

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 8, 2015 at 2:00 P.M.

1. [15-24101](#)-C-13 EBONY HUDSON OBJECTION TO CLAIM OF JWP
DPC-1 Michael Croddy LENDERS, CLAIM NUMBER 18
10-19-15 [[19](#)]

Final Ruling: No appearance at the October 19, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, October 19, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

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

<p>The Objection to Proof of Claim number 18-1 of JWP Lenders is sustained, and the claim is disallowed in its entirety.</p>

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of JWP Lenders ("Creditor"), Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$4,287.93. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is September 23, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 8.

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).

Discussion

The deadline for filing a Proof of Claim in this matter was September 23, 2015. The Creditor's Proof of Claim was filed October 1, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of JWP Lenders, Creditor filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 18-1 of JWP Lenders is sustained, and the claim is disallowed in its entirety.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is \$599 delinquent in plan payments to the Trustee under the terms of the proposed plan and \$2,997 under the plan confirmed May 26, 2015.
2. Debtor is surrendering the only vehicle listed on Schedule B. Debtor resides in Sacramento and works in Plymouth, CA, a distance of approximately 40 miles. Additionally, the debtor states on Schedule J that he is between living quarters and is living in hotels and with friends. Debtor projects \$950 rent expense in the future.

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 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).

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 20, 2015. 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 purchase a 2014 Chevrolet Impala LT Sedan with 15,000 miles, which the total purchase price is \$16,634.41 with 15.99% interest, with monthly payments of \$330.36. Debtor intends to trade in his 2008 Chrysler Sebring for \$1,500, which has broken down.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c) (1) (B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c) (1) (A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In re Clemons, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, 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.

Debtor's monthly plan payment is \$100. Debtor intends to move in with his girlfriend and his rent will decrease from \$945 to \$500 per month. The reduction in rent will facilitate Debtor's monthly car and plan payments.

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, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Nicholas Jay Huggins, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 96.

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 November 5, 2015. Fourteen days' notice is required. That requirement was met.

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

1. Debtor is \$50 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$50 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor proposes to complete the plan in 36 months, but the amount of the proposed monthly payments will make the plan complete in 56 months.
3. The plan impermissibly modifies Nationstar's debt secured solely by the debtor's principal residence.
4. Debtor fails to provide for the \$1,005 IRS priority tax debt.

5. Debtor does not provide for the secured claim of Ally Bank (Claim #2).

Debtor's Opposition

To address the Trustee's concerns, the Debtor has filed a second Amended Plan set for confirmation hearing on January 12, 2016.

Discussion

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of US Bank, N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 610 Elizabeth Street, West Sacramento, California. The Debtors seeks to value the property at a fair market value of \$90,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$91,996.00. US Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$1,700.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Trustee's Objection

The Claims Docket reflects that Creditor has not filed a proof of claim. There is no allowed claim on file for the Debtor to value pursuant to § 506.

Creditor's Statement of Non-opposition

US Bank, N.A., Creditor, does not object to Debtor's valuation of the subject property. Creditor intends to file a proof of claim in the amount of \$1,750.09 prior to the claims bar date of December 23, 2015.

Debtor's Reply

Debtor's reply summarizes the positions of the Trustee and Creditor.

Discussion

The claims docket reflects that Creditor has filed a proof of claim (Claim #1) in the amount of \$1,750.09, thereby resolving the Trustee's objection. This motion is proper under § 506 as there is an "allowed" claim to value.

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' Motion to Value.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of US Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 610 Elizabeth Street, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$90,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The proposed plan does not indicate what the plan payments are for August through October, 2015. The Trustee would have no objection if this error were corrected in the order confirming.

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.

7. [15-28231](#)-C-13 KATHY MUNO
SNM-1 Stephen Murphy

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
10-28-15 [[8](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is denied.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 2757 Hillview Drive, Fairfield, California. The Debtors seeks to value the property at a fair market value of \$312,000 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$341,277. Bank of America, N.A.'S second deed of trust secures a loan with a balance of approximately \$57,849. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Trustee's Objection

The Claims Docket reflects that Creditor has not filed a proof of claim. There is no allowed claim on file for the Debtor to value pursuant to § 506.

Discussion

The claims docket reflects that Creditor has not filed a proof of claim thereby resolving the Trustee's objection. As the Trustee's Objection highlights, this motion is not proper under § 506 as there is no "allowed" claim to value. Therefore, the court will deny Debtors' Motion to Value.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied.

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. The Trustee cannot verify if the plan is proposed in good faith under § 1325(a)(3) without knowing all the reasons for modification. The motion does not describe with particularity what financial circumstances of the Debtor have changed.

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

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 November 4, 2015. Fourteen days' notice is required. That requirement was met.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not 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. Debtor's projected disposable monthly income listed on Schedule J is a negative \$1,046, and Debtor proposes a plan payment of \$150.

4. The Plan does not propose to cure mortgage arrears.
5. The Plan fails to provide a commitment period.
6. Debtor is \$150.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$150.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
7. Debtor did not appear at the First Meeting of Creditors held on December 3, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

Discussion

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

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

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

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

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

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 November 4, 2015. Fourteen days' notice is required. That requirement was met.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not 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. Debtor's projected disposable monthly income listed on Schedule J is \$2,900, and Debtor proposes a plan payment of only \$1,587.36.

4. The Plan does not propose to cure mortgage arrears.
5. The Plan fails to provide treatment of student loan debt.
6. Debtor is \$1,587.36 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,587.36 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
7. Not all debts reported, and proper notice has not been provided to all required parties.

Discussion

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 17, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

The Motion to Sell Property is granted.

