

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

December 15, 2015 at 2:00 P.M.

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1. [15-24310](#)-C-13 ANGELO/LISA OLIVA MOTION TO CONFIRM PLAN  
TTF-5 Thanh Thuong Foxx 10-21-15 [[77](#)]

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

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

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

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

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

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

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

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor is \$11,576.36 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$6,009.00 is due on December 25, 2015. Debtors have paid \$24,477.64 into the plan to date.
2. Debtor has not filed an amended Schedule J showing the ability to make the increased plan payment. The Trustee has not received any pay advices from Debtor's new employment to date.

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

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

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.

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).

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 overrule the Objection.**

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

1. The plan fails the liquidation analysis. Debtor lists a disputed claim against Rose Ferris with a potential value of \$125,000 and proposes to pay less than this amount to creditors.

**Debtor's Opposition**

Debtor has elected not to pursue this claim because he cannot afford the litigation deposit, the result is uncertain, and there may be no significant benefit to him.

**Discussion**

Debtor has addressed the Trustee's sole concern. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by 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 October 16, 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.

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.

The Motion to Reconsider 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.

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 27, 2015. Fourteen days' notice is required. That requirement was met.

**The court's decision is to continue the Motion to Reconsider to January 12, 2016 at 9:30 a.m.**

Debtor moves the court to reconsider judgment on Debtor's objection to claim #9 and vacate orders on said claim. Debtor amends the motion to reconsider/motion to vacate filed on September 30, 2015 (dkt. 143) to more clearly identify the order for which relief is sought.

### **Legal Standard**

Rule 60(b)

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;

it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

### **Discussion**

The initial Motion to Reconsider was heard on November 3, 2015 at 9:30. Because the factual background of this matter is extensive, the court's decision is to continue the Motion to Reconsider to January 12, 2016 at 9:30 a.m. to be heard by Judge Klein.

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

**IT IS ORDERED** that the Motion to Reconsider is continued to January 12, 2016 at 9:30 a.m.

4. [15-28112](#)-C-13 CAREN ARMSTRONG  
DPC-1 Michael Croddy

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
11-3-15 [[13](#)]

Also #5

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

<b>The court's decision is to sustain the Objection.</b>
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#### SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on April 15, 2013 (Case No. 12-42122). Debtor filed this Chapter 13 case on October 18, 2015.

#### DISCUSSION

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

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-28112.

5. 15-28112-C-13 CAREN ARMSTRONG  
DPC-2 Michael Croddy

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-24-15 [[17](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. The plan relies on a motion to value collateral being filed for Elite Acc Corp.
2. The additional provisions of the plan refers to entry of discharge. Debtor is not entitled to a discharge in this case due to a previous chapter 7 discharge.

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.

6. [15-27921](#)-C-13 CATHY NOVARESI  
BF-5 Mikalah Liviakis  
OBJECTION TO CONFIRMATION OF  
PLAN BY CENLAR FSB  
11-18-15 [[18](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 18, 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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<b>The court's decision is to overrule the Objection.</b>
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Cenlar FSB opposes confirmation of the Plan on the basis that Cenlar FSB is the holder of a secured claim recorded against property in which Debtor claims an interest, and the plan understates the pre-petition arrearage owed on that debt.

### **Debtor's Opposition**

Cenlar FSB objects on grounds that the Debtor understates the pre-petition arrearage owed to Cenlar in her Chapter 13 Plan. While this may be true, this objection is not necessary because the amount paid to a creditor is controlled by the proof of claim, not the dollar amount stated in the Chapter 13 Plan.

### **Discussion**

The failure of a Chapter 13 plan to provide for a secured debt does not preclude confirmation of the plan. 11 U.S.C. § 1325. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by Cenlar FSB 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 October 9, 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.

7. [15-26222](#)-C-13 JOHN/ROBYN BURWELL  
MB-1 Michael Benavides

MOTION TO VALUE COLLATERAL OF  
ABILINE TEACHERS FCU  
11-3-15 [[33](#)]

Also #8

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 3, 2015. Twenty-eight days' notice is required.

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

<b>The Motion to Value secured claim of Abiline Teachers FCU, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2011 Dodge Ram 1500. The Debtor seeks to value the property at a replacement value of \$12,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$15,962.43. 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 \$12,500. *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 Abiline Teachers FCU secured by a purchase-money loan recorded against a 2011 Dodge Ram 1500 is determined to be a secured claim in the amount of \$12,500, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$12,500.

8. [15-26222](#)-C-13 JOHN/ROBYN BURWELL MOTION TO CONFIRM PLAN  
MB-2 Michael Benavides 11-3-15 [[28](#)]

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

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

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

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

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

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

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan relies on a pending motion to value collateral of Abiline Teacher's FCU.
2. Debtor failed to provide a breakdown of rental income and expenses as requested by the Trustee.

3. Debtor amended Schedule I to add income from a student loan, and the Trustee is not certain when this loan was taken out.
4. Amended Schedule J reflects disposable monthly income of \$1,309.15 while the proposed monthly plan payments are \$1,215. Thus, it appears that the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b).

