg. 25) is the average expenses for supplies versus the original estimate of \$517.00 per month (Exh. A, Dkt. 30). Debtors claim to make and sell Churros.

Debtors did not supply Trustee with any evidence to support their expenses for the business. Debtors did not list any business equipment, inventory, or machinery on Schedule B. The Debtor only shows one 2006 Aztec Trailer on Schedule B.

The Trustee is unable to determine that the income Debtors claim for the business is an actual, stable, and reliable source of income. The Trustee has not been provided with any proof of a business licence, health permits, or permit/license to sell food.

### **Disputed Material Facts**

The Trustee requests the court set an evidentiary hearing to determine the Debtors' income and expenses and the result and/or effect of the Debtors' medical condition. Trustee seeks that the matter be set out at least 60 days to allow discovery.

### **Business**

Trustee seeks from Debtors ninety (90) days of receipts for supplies for the business, a list of business equipment, a list of current inventory, their 2013 tax return, and a copy of their most recent sales tax return. The Trustee also requests that Debtors describe when, where, and how they operate their business.

### **Medical Issues**

Debtors' medical records indicate that treatment is for diabetes. The records appear to disclose that the initial appointment on May 2, 2014 was a "new patient" appointment. There is no clear indication in the medical records that the doctor requested that Debtors stop working or have surgery.

Trustee cannot determine whether Debtors' petition was filed in good faith or if the plan has been proposed in good faith. 11 U.S.C. §§ 1325(a)(3) & (7).

### **Disguised Chapter 7**

Trustee reiterates his concern that Debtors' case is merely a disguised Chapter 7 case. Debtors have done nothing to attempt a debt reorganization and will pay a total of \$2,299 toward unsecured claims under the plan. Counsel accepted \$4,800 in fees prior to filing. The plan proposes to pay nothing to secured claims and a nominal dividend to unsecured claims; however,

Debtors list no unsecured claims on Schedule F. On Schedule D, Debtors list a First Deed of Trust held by JP Morgan Chase Bank, N.A. and a Second Deed of Trust held by Bank of America. Debtors' Second Deed of Trust was subject to a Motion to Value heard and granted on February 2, 2014 (Dkt. 37).

Trustee argues that this case was filed with the sole purpose of stripping the Second Deed of Trust on Debtors' rental property, located at 412 Park Drive, Bakersfield, California. Debtors filed the Chapter 13 to receive the benefits not available under Chapter 7.

### **Chapter 7 Liquidation Analysis**

Debtors' plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$0.00 and the Debtors are proposing a 2.4% dividend to unsecured creditors. Debtors may not have reported all assets. Debtors have not business inventory or assets listed on Schedule B. The Trustee is concerned that all assets have not been reported.

### **Best Effort**

The plan may not be Debtors' best effort under 11 U.S.C. § 1325(b). In the event the original Schedules I & J filed by Debtors were and remain correct, because of the double-counting of rent and utilities, more money should be available to unsecured creditors.

### **DISCUSSION**

The court's decision is to set the matter for an evidentiary hearing, per the Trustee's request, on **[date]** at **[time]**. During the evidentiary hearing, the court will take evidence on the Debtor's income, expenses, medical history and status, business, and why Debtors' require a Chapter 13 plan versus a Chapter 7 liquidation.

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

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

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

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

**Final Ruling:** No appearance at the November 18, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee filed a statement of non-opposition on November 3, 2014. 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  
October 6, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order

**November 18, 2014 at 2:00 p.m.**

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2014. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to 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 because Debtor's plan proposes to reclassify Bank of America, N.A. from a Class 1 secured claim to Class 4 to be paid directly by Debtor, based on a loan modification granted on October 21, 2014. Debtor's modified plan does not authorize payments to be made to this creditor under the confirmed plan. The Trustee has paid \$7,548.23 in ongoing mortgage payments and \$1,453.53 in mortgage arrears to this creditor.

**DEBTORS' RESPONSE**

Debtor responds and proposes to insert language in the Order Confirming the Plan that states:

All payments already disbursed by the Chapter 13 Trustee to Bank of America, N.A. in the form of 1) On-going mortgage payments in the amount of \$7,548.23, and 2) Payments on arrears in the amount of \$1,453.53 are hereby authorized.

The Debtor's proposed changes remedy the Trustee's concern. The Objection is overruled. 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 the Motion is granted, Debtor's Chapter 13 Plan filed on September 30, 2014 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 Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2014. Fourteen days' notice is required.