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

A. 1557 S. Carmelina Ave., Los Angeles, CA

The proposed purchaser of the Property is SoCal Investment Company, LLC, and the terms of the sale are a price of \$1,275,000.

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

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

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

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

The Motion to Sell Property filed by John E. Mitchell and Shirley A. Mitchell, 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 John E. Mitchell and Shirley A. Mitchell, Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to SoCal Investment Company, LLC, or nominee ("Buyer"), the Property commonly known as 1557 S. Carmelina Ave., Los Angeles, CA ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$1,275,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 44, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Chapter 13 Debtors be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

Final Ruling: No appearance at the December 8, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on October 20, 2015
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The months paid stated in the Debtor's proposed plan differ from the Trustee's records. The proposed plan states that Debtor has paid \$14,470 to the Trustee to date. According to the Trustee's records, the Debtor has paid \$76,548.43. It appears Debtor did not include the lump sum amount of \$62,078.43 received from a sale of real property.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 4, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$85 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$85 is due on November 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. 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).

4. Debtor did not appear at the First Meeting of Creditors held on December 3, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
5. The plan does not propose to pay in claims in Classes 1-6 and proposes a blank dividend to general unsecured in Class 7.

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

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

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

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

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

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 November 4, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor is \$162 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$162 is due on November 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. 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).

4. Debtor did not appear at the First Meeting of Creditors held on October 29, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
5. Debtor's projected disposable income listed on Schedule J is \$113.41, and the proposed plan payment is \$162.00, thus Debtor may not be able to make the payments under the plan.

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

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

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

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

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

16. [15-27153](#)-C-13 D JACK
GLM-3 Mark Wolff

MOTION FOR EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS
11-24-15 [[65](#)]

Also #17

Final Ruling: No appearance at the December 8, 2015 hearing is required.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee,, parties requesting special notice, and Office of the United States Trustee on November 24, 2015. 14 days' notice is required. That requirement was met.

The Motion For Examination and Production of Documents 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 For Examination and Production of Documents is granted.
--

Creditors James and Linda Holloway ("Creditors") seek to examine the debtor and his spouse pursuant to Federal Rule of Bankruptcy Procedure 2004.

The court has issued a chambers order granting the motion. The granting of this motion does not affect the deadline to file a non-dischargeability action under 11 U.S.C. 523(a) and Federal Rule of Bankruptcy Procedure 4007.

The court has issued a chambers 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 Examination and Production of Documents filed by 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 Creditors Linda and James Hollaway may examine the debtor and his spouse pursuant to Federal Rule of Bankruptcy Procedure 2004 and may compel attendance and production of documents pursuant to Rule 2004(c).

17. [15-27153](#)-C-13 D JACK
GLM-4 Mark Wolff

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
11-24-15 [[69](#)]

Final Ruling: No appearance at the December 8, 2015 hearing is required.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee,, parties requesting special notice, and Office of the United States Trustee on November 24, 2015. 14 days' notice is required. That requirement was met.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 -----
-----.

<p>The Motion to Extend Deadline to File a Complaint Objecting to Discharge is denied.</p>

Creditors James and Linda Holloway ("Creditors") seek to extend the deadline to file a complaint objection to discharge.

The court has issued a chambers order denying the motion. As explained in open court on December 2, 2015, Creditors appear to have information sufficient to enable the timely filing of a complaint pursuant to 11 U.S.C. 523(a) and Federal Rule of Bankruptcy Procedure 4007. Accordingly, the Motion to Extend Time is denied.

The court has issued a chambers order substantially in the following form holding that:

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

The Motion to Extend Deadline to File a Complaint

Objecting to Discharge filed by 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 the Motion to Extend Time to File a Complaint and Object to discharge is denied.

18. [15-27555](#)-C-13 MICHAEL/BARBARA
DPC-1 FLORENTINE
Mikalsh Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-5-15 [[22](#)]

Also #19

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 November 5, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection and confirm the plan.
--

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

1. At the 341 meeting held on October 29, 2015, Debtors confirmed that they are current with their mortgage payments. On October 20, 2015, Central Mortgage filed opposition to the plain indicating the Debtors are five payments delinquent. Dkt. 15.

Debtor's Opposition

Debtors have been participating in a trial loan modification and were in fact current on their payments at the time of the 341 meeting. Central Mortgage has since withdrawn its objection to Debtors' plan.

Discussion

All of the Trustee's concerns have been addressed. 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 the Objection is overruled, Debtor's Chapter 13 Plan filed on September 28, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [15-27555](#)-C-13 MICHAEL/BARBARA MOTION TO APPROVE LOAN
MRL-1 FLORENTINE MODIFICATION
 Mikalah Liviakis 11-10-15 [[26](#)]

Final Ruling: No appearance at the November 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and parties requesting special notice, and Office of the United States Trustee on November 10, 2015. 28 days' notice is required.

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 Michael and Barbara Florentine ("Debtor") seeks court approval for Debtor to incur post-petition credit. Central Mortgage Company ("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 \$1,216.26 a month to \$862.33 a month.

The Motion is supported by the Declaration of Barbara Florentine. 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 Michael and Barbara Florentine 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 Michael and Barbara Florentine ("Debtors") to amend the terms of the loan with Central Mortgage Company, which is secured by the real property commonly known as 8976 Sonoma Valley Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 28.

Also #21

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Safe Credit Union, "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Honda Civic EX. The Debtor seeks to value the property at a replacement value of \$4,321 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 more than 910 days prior to the filing of the petition, with a balance of approximately \$6,417.72. 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 \$4,321. 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 Safe Credit Union secured by a purchase-money loan recorded against a 2006 Honda Civic EX is determined to be a secured claim in the amount of \$4,321, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$4,321.