### Discussion

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

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

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

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

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

9.	<a href="#">15-25723</a> -C-13	LAWRENCE BOUIE	MOTION TO CONFIRM PLAN
	SJS-1	Scott Johnson	11-3-15 [ <a href="#">35</a> ]
	DEBTOR DISMISSED 11/9/2015		

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.

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

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

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 3, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

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

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

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

**Trustee's Response**

The Chapter 13 Trustee does not oppose confirmation but requests clarification as to the "other monthly income" listed on Schedule 1 (Dkt 33, p. 3).

**Debtor's Response**

The debtor receives \$500 income for *Storage Rent*, as opposed from rent from a roommate, and that the source of her mother's payment arises from a stipend which she pays to her daughter of \$600.

**Discussion**

Debtor has resolved the Trustee's sole concern. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 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.

11.	<a href="#">12-40030</a> -C-13	RICHARD/GLORIE JONES	MOTION TO COMPEL ABANDONMENT
	DBJ-6	Douglas Jacobs	11-24-15 [ <a href="#">110</a> ]

**Final Ruling: No appearance at the December 15, 2015 hearing is required.**

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The Motion to Abandon 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.

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, parties requesting special notice, and Office of the United States Trustee on November 24, 2015. 14 days' notice is required.

<b>The Motion for Motion to Abandon Property is denied.</b>
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After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Richard and Glorie Jones ("Debtors") was withdrawn

on December 8, 2015. Dkt 117.

On account of mootness, the court shall deny the Motion.

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 Abandon Property filed by Richard and Glorie Jones ("Debtors") having been withdrawn,

**IT IS ORDERED** that the Motion to Compel Abandonment is denied.

12.	<a href="#">15-27632</a> -C-13	VICTOR SCOTT AND CHARLA	OBJECTION TO CONFIRMATION OF
	DPC-1	FRECKMANN	PLAN BY DAVID P. CUSICK
		Kristy Hernandez	11-17-15 [ <a href="#">22</a> ]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2015. Fourteen days' notice is required. That requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan fails the liquidation analysis. Debtor's non-exempt assets total \$16,685, and the plan proposes a 0% dividend to unsecured creditors.
2. A secured debt exists against a vehicle that is not provided for in 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.

13. <a href="#">15-25434</a> -C-13 REMEDIOS/JOSEPH RAQUIZA UST-3 Pro Se	MOTION FOR ORDER DIRECTING MARSHAL TO BRING DEBTOR JOSEPH RAQUIZA BEFORE THE COURT 11-23-15 [ <a href="#">35</a> ]
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DEBTOR DISMISSED:

07/24/2015

JOINT DEBTOR DISMISSED:

07/24/2015

**Tentative Ruling:** The Motion for an Order Directing Marshall to Bring Debtor Before Court 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 17, 2015. Fourteen days' notice is required. That requirement was met.

The Motion 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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<b>The court's decision is to grant the Motion for an Order Directing Marshall to Bring Debtor Joseph Raquiza Before Court.</b>
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The United States Trustee moves for an order to bring debtor Joseph Raquiza before court pursuant to Federal Rule of Bankruptcy Procedure 2005.

An examination of Debtor Joseph Raquiza is necessary to determine, among other things, whether purported Joint Debtor Remedios Raquiza is the victim of identity theft.

Mr. Raquiza failed to appear for examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure on August 26, 2015, even though he was personally served with a subpoena.

More recently, the Court entered an order requiring Mr. Raquiza to appear and provide testimony on October 22, 2015. On October 14, 2015, the Court's order was served on Mr. Raquiza by First Class Mail (and it was also sent by Federal Express). Nevertheless, Mr. Raquiza failed to appear for the examination on October 22, 2015.

#### **Legal Standard**

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) Order To Compel Attendance for Examination. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

## Discussion

As the U.S. Trustee highlights, the Debtor has failed to appear for a Rule 2004 examination and failed to comply with the court's order to appear. Because the debtor has willfully disobeyed a subpoena and an order to attend for examination, an order directing an officer of law to bring debtor before court pursuant to Federal Rule of Bankruptcy Procedure 2005(a)(3) is warranted.

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 U.S. 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 Motion for an Order Directing Marshall, or some other officer authorized by law, to Bring Debtor Joseph Raquiza Before Court pursuant to Federal Rule of Bankruptcy Procedure 2005 is granted.

14.	<a href="#">15-26234</a> -C-13 DPC-3	KATHERINE GERRARD David Silber	CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 9-23-15 [ <a href="#">37</a> ]
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**Tentative Ruling:** The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

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

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of

Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

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

704.730. (a) The amount of the homestead exemption is one of the following:  
(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:  
(A) A person 65 years of age or older.  
(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.  
(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

(emphasis added)

The Trustee reports that:

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

#### **Prior**

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

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

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

### **Trustee's Reply**

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

### **Prior**

At the hearing held on November 17, 2015, the court inquired as to the status of Debtor's application for social security disability (claim number 1578287).