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

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

1. Debtor is \$3,000.00 delinquent in plan payments, and the next payment of \$3,000.00 is due on October 25, 2014. Debtor has paid \$0 into the plan to date. The plan in § 1.01 calls for payments to be received by the Trustee no later than 25th of each month. Given that Debtor has filed at least four prior cases, Debtor should be aware of his duty to make plan payments.
2. Debtor's Plan may not be Debtor's best effort or Debtor may not be able to make the required plan payments because:
  - a. Debtor appears to have an undisclosed business, which the

Trustee believes is a radio station. This business is not listed in the petition. The status of rental income listed on Schedule I is not clear. Trustee believes that Debtor get an income of \$4,000 from this business. Debtor should clarify the status of all businesses he owns or recently owned.

- b. Based on testimony at the meeting of creditors, Trustee believes that Debtor may be renting premises at 14530 Lakeshore Drive, Clear Lake, CA to his sister for a rate that may be below market rate. Debtor's sister operates "Burger Time," a restaurant, at the location. This rental income may not be clearly disclosed and should addressed by a declaration from the Debtor and an amended Schedule I. The rental income may result in an issue as to use of cash collateral.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 23, 2014. Fourteen days' notice is required. That requirement was met.

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

One Shot Mining Company, LLC and Sara Lynnee Wilder ("Creditor") oppose confirmation of the Plan on the following basis:

1. Debtor and Karen Williams, borrowers, are indebted to Creditors under a \$122,383.00 loan, secured by a first deed of trust, which encumbers real property located at 14530 Lakeshore Dr., Clearlake, California (Lake County Property). Creditors made this loan to borrowers on September 17, 1996. Creditors filed a proof of claim and supporting loan documents for this loan on October 22, 2014. Debtor's Plan does not provide for this claim.
2. On August 16, 2013, One Shot obtained a Default Judgment of

Foreclosure and Order of Sale on a loan secured by a second deed of trust on the Lake County Property. The loan was made to borrowers on October 8, 2001 in the original principal amount of \$51,299.63. On October 22, 2014 Creditors filed a proof of claim based on the Default Judgment in the amount of \$113,141.76. Debtor's Plan lists \$107,862.72 as the amount for this claim. Also, the Plan proposes to pay 0.0% interest on this claim while under the default judgment, the creditor is entitled to 10.00% interest.

3. The Plan is not feasible under 11 U.S.C. § 1325(a)(6) because:
  - a. The Debtor's income is uncertain. At the meeting of creditors, Debtor testified that he expects to have reliable income from his trucking business for the life of the plan. Yet, Schedule I shows that he has no wage income from his trucking business. The Debtor also testified that his former business, "Silks Bar and Grill," stopped doing business in October 2013, yet on page 8 of Debtor's Chapter 13 Statement of Current Monthly Income, Debtor states that from this business, he has earned an average of \$6,758 over the last six months in 2014.
  - b. Debtor testified at 341 Meeting that property taxes for the Lake County property are not current. The Plan makes no provision for the payment of these taxes.
  - c. Creditor filed a Notice of Non-Consent to Use of Cash Collateral on August 21, 2014.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation on the following grounds:

1. The Plan may not be Debtors' best effort under 11 U.S.C. § 1325(b), or Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors are under the median income and propose plan payments of \$3,136.00 for 4 months, \$3,250.00 for 56 months, with a 37% dividend to unsecured claim holders, which totals \$13,320.72. Debtors filed an Amended Schedule I, and changed Robert Vosberg's business income from \$4,440.00 gross and \$3,765.00 net to \$3,880.00. Debtor is now an Independent Contractor. Debtors do not provide an attachment to Schedule I, which shows the Debtors' gross income, expenses, and net business income.

Trustee is uncertain if the business income listed on Line 8a is gross or net income. Trustee's prior Objection, Dckt. No. 26, has not been resolved.

Debtor's' 2013 tax return reflects a refund of \$5,287.00; however, Debtors do not propose to pay any future refunds into the Plan or change their income tax withholdings so that they will not receive such a large tax refund. Debtors' Motion states that the Debtors' income tax refund was solely due to tax credits which may or may not be available on a year to year basis, and therefore accounting for a speculative refund would not provide for best efforts in the plan by Debtors.

2. It appears that the Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$11,279.92 and possibly more. Debtor is proposing a 37% dividend to unsecured claim holders, which totals \$13,320.72. Debtors filed amended schedules A, B, C, and D on August 15, 2014, Dckt. No. 39, with no declaration explaining why the amendments were made.