21. [15-27955](#)-C-13 JITENDRA/JEANNETTE SINGH
WW-2 Mark Wolff

AMENDED MOTION TO VALUE
COLLATERAL OF SPRINGLEAF
FINANCIAL SERVICES, INC.
11-18-15 [[39](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Springleaf Financial Services, Inc., "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Nissan Sentra EX. The Debtor seeks to value the property at a replacement value of \$2,730 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 more than 910 days prior to the filing of the petition, with a balance of approximately \$5,642.74. 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 \$2,730. 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 Springleaf Financial Services, Inc. secured by a purchase-money loan recorded against a 2006 Nissan Sentra EX is determined to be a secured claim in the amount of \$2,730, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$2,730.

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. Debtors' modified plan no longer propose an increase in plan payments of \$300 beginning the 13th month of the plan, as provided for in the order confirming plan, dckt. 49, in which the Debtor is directed to increase plan payments by \$300 for months 13-60. Trustee is unaware of any change to the confirmed increase.
2. The proposed modified plan does not provide for priority creditor Franchise Tax Board. According to Trustee's records, creditor filed a priority claim, Claim 15-1, on 07/17/15 for \$322.00.

The Trustee's concerns are well-taken, and the court agrees that 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.

23. [15-27566](#)-C-13 JEFFREY/BECKY NEITHERCUTT
KO-1 Richard Chan

OBJECTION TO CONFIRMATION OF
PLAN BY CRHMFA HOMEBUYERS FUND
11-5-15 [[22](#)]

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 November 5, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to overrule the Objection as moot.

Creditor, CRHMFA Homebuyers Fund, holds a purchase money security interest in goods installed in Debtors' home located at 958 K Street, Davis, California, which security interest was perfected by a fixture filing. Debtors are jointly and severally liable to Creditor under a loan in the amount of \$64,725.00. The amount due and owing as of the petition date is \$49,993.90. Debtors' plan relies on a Motion to Value the Collateral of Creditor. Creditor opposes confirmation of the Plan on the basis that the chapter 13 plan proposes to address Creditor's claim based on Debtors' asserted valuation of the collateral in the amount of \$4,980.00. Creditor asserts that this valuation is too low and CHF intends to oppose the Motion to Value and offer evidence that the collateral is worth \$16,100.00, more than three times Debtors' valuation amount. Because the collateral and therefore Creditor's claim is worth more than the \$4,980.00 allocated to this claim in Debtors' plan, Debtors have insufficient monthly net income to pay the full value of Creditor's secured claim.

The court notes that Debtors filed a Motion to Value the Collateral of CRHMFA Homebuyers Fund, set to be heard by this court on November 24, 2015. Dckt. 14. Debtors and Creditor resolved that motion by stipulation, in which the parties agreed to the value of the secured claim at \$16,355.00, and which further provided that Debtor would amend the plan to provide for this secured claim. Dckt. 42. The court further notes that on November 20, 2015, Debtors filed an amended plan in which Debtors value the Creditor's interest in its collateral at \$16,355. Dckt. 40.

The basis for Creditor's objection having been resolved by stipulation, 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 the Chapter 13 Plan filed by the Creditor, CRHMFA Homebuyers Fund, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is continued to February 23, 2016 at 2:00 p.m.

This Motion has been filed by The Law Offices of Allan R. Frumkin ("Creditor") to convert this case from one under Chapter 13 to one under Chapter 7.

Creditor asserts that the case should be converted because Debtor, having filed this chapter 13 case on April 13, 2015, has been unsuccessful in confirming a chapter 13 plan for over 6 months. Debtor's attempts are unconfirmable because Debtor is \$40,000 in arrears on his home and cannot afford to save his home. Pursuant to Debtor's schedule F, Debtor owes \$13,750.55 to non-priority general unsecured creditors, and pursuant to Debtor's schedule B and C, Debtor has \$37,349.65 in non-exempt equity available to non-priority general unsecured creditors. Creditor here asserts that (1) there is cause to act; and (2) conversion is in the best interest of creditors.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee, David Cusick, responds to Creditor's motion stating that Debtor has a pending objection to claim to this Creditor's claim, and that Debtor is current to Trustee under the most recent second amended plan with \$13,658.02 paid to date. Debtor's most recent Motion to Confirm was withdrawn on November 2, 2015, and no subsequent motion to confirm has been filed to date.

DISCUSSION

The Chapter 13 Trustee is correct in noting that Debtor's Objection to Proof of Claim of the Law Offices of Allan R. Frumkin, Dckt. 69, is pending, heard on November 24, 2015, and continued to February 23, 2016. Noting that the very creditor to whose claim Debtor is objecting, and further noting that Debtor is current on payments to Trustee under the terms of the second amended plan, the court will continue the instant motion to the same date of hearing.

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

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

The Motion to Convert filed by Creditor the Law Offices of Allan R. Frumkin having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is continued to February 23, 2016 at 2:00 p.m.

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 November 4, 2015. Fourteen days' notice is required. This requirement was met.

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

1. Debtor's plan may not be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor appears to be proposing to pay a debt that may not be secured. Debtor is below median income, proposing to pay \$299 for 60 months. It appears that more money is available to disburse to general unsecured creditors, which are proposed to receive 1%. Class 2 of Debtor's plan lists GM Financial, proposing to pay \$12,179 toward a vehicle that was stolen and totaled. This creditor does not appear to be entitled to secured treatment in this plan. At the 341 meeting held on October 29, 2015, Debtor admitted that she no longer had possession of the vehicle, indicated that after the vehicle was stolen, it was determined a total loss.
2. The plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1),

or the Debtor may not be willing to comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor provides for treatment of her secured mortgage in class 3 of the plan indicating an intent to surrender the property located at 8748 Gessgner Drive, Elk Grove, California. At the 341 meeting held on October 29, 2015, Debtor admitted that she is working on a loan modification with lender and does not wish to surrender her property. It appears the claim was listed in Class 3 in an attempt to postpone payment to the creditor. Further, it appears that the creditor should be provided for in either class 1 or class 4 if the Debtor intends to retain the property.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 4, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of John S. Grill, "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 5356 Ayala Way, Sacramento, California. The Debtors seek to value the property at a fair market value of \$338,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$337,114.49. The second deed of trust secures a loan with a balance of approximately \$44,169.08. John S. Grill's third deed of trust secures a loan with a balance of approximately \$29,000.00. Therefore, the respondent creditor's claim secured by a third deed of trust is completely under-collateralized.

TRUSTEE'S OBJECTION

Chapter 13 Trustee David Cusick opposes the valuation motion pursuant to 11 U.S.C. §§ 506(a) and (d) and Fed. R. Bankr. P. 3012, on the basis that

the Creditor John S. Grill has not filed a claim in this case, and thus there is no "allowed claim" on file for Debtor to value.

DEBTOR'S RESPONSE

Debtor responds to Trustee's motion, stating that nothing in the stated Bankruptcy Code provisions or the Federal Rules of Bankruptcy Procedure require that a proof of claim must be filed prior to the opportunity to be heard on the motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$337,114.49. A second deed of trust secures a claim with a balance of approximately \$44,169.08. Creditor's third deed of trust secures a claim with a balance of approximately \$29,000. Therefore, Creditor's claim secured by a third deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--

(1) such claim was disallowed only under section 502(b) (5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not strip the lien. Even

reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court to value the creditor's secured claim pursuant to § 506(a) is not supported by the Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

(a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of John S. Gill secured by a third deed of trust recorded against the real property commonly known as 5356 Ayala Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$338,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 21, 2015. Amended notice was served on November 12, 2015.

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

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Nationstar Mortgage LLC ("Creditor") seeks court approval for Debtor to incur post-petition credit. Creditor and Debtor, whose claim the plan provides for in Class 4, have agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,584.40 a month to \$1,416.05 a month. The modification will extend the date of maturity of the note from June 1, 2041 to January 1, 2045. The interest rate will remain the same at 5.75%.

However, due to certain deficiencies in the moving papers, the court will not grant the relief requested.

LBR 9014-1(d) provides "Format and Content of Motions and Notices. First, LBR 9014-1(d)(4) requires that in the separate notice, the "notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition."

Here, the notice provided, dckt. 129, states only that a hearing on this instant motion was scheduled for December 8, 2015 at 2:00 p.m. No information is provided to respondents as to whether or when written opposition must be filed, deadlines, names or those to be served with opposition, etc.

Second, LBR 9014-1(d)(7) requires that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e).

Here, the Motion is not supported by a declaration of Debtor or any party establishing the facts alleged, which is generally required to affirm Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

28. [15-28677](#)-C-13 TRINA MCKIE
TLA-1 Thomas Amberg

Thru #30

MOTION TO VALUE COLLATERAL OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT OF THE STATE OF
CALIFORNIA
11-10-15 [[11](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 10, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Employment Development Department of the State of California, "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of a number of assets listed in Debtor's schedule B. The Debtors seeks to value the property at a fair market value of \$0.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor asserts that the Employment Development Department of the State of California ("Creditor") holds a claim in the amount of \$4,978.00 secured by a recorded tax lien. Debtor asserts that based on the value of the assets (\$0.00), the secured claim of Creditor should be valued at \$0.00.

TRUSTEE'S OBJECTION

Chapter 13 Trustee David Cusick opposes the valuation motion pursuant to 11 U.S.C. §§ 506(a) and (d) and Fed. R. Bankr. P. 3012, on the basis that the Creditor has not filed a claim in this case, and thus there is no

"allowed claim" on file for Debtor to value.

DISCUSSION

The Creditor's recorded tax lien secures a claim with a balance of approximately \$4,965.50 filed on March 23, 2015. Exhibit E, Dckt. 14. Debtor avers that the value of the property securing such claim has a fair-market value of \$0.00. Therefore, Creditor's claim secured by a perfected tax lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--

(1) such claim was disallowed only under section 502(b) (5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court to value the creditor's secured claim pursuant to § 506(a) is not supported by the Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

(a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

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

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

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Employment Development Department of the State of California secured by a tax lien recorded against Debtor's property on March 23, 2015, 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 confirm bankruptcy plan.

29. [15-28677](#)-C-13 TRINA MCKIE
TLA-2 Thomas Amberg

MOTION TO VALUE COLLATERAL OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT OF THE STATE OF
CALIFORNIA
11-10-15 [[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.

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 November 10, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Employment Development Department of the State of California, "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of a number of assets listed in Debtor's schedule B. The Debtors seeks to value the property at a fair market value of \$0.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor asserts that the Employment Development Department of the State of California ("Creditor") holds a claim in the amount of \$4,978.00 secured by a recorded tax lien. Debtor asserts that based on the value of the assets (\$0.00), the secured claim of Creditor should be valued at \$0.00.

TRUSTEE'S OBJECTION

Chapter 13 Trustee David Cusick opposes the valuation motion pursuant to 11 U.S.C. §§ 506(a) and (d) and Fed. R. Bankr. P. 3012, on the basis that

the Creditor has not filed a claim in this case, and thus there is no "allowed claim" on file for Debtor to value.