The motion claims that the real property was incorrectly valued, but does not explain why the court should accept the current valuations over the earlier valuations and why these errors occurred. Amended Schedule A changes the value of the real property located at 5000 Lena Way, Fair Oaks, California from \$479,896.00 to \$435,000.00, a decrease of \$44,896.00. Debtor also changed the amount of the secured claim from \$317,420.00 to \$354,795.10, an increase of \$47,375.00. Debtor has filed a "Broker Price Opinion for value of real property," Exhibit D, Dckt. No. 44; however, this document does not appear to be a Broker Price opinion as it does not specifically state the value of the real property. The document is titled CMA REPORT and appears to list the properties in the area.

Based on the original Schedule A, filed on May 30, 2014, the non-exempt equity in the real property totaled \$136,901.00. Value of the real property listed on the original Schedule A: \$479,896.00  
Amount of the secured claim listed on the original Schedule A: \$317,420.00. The total equity in the real property: \$162,476.00. The original schedule C exempted \$25,575.00 of equity in the property, which provides \$136,901.00 in non-exempt equity. The Amended Schedule C changes the exemptions from California Civil Code of Procedure § 703.140(b) 703.140 et. seq to Section 704 et. seq. Debtors' Amended Schedule C changes the exemption of equity in the property to California Civil Code of Procedure § 704.730 and exempts all equity in the property after Debtors decrease the value and increase the amount of the secured claim.

Trustee has filed an Objection to Confirmation, DPC-1, which raised the liquidation issue, Dckt. No. 26. Debtors do not indicate why the value of the property decreased after the date of filing on May 30, 2014, approximately 3 months later on August 15, 2014.

The Debtor filed Amended Schedule B and deleted the following assets originally listed:

Cash \$155.00;

Chase Checking \$179.30;

Chase Savings \$.60 cents;



Optimum Bank \$1,200.00;

3 Firearms, 12 gauge shotgun, .30-06 rifle, .40 caliber pistol all valued at \$700.00;

Kayak \$150.00;

34 shares of stock in American Airlines  
\$1,291.66;

Penny Stocks \$.28 cents 2 great Pyreness, not AKC registered;

1 domestic cat valued at \$500.00.

Debtors have not indicated why these assets were deleted.

### **RESPONSE BY DEBTORS**

As set forth in the Declaration in Support of the Motion to Confirm Amended Plan, Debtors state that Mr. Vosberg lost his employment post-petition but became employed as an "independent contractor" shortly afterward. As a result, his income change and a new estimate of his income was filed with the court. Mr. Vosberg began his position shortly prior to the filing of the 2nd Amended Plan and he did not have a history of the new income and his independent contractor expenses to provide to the court. Debtors state that the income at issue is not true "business income" but he is employed by one company, full time but is paid as a "1099 employee". Mr. Vosberg pays some, but not all of his expenses. Primarily, Mr. Vosberg is responsible for his own taxes and related expenses.

Debtors state that they will be able to provide a more complete "Profit & Loss" or "Income & Expense" report for the new employment as the data accumulates. Since income is based on miles traveled and other factors (he is a truck driver), the income, while steady, has not been established over time. Debtors argue that this is the essence of "best efforts" by the debtors: despite losing his income, Mr. Vosberg "took immediate steps to replace the income so that the Plan could be funded."

### **Best Efforts**

The trustee objects that the prior Objection regarding the tax refunds has not been resolved. Debtors state that this was discussed with the trustee and, at his suggestion, the debtors have agreed to pay the tax refund to the trustee on an annual basis.

The debtors have further agreed to place the following language in the Order Confirming Plan, subject to the approval of the court:

A. At the same time the Debtors file state and federal tax returns with the respective agencies, copies of said returns shall be served on the Chapter 13 Trustee. The Debtors shall file a certificate of service attesting to such timely service on the Chapter 13 Trustee.

B. All federal and state tax refund checks during the term of

the Plan shall immediately upon receipt be endorsed over to the Chapter 13 Trustee for deposit in the Trustee's Chapter 13 account. The Debtors shall not receive electronic payment of any tax refunds during the term of the Plan. The Trustee shall hold such funds for a period of 60 days from receipt for Debtor to file motion for disbursement of the tax refund monies to Debtors instead of to creditors through the Chapter Plan. If such motion is timely filed, the Trustee shall than hold such tax refund monies until otherwise ordered by the court.

### **Liquidation Analysis**

The Trustee also objects that the Plan fails the "liquidation analysis". In response, the Debtors state that the Declaration and supporting documents provide sufficient evidence that the valuation of the real property, now based on a Comparative Market Analysis instead of an online resource, is accurate.