DISCUSSION

The Creditor's recorded tax lien secures a claim with a balance of approximately \$4,965.13 on June 22, 2015. Exhibit E, Dckt. 19. Debtor avers that the value of the property securing such claim has a fair-market value of \$0.00. Therefore, Creditor's claim secured by a perfected tax lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--

(1) such claim was disallowed only under section 502(b) (5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court to value the creditor's secured claim pursuant to § 506(a) is not supported by the

Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

(a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Employment Development Department of the State of California secured by a tax lien recorded against Debtor's property on June 22, 2015, 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 confirm bankruptcy plan.

30. [15-28677](#)-C-13 TRINA MCKIE
TLA-3 Thomas Amberg

MOTION TO VALUE COLLATERAL OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT OF THE STATE OF
CALIFORNIA
11-10-15 [[21](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 10, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Employment Development Department of the State of California, "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of a number of assets listed in Debtor's schedule B. The Debtors seeks to value the property at a fair market value of \$0.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor asserts that the Employment Development Department of the State of California ("Creditor") holds a claim in the amount of \$4,978.00 secured by a recorded tax lien. Debtor asserts that based on the value of the assets (\$0.00), the secured claim of Creditor should be valued at \$0.00.

TRUSTEE'S OBJECTION

Chapter 13 Trustee David Cusick opposes the valuation motion pursuant to 11 U.S.C. §§ 506(a) and (d) and Fed. R. Bankr. P. 3012, on the basis that

the Creditor has not filed a claim in this case, and thus there is no "allowed claim" on file for Debtor to value.

DISCUSSION

The Creditor's recorded tax lien secures a claim with a balance of approximately \$5,568.11 on October 5, 2015. Exhibit E, Dckt. 24. Debtor avers that the value of the property securing such claim has a fair-market value of \$0.00. Therefore, Creditor's claim secured by a perfected tax lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--

(1) such claim was disallowed only under section 502(b) (5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court to value the creditor's secured claim pursuant to § 506(a) is not supported by the

Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

(a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Employment Development Department of the State of California secured by a tax lien recorded against Debtor's property on October 5, 2015, 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 confirm bankruptcy plan.

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 November 4, 2015. 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.
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Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that:

1. Debtor is \$2,290 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,290 is due November 25, 2015. The case was filed on March 11, 2015, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtor does not appear to intend to comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor is proposing to surrender real property located at 6441 Hogan Drive, Sacramento, California, in Class 3 of the plan. Debtor's schedule A reports the current value of the property to be \$304,000 and liens on the property total \$240,000. It appears the Debtor is proposing to surrender property with approximately \$64,000 in equity. When examined at the 341 meeting held on October 29,

2015, Debtor indicated his intent is to retain the property and will be renting the property out expecting to earn approximately \$4,200 per month. Debtor also indicated that the mortgage is in arrear approximately \$40,000, which Debtor is attempting to cure by means of a loan modification. Debtor offers no payments toward the secured claim held by Bank of America, nor does it appear that the Debtor has the ability to make payments.

3. According to Trustee's calculations, the plan will complete in 222 months and not the proposed 60 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).
4. Debtor's plan may not be Debtor's best efforts, 11 U.S.C. § 1325(b). On Schedule I, Debtor reports \$2,300 in rental income. At the 341 meeting held on October 29, 2015, Debtor indicated that he anticipates receiving \$5,600 per month from rental income.

Trustee has raised valid and legitimate concerns as to Debtor's plan, as illustrated in the inconsistencies between Debtor's schedules and the 341 meeting held on October 29, 2015. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

PREVIOUSLY

This matter came on calendar before this court on October 27, 2015, at which time the court continued the date of hearing.

MOTION

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

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

1. The Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b).
 - a. Under the confirmed plan, Debtors' payments are \$630 for 6 months, then \$780 for 54 months. Debtor is currently delinquent \$1,525 and now proposes to reduce plan payments to \$600. Debtor proposes plan payments of \$13,955 total paid in through August 10, 2015, then \$600 for the remainder of the plan beginning

September 25, 2015. Debtor has paid a total of \$13,995 through August 10, 2015, but then paid \$780 on September 10, 2015, and \$600 on October 9, 2015. Debtor has paid in \$180 more than proposed in the plan. This can be corrected in the order confirming.

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

- 2. The proposed plan decreases the percentage to unsecured creditor from 15.82% to 0% based on Debtors' income and expenses. The percentage to unsecured creditors under the confirmed plan is 0%. Debtors' proposed an increase to 15.82% in their prior proposed modified plan, dckt. 25, which was denied. Therefore, the instant modified plan proposes to alter the percentage to unsecured creditors, which is incorrect.

The court agrees that Debtors have failed to sufficiently document their best efforts to the court. Although Debtor Michael Lawrence states in his declaration that he will file an amended schedule I reflecting the most up-to-date income of debtors by the date of hearing, the docket shows that no such amended schedule has been filed. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

CREDITOR'S OPPOSITION

Creditor Schools Financial Credit Union is the holder of two claims. One, a claim secured by second deed of trust on Debtor's residence. Second, an unsecured claim for a line of credit. Creditor objects to confirmation of the proposed modified chapter 13 plan on the following basis:

1. Debtor's plan is not feasible, 11 U.S.C. § 1325(a)(6). Debtor has not provided current income and expense information. Debtor's declaration does not provide any specific information regarding her current income, stating only that "The primary source of my income for my household is from my pension and part time income as an adjunct professor and I anticipate this income source for the remainder of the plan."

- a. Debtor filed an unauthenticated schedule J, the information in which is not consistent with statements in her declaration.
 - b. Debtor's adult son is not listed as a dependent, however Debtor states that her son has a mental illness and that she supports him, and that she has a domestic support obligation to him. In her prior case and on tax returns for 2010 and 2011, Debtor listed an adult son as a dependent. At the meeting of creditors in this case, Debtor states that he is still a dependent and that he is living with her. This casts doubt on Debtor's ability to make payments under the plan.
 - c. Debtor states in her declaration that she buys food and clothing for her grandchildren when her son is not working. Debtor states that she makes up his rent and utilities at the rental property when he does not pay them. Debtor does not list this support as an expense on her schedules.
 - d. Debtor's declaration states that her rental property requires more work than sellers disclosed, and states that emergencies repairs have been made in the past and are still necessary from time to time. Debtor does not provide any specific information as to these repairs, nor is information provided as to anticipated future repairs. Debtor has not listed any anticipated expenses for the rental property on her schedule J, and no allowance has been made for maintenance or utilities.
 - e. Debtor was to pay \$3,200 per month for two months, then \$3,210 per month thereafter. She now proposes to pay \$3,260 for the remaining 28 months. Creditor asserts that there is no evidence or explanation by Debtor as to how she will make the higher payments set forth in this modified plan when she was unable to make the lower payments.
2. Debtor's plan was not filed in good faith, 11 U.S.C. § 1325(a)(3). Creditor points out that the total amount of unsecured debt listed by Debtor in Class 7 in prior plans was \$76,828.72. The total debt in Class 7 now is \$39,546.93, which is equal to the amount of unsecured claims filed. Debtor proposes to pay the Class 7 debts zero. However, Debtor proposes to retain a rental property, and Debtor has not listed any rental income currently for this property. Furthermore, the history for this property shows a lack of consistent income sufficient to pay the expenses of this property. Creditor asserts that Debtor is attempting to provide support for her adult son and his children at this rental property at the expense of her unsecured creditors. Creditor asserts that Debtor's failure to include a detailed statement of income and expenses, and in particular the income and expenses of this rental property, is a breach of her duty under 11 U.S.C. § 521(a)(1) and that this constitutes bad faith.

CHAPTER 13 TRUSTEE'S OBJECTION

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

1. Debtor is \$10 delinquent in plan payments to the Trustee to date. According to the proposed modified plan, payments of \$99,137 have become due. Debtor has paid \$99,127 to Trustee with the last payment posted on November 2, 2015 in the amount of \$100.
2. Debtor has not filed an amended schedule I. Debtor's modified plan proposes to increase the plan payment from the current \$3,210 to \$3,260. Debtor's exhibits in support of the Motion to Modify, Dckt. 95, indicated updated schedule I attached as an exhibit. Trustee is unable to locate this exhibit, and Debtor's updated schedule J reflects a reduced monthly income of \$5,023.80, as compared to Debtor's prior schedule J where the monthly income is \$5,264.32. Debtor's declaration provides no explanation for the reduction in income.

DEBTOR'S RESPONSE

Debtor responds to Creditor's and Trustee's objections, stating that Debtor will pay the delinquent \$10.00 or can be corrected in the order modifying plan, and submits a supplemental declaration to explain the changes in income and expenses.

Debtor's supplemental declaration, dckt. 114, states that Debtor's son and wife are in divorce proceedings, and Debtor is thus aiding in paying the rent and utilities for her four grandchildren. Debtor's son is unemployed, but has recently found a job on October 27, 2015, and that he received his first paycheck on November 6, 2015.

Furthermore, Debtor provides that she works as an adjunct professor for eight months per year and that is how Debtor makes up the deficit. Debtor earns an average of \$1,000 per month. During the summers, Debtor generally gets by on unemployment. Since her original filing, Debtor's pension has increased to \$3,500, so Debtor has an extra \$250 left after she makes the chapter 13 payment of \$3,250. The additional \$250 per month is what Debtor has been using to help with her grandchildren.

DISCUSSION

Although Debtor has filed a supplemental declaration explaining discrepancies in expenses and income, the court finds the supplemental declaration to be lacking and insufficient to address the concerns of the Creditor. Creditor specifically points out a lack of information provided by the Debtor as to Debtor's rental property. Debtor's supplemental declaration does not raise what income Debtor receives from the rental property or the anticipated expenses associated with it. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2015. Forty-two days' notice is required. That requirement was met.

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

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

PREVIOUSLY

At the previous hearing on November 24, 2015, the court continue the hearing to 2:00 p.m. on December 8, 2015. The court further ordered the Debtor to file and serve a declaration on or before December 2, 2015.

DISCUSSION

Chapter 13 Trustee, David Cusick, opposes Debtors' motion to confirm plan on the basis that:

1. Debtors' motion does not comply with LBR 9014-1(d)(7). Debtors have failed to file a declaration in support of the motion and the first amended plan, providing testimony of the debtors' ability to comply and perform pursuant to the terms of the proposed plan and motion. While Debtors have provided as exhibits amended schedules A, B, C, & D, Debtor has not provided

a declaration to prove or assist in proving to the court the nine separate details required under 11 U.S.C. § 1325(a) have been met.

2. In section 6 of the plan, Debtors appear to propose plan payments of one payment of \$320 on September 25, 2015, and \$410 per month for 59 months, although the plan does not clearly state this where it states, "Debtors have included said payment in their TPI calculation." Trustee is not opposed to clarifying plan payments in the order confirming.