Debtors state that their Declaration is Support of Confirmation of the Amended Plan may not adequately describe on what information they relied on to determine the market value of the real property, and it may not adequately describe the personal information of the debtors upon which that opinion was based. A Supplemental Declaration is filed that sets forth the process by which the debtors formed their opinion of the value of the subject real property and why that amount was amended.

Additionally, the trustee notes that the amount of the claim of the secured creditor was increased. That is based on a recalculation of the principal amount the creditor had stated was owed, plus the arrears as calculated up the date of filing. It does appear, now that the Proof of Claim was filed, that the actual amount of this claim is \$340,893.47, an amount slightly lower than that calculated by the debtors.

Debtors also state that the Amended Schedule B was filed in error and is concurrently being corrected, and that no assets should have been omitted from the originally filed Schedule. Debtors state that, based on all of the information available at this time, the distribution to the unsecured, Class 7 creditors should be slighter higher than set out in the current plan. Debtors propose that this can be dealt with as an Additional Provision in the Order Confirming Plan. If there are tax refunds, much of this additional amount will be paid due to the trustee receiving those refunds. Debtor requests additional time to discuss this matter with the trustee.

### **REVIEW OF DEBTORS' DECLARATION**

In Debtors' Supplemental Declaration, the Debtors attempt to account for the previously unexplained increased valuation of Debtors' real property. Dckt. No. 54. Debtors state under the penalty of perjury that, prior to when this case was filed, Debtors reviewed the Schedules and Statements filed in this case, including Schedule A - Real Property. At that time, Debtors had reviewed online information about the value of the real property located at 5000 Lena Way, Fair Oaks CA 95628.

Debtors state that, although Debtors believed at that time that the market value was higher than the amount the property would actually sell for, Debtors relied on that valuation. After this case was filed, Debtors contacted

a real estate broker, Karene G. Schneider. Ms. Schneider allegedly gave Debtors a Comparable Market Analysis for reviews; Debtors state that some of the information that given to Debtors is shown in Exhibit D filed with this Motion. Debtors state that they reviewed the information provided by Ms. Schneider, considered the properties noted in those documents and, based upon that information and their own personal knowledge of our neighborhood, including condition of Debtors' property, Debtors believe that the market value of the real property is \$435,000, not the previously stated amount of \$479,896 that was "based solely on the online resource."

Additionally, in their Declaration, Debtors address Mr. Vosberg's new position as an "independent contractor," and Debtors' inability to provide an accurate statement of new income, expenses, and taxes associated with Mr. Vosberg's position.

The Debtors have acknowledged that there are remaining issues regarding the proposal of a new dividend to the unsecured claim holders, a provision of which has not been proposed by Debtors to be incorporated in the order confirming the plan. Debtors have also not provided clarification on Debtors' 2013 tax return refund of \$5,287.00, and whether those funds would be contributed into the plan. Additionally, no Amended Schedule B listing including the allegedly erroneously omitted assets (Cash \$155.00; Chase Checking \$179.30; Chase Savings \$.60 cents; Optimum Bank \$1,200.00; 3 Firearms, 12 gauge shotgun, .30-06 rifle, .40 caliber pistol all valued at \$700.00; Kayak \$150.00; 34 shares of stock in American Airlines \$1,291.66; Penny Stocks \$.28 cents 2 great Pyreness, not AKC registered; 1 domestic cat valued at \$500.00) has been filed.

The Debtors requested additional time to resolve some of these issues and the court continued the hearing on the matter to November 18, 2014.

#### **DEBTORS' SUPPLEMENTAL DECLARATION**

Debtors filed a second supplemental declaration in response to the Trustee's Objection to correct the prior declaration filed on September 23, 2014.

The Supplemental Declaration provides the following:

1. Debtors filed an Amended Schedule I on August 15, 2014. The income state on Schedule I was correct; however, counsel for Debtors inadvertently carried over the prior employment description of Mr. Vosberg, incorrectly stating that his occupation was still "truck driver;" when he actually lost his employment soon after the case was filed. As of the time of the Amended Schedule I, Mr. Vosberg work as an independent contractor insurance agent for Aflac Insurance.
2. Debtors declare that the change of employment has been correctly stated on Amended Schedule I filed on October 21, 2014. The income remains the same, but the place of employment is correct.
3. Debtors assert that employment as an insurance agent will allow the plan to be funded and allow for the proposed additional increase in payments that will occur as of the twenty-first (21) month of the plan. Debtors anticipate that income from sales will increase, and there will be increasing residual payments

from this employment for past sales and renewals.