The court docket reflects that Debtor has failed to file an explanatory declaration in support of the Motion to Confirm Plan, despite the court's order to do so by December 2, 2015. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The additional provisions of Debtor's modified plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). The provisions call for the secured claim of Placer County Tax Collector to be paid with no payments to other secured claims until July 25, 2016. The additional provisions propose disbursements be suspended to all other creditors, including class 1 mortgage and arrears payments through month 35, and that Debtor's \$6,350 monthly plan payment be divided between Trustee fees, Placer County, who will receive a dividend of not less than \$5,267.61 and administrative expenses. Any remaining funds are to be paid to Placer County as well. Under both the confirmed and modified plan, California Bank and Trust, holding a second deed of trust on Debtor's residence, is provided for as a Class 1 claim with a monthly dividend of \$300. Wells Fargo holding a first deed of trust on Debtor's residence is provided for in Class 2

with a monthly dividend of \$2,727.28 under the confirmed plan and \$2,526.75 beginning month 36 in the proposed modified plan. Debtor has no equity in the residence according to the schedule A, and the modified plan does not provide for any kind of adequate protection payment to these creditors. Where Debtor intends to suspend disbursements, the additional provisions may not provide adequate notice to creditors.

2. Debtor's modified plan proposes to add Franchise Tax Board as a Class 5 priority creditor when the creditor filed a secured claim for \$6,650.35 due to unfiled tax returns for tax years 2005 and 2006. Even if the claim is priority due to the unfiled returns, the creditors is entitled to interest where claimed security.

The Trustee raises legitimate concerns as to Debtor's modified plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 5, 2015. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Creditor, CitiMortgage, Inc., holds a claim secured by real property described as 3039 Union Street, Rocklin, California. Creditor opposes confirmation of the Plan on the basis that:

1. Debtor's plan modified the rights of a creditor whose claim is secured only by a security interest in real property that is the Debtor's principal residence, 11 U.S.C. § 1322(b)(2). Creditor objects to the treatment of its claim because it does not provide for a complete cure of the arrears owed to Creditor.
2. Debtor's plan does not provide for the full amount of Creditor's prepetition arrears in the amount of \$34,236.63, and therefore does not comply with 11 U.S.C. § 1322(b)(5). In order for Debtor to cure the arrears within 60 months, Creditor must receive a minimum monthly arrearage dividend of approximately \$570 rather than the \$498.28 currently provided for under paragraph 2.08(a) of the plan.

3. Debtor is not able to make proposed payments under the plan, 11 U.S.C. § 1325(a)(6). IN order to properly provide for the arrears, Debtor would need to increase plan payments by \$71.00 per month. However, the amount of disposable income listed in Debtor's schedules is the exact amount of the current plan payments. Schedule I lists Debtor's gross wages from employment as \$3,230 but does not provide for any payroll deductions for withholding for taxes. Taking into account the increase in plan payments necessary to cure the arrears and the additional payroll deductions not listed on schedule I.
4. Creditor has an allowed secured claim and has not accepted the plan, 11 U.S.C. § 1325(a)(5)(A). The treatment of Movant's claim is contingent upon several factors but mainly whether Debtor secures a loan modification from Creditor. To date, Debtor does not have a loan modification application pending with Creditor.

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, CitiMortgage, Inc., 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.

37. [15-24192](#)-C-13 ERIC FRANCOIS
AMC-2 Richard Jare

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-23-15 [[51](#)]

CENTRAL MORTGAGE COMPANY VS.

Also #38

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The court continued the hearing on the Motion for Relief from the Automatic Stay to today to be conducted in conjunction with the hearing on the Motion to Confirm.

MOTION

Central Mortgage Company seeks relief from the automatic stay with respect to the real property commonly known as 1827 Fairfield Avenue, Fairfield, California. The moving party has provided the Declaration of Leslie Crider to introduce evidence to authenticate the documents upon which

it bases the claim and the obligation owed by the Debtor.

The Crider Declaration states that the Debtor has not made 4 post-petition payments, with a total of \$12,264.41 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$539,466.54 (secured by movant's first trust deed), as stated in the Declaration, while the value of the property is determined to be \$330,000, as stated in Schedules A and D filed by Debtor.

TRUSTEE'S RESPONSE

The debtor is delinquent \$2,000 under the plan. The debtor has paid a total of \$6,222 to date.

DEBTOR'S OPPOSITION

The motion for relief is not supported by competent, admissible evidence. Specifically, pages five and six of the Crider declaration appears to be boiler plate.

Movant is receiving sufficient adequate protection as the Trustee disburse \$1,600 per month to Movant.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, aside from the deficiencies noted by the Crider Declaration in post-petition payments, Debtor has failed to submit a plan and Motion to Confirm Plan to the satisfaction of the Chapter 13 Trustee, Creditor, and the court. The court takes issue on numerous basis with the proposed plan. However, relevant to the instant motion, Debtor has failed to provide Creditor with adequate protection, and has not shown the court that a loan modification has been attempted with Creditor despite representation otherwise.

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 Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Central Mortgage

Company, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1827 Fairfield Avenue, Fairfield, California.

No other or additional relief 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)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Creditor, Central Mortgage Company, and Chapter 13 Trustee, David Cusick, oppose the instant Motion to Confirm Plan.

CHAPTER 13 TRUSTEE OPPOSITION

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

1. Debtor may have failed to file all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. § 1308 and 1326(a)(9). The most recent Proof of Claim filed by the Franchise Tax Board indicates that state returns have not been filed for tax years 2012, 2013, and 2014. The Trustee received by email copies of state tax returns for 2011 on October 1, 2015, and 2014 on October 26, 2015. The returns are not stamped as received by the FTB and do not indicate a signature date. Trustee is not certain that they have been filed with the taxing agency. Trustee has not received any state returns for 2012 or 2013 to date.
2. Creditor Central Mortgage Company filed a Motion for Relief from Automatic Stay on September 23, 2015, dckt. 51. The matter was heard

by the court on November 15, 2015, and continued to the date of this hearing.

CREDITOR OPPOSITION

Creditor, Central Mortgage Company dba Central Mortgage Loan Servicing Company, opposes the instant motion on the basis that Debtor's motion appears to have been filed to further delay and hinder Central Mortgage's rights with regard to the Property. First, central to Debtor's proposed plan is a proposed request for loan modification. However, Debtor is not a borrower on the note or Deed of Trust. At most, Debtor holds a 25% community property interest on the subject property. Second, this is the third bankruptcy petition filed that impacts the subject property and Central Mortgage's rights. The other two bankruptcy cases were dismissed after Debtor's wife failed to comply with court orders. Third, while the petition was filed on May 26, 2015, no loan modification request has been submitted. Finally, Debtor's proposed adequate protection payments of \$2,250 per month will provide adequate protection. It appears that Debtor is attempting to improperly modify the terms of the subject loan in violation of 11 U.S.C. §§ 1322(b) and 1325(a)(5), and that the bankruptcy was not filed in good faith in violation of 11 U.S.C. § 1325(a)(3)(7).

DISCUSSION

The court agrees that Trustee and Creditor have raised valid concerns as to the confirmability of Debtor's plan. Debtor has not shown to the satisfaction of the Trustee or the court that the tax returns were indeed received by the Franchise Tax Board and thus filed. Second, Creditor points out a number of concerns as to Creditor's secured interest. The court is concerned that despite Debtor's representations that a loan modification would be submitted by November 9, 2015, Debtor has not attempted to obtain a loan modification. Furthermore, the court is not satisfied that the proposed payments to Creditor in the amount of \$2,250 per month are sufficient to provide Creditor with adequate protection.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's proposed plan decreases plan payments in month 33 from \$2,672.89 to \$2,599.81 for the remainder of the plan without explanation. While the plan proposes no less than 0% to unsecured claims, if the plan payment is not reduced this extra money can go to unsecured claims.
2. Debtor is proposing to reduce the monthly dividend to Class 2 creditor Fast Auto & Payday Loans to less than \$15.00, contrary to FRBP 3010 that provides payments normally will be \$15.00 or more unless the last payment, and potentially contrary to 11 U.S.C. § 1325(a)(5)(B)(iii)(1) which requires equal periodic payments.
3. Debtor's notice provides conflicting times for the hearing. The caption states 2:00 p.m. while the hearing time is stated as 1:30

p.m. in the body of the notice.

4. Debtor's budget appears too low. \$450.00 a month is budgeted for food and housekeeping supplies for a family of 4, compared to \$800 earlier. Medical and dental expenses are budgeted at \$100 compared to \$150 earlier, where health issues are noted in Debtor's declaration.

DEBTORS' RESPONSE

Debtors respond to Trustee's opposition, providing the following:

1. Debtors' proposed plan is based on Debtors' current financial situation. Debtor lost his job and is not receiving unemployment benefits. The plan payments were reduced by \$73.08 starting month 33 so that Debtors can have additional funds for household expenses such as food and medical. If Debtor Raymond Wolfe is able to secure employment during the term of the plan, Debtors will file an amended schedule I and J within 60 days of the start of employment.
2. Debtors do not oppose increasing the monthly dividend to Class 2 Creditor Fast Auto & Payday Loans from \$12.00 to \$15.00.
3. An amended notice of hearing correcting the hearing time from 1:30 p.m. to 2:00 p.m. in the body of the notice was filed and served on November 23, 2015.
4. Debtors' budget is low, and Debtors have cut their expenses and are living on a tight budget so they can make their plan payments and complete their case. The reason the plan payment was reduced in month 33 was to provide Debtors with a little room in their monthly budget.

DISCUSSION

While Debtors have addressed a number of Trustee's concerns to the satisfaction of the court, including explaining the reduction in plan payments starting month 33, increasing the amount paid to Class 2 Creditor Fast Auto & Payday Loans to \$15.00 per month, and serving an amended notice, the court remains concerned as to the feasibility in the reducing Debtors' expenses. Debtors fail to address how they expect to reduce food and housekeeping expenses in half from \$800 to \$450 for a family of four, and reducing necessary medical expenses from \$150 per month to \$100 when medical/health issues have already been identified by Debtors.

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.

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 November 2, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor has not clearly defined what the plan payments are for September and October 2015. Trustee believes based on Debtor's explanation in the Motion and Declaration that the payments for the months in question are \$0.00, as Debtor has been unemployed since June 2015 with unemployment compensation beginning October 2015. Trustee requests that the Order Confirming contain clarifying language stating the total paid to Trustee through October 2015 is \$59,580 with plan payments of \$465 commencing November 25, 2015 for the remainder of the plan.

The court is satisfied that Trustee's proposal to include clarifying language as to the proposed payments is necessary, and is amenable to such action, contingent upon Debtor's confirmation that \$0.00 plan payments were intended for the months of September and October 2015. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is confirmed and the proposed Chapter 13 Plan filed November 2, 2015 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language: "IT IS FURTHER ORDERED that the total paid to Trustee through October 2015 is \$59,580 with plan payments of \$465 commencing November 25, 2015 for the remainder of the plan." Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. [15-27798](#)-C-13 THOMAS/SAMMY BOONE
DPC-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-12-15 [[14](#)]

Final Ruling: No appearance at the December 8, 2015 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to overrule the Objection to Confirmation, and good cause appearing, **the court overrules as moot the Chapter 13 Trustee's Objection to Confirmation.**

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

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

An Objection to Confirmation having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041,

IT IS ORDERED that the Objection is overruled as moot.