## **DEBTORS' SUPPLEMENTAL RESPONSE**

Debtors provide the following additional information in response to the Trustee's Objection:

1. Debtors state that they have worked with the Trustee towards a resolution and have tentatively agreed upon a settlement, dependent on court approval.
2. Debtors filed Amended Schedules B & C on September 30, 2014 and Amended Schedule I on October 21, 2014. Debtors also filed their Supplemental Declaration in response to the Trustee's Objection on November 4, 2014. These documents were to resolve the Trustee's concerns over "best efforts" and Debtors' "ability to pay" plan payments.
3. Debtors submitted a proposed Order Confirming Plan that incorporates the resolutions to the "best efforts" and "ability to pay" issues and the concerns regarding liquidation analysis. Debtors propose to increase payments into the plan at a later date and agree to submit tax refunds if they become owed to the Debtors. The Debtors can increase their plan payments due to Mr. Vosberg's employment and expected increases in future income.
4. Debtors propose adding the following Additional Provisions to the Plan, as set forth in the proposed Order Confirming Plan:
  - a. Plan Payment Provisions
    - i. Section 6.01- Additional Provisions for Section 1.01, shall be replaced with the following: Payments into the plan shall be: \$3,136 per month for 4 months, then \$3,250 per month for 16 months, then \$3,523 per month for 40 months.
  - b. Distribution to Class 7 Creditors
    - i. Paragraph 2.15 of the Plan shall provide that Class 7 claims shall receive no less than a 68% dividend.
  - c. Tax Refund Provisions
    - i. At the same time the Debtors file state and federal tax returns with the respective agencies, copies of said returns shall be served on the Chapter 13 Trustee. The Debtors shall file a certificate of service attesting to such timely service on the Chapter 13 Trustee.
    - ii. All federal and state tax refund checks received during the term of the Plan shall immediately upon receipt be endorsed over to the Chapter 13 Trustee for deposit in the Trustee's Chapter 13 account. The Debtors shall not receive electronic payment of any tax refunds during the term of the plan.
5. Debtors state that the Trustee agrees that the Order Confirming Plan, as proposed, resolves all outstanding objections.

## **DISCUSSION**

The court's decision is to grant the Motion to Confirm, contingent on

**November 18, 2014 at 2:00 p.m.**

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the Chapter 13 Trustee approving the Order Confirming Plan as to form and content. A review of the Trustee's objection and supplemental declarations and responses by Debtors indicates that Debtors have resolved the Trustee's outstanding Objections and the court is amenable to the Debtors adding the proposed sections into the Order Confirming the Plan.

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

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

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 15, 2014 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.

35. [14-28797](#)-C-13 DALE/SHEILA PETITT  
BLG-1 Bruce Charles Dwigins  
**Thru #36**

MOTION TO VALUE COLLATERAL OF  
GREEN TREE SERVICING, LLC  
10-7-14 [[16](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 7, 2014. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of Green Tree Servicing, LLC, "Creditor," is denied without prejudice.</b>
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The Motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 1087 Moss Creek Road, Redding, California. The Debtors seek to value the property at a fair market value of \$159,000.00 as of the petition filing date. As the owners, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

#### **CREDITOR IDENTIFICATION AND NOTICE**

From the evidence presented, the court cannot identify the correct Creditor subject to the instant Motion. Debtor filed the Motion as against Green Tree Servicing, LLC. Debtors have not attached a Deed of Trust or a copy of the Note. There is no proof of claim filed for the secured claim at

**November 18, 2014 at 2:00 p.m.**

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issue. Debtors did not provide evidence that the Note and Deed of Trust were transferred to Green Tree Servicing, LLC or that Green Tree Servicing, LLC is a servicer with authority to act on behalf of the loan holder.

The court cannot to adjust the legal rights of a secured creditor when it cannot determine who is the proper secured creditor subject to the motion. Additionally, the Motion and all supporting documents were served on Green Tree Servicing LLC, not the actual secured creditor. For these reasons, the motion is denied without prejudice.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 14, 2014. Fourteen days' notice is required. That requirement was met.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors' Plan relies on the Motion to Value Collateral of Green Tree Servicing LLC. If this motion is not granted, the Plan does not have sufficient monies to pay the claim in full. Debtors will not be able to make plan payments or comply with the Plan as required under 11 U.S.C. §1325(a)(6).

At the hearing on November 18, 2014, the court is deny Debtors' Motion to Value the secured claim of Green Tree Servicing, LLC.

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.