The Debtor reported at the hearing that the claim for disability is being approved. Debtor is awaiting the confirmation letter.

### **Discussion**

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

At the hearing, the court will inquire as to the status of Debtor's application for social security disability (claim number 1578287) - specifically, as to whether Debtor has received a confirmation letter.

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

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

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

**IT IS ORDERED** that Objection is ...

15. [15-25438](#)-C-13 LISA ORTIZ  
LBG-2 Lucas Garcia

CONTINUED MOTION TO CONFIRM  
PLAN  
10-2-15 [[45](#)]

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

Oral argument may be presented by the parties at the scheduled hearing,

where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

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

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

**Trustee's Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

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

**Creditor's Opposition**

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

**Prior**

At the hearing held on November 17, 2015, Debtor agreed to amend the plan to correctly identify this creditor as holding the Class 1 claim. See Proof of Claim No. 5.

The court continued the Motion to Confirm the Plan to 2:00 p.m. on December 15, 2015 to allow the IRS to amend its proof of claim.

**Discussion**

As of December 9, 2015, the docket does not reflect that the IRS amended its claim or that Debtor amended her plan.

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

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

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

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

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

16.	<a href="#">12-25539</a> -C-13	CATHERINE BODINE	MOTION TO APPROVE LOAN
	PGM-1	Peter Macaluso	MODIFICATION
			11-16-15 [ <a href="#">26</a> ]

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 16, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

The Motion to Approve Loan Modification filed by Catherine Bodine ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$2,052.43 a month. Creditor offered Debtor a loan

modification under HAMP

The Motion is supported by the Declaration of Catherine Bodine. 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 Catherine Bodine 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 Catherine Bodine ("Debtor") to amend the terms of the loan with [Wells Fargo Home Mortgage, which is secured by the real property commonly known as 9988 Wyatt Ranch Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 29.

17. [15-27441](#)-C-13 KANDICE RICHARDSON FOWLER OBJECTION TO DEBTOR'S CLAIM OF  
DPC-3 Pro Se EXEMPTIONS  
11-10-15 [[26](#)]

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.  
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 10, 2015. Twenty-eight days' notice is required. That requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The objection to claimed exemptions is sustained.**

The Trustee objects to the Debtor's use of the California exemptions. Debtor claims exemptions under California Code of Civil Procedure §703.140(b)(5), known as the wildcard exemption, but has exceeded it's allowance. Debtor is allowed \$26,295 under the code, but claims \$37,058 (\$25,000 in real property, \$58 cash, and \$12,000 household goods).

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

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

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

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

**IT IS ORDERED** that Objection is sustained.

18. [15-26843](#)-C-13 ENRICO MENDOZA  
KMT-1 Stephen Murphy  
10-23-15 [[18](#)]

OBJECTION TO CONFIRMATION OF  
PLAN BY A.I. HOLDINGS, LLC

Also #19

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

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

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

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

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

The Objection to Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 overrule the Objection.**

A.I. Holdings, LLC ("Creditor"), an unsecured creditor, opposes confirmation of the Plan on the basis that the Plan is not feasible. A.I. Holdings, LLC's claim is valued at \$93,436.66, and the proposed \$880 monthly payment will not pay off A.I. Holdings, LLC's claim and the other unsecured creditors. The Plan only includes approximately \$3,100 for A.I. Holdings, LLC's claim. In fact, A.I. Holdings, LLC's claim is \$93,436.66.

Furthermore, the Plan, which proposes to pay \$880 per month, does not satisfy the "Disposable Income" test. The debtor's monthly disposable income under section 1325(b)(2) is \$2,865.98 according to his bankruptcy petition. (Form 22C-2.)

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

Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building.

Debtor missed a payment for rent to A.I. Holdings because he could no longer afford to make the payments.

Debtor attempted to mitigate damages to A.I. Holdings by locating potential

new tenants for the Leased Premises. On August 6, 2015, Debtor made a written request to assign or sublet the Leased Premises to potential new tenants. Exhibit 2. A.I. Holdings denied Debtor's request. In A.I. Holding's failure to approve or consider new tenants for the Leased Premises, it failed to mitigate its own damages.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition(see docket #1). Debtor's Chapter 13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

Debtor filed an Objection to Proof of Claim #5 filed by A.I. Holdings, LLC. The matter is set for hearing on December 15, 2015, at 2:00 p.m. (see matter below)

### **Creditor's Response**

Debtor Mendoza argues that the lease required monthly payments of \$3,121.85 per month beginning in November 2014 through October 2019. However, the addendum to the lease, attached to the Exhibit List as Exhibit B states that the monthly lease payments increased to \$3,246.73.1 According to the summary of the claim amount, attached to the proof of claim, and applying the increased monthly lease payment as of November 2015, capped at one year from the filing of the bankruptcy, September 2015-August 2016, the claimed for missed commercial lease payments is \$41,832.85.

A.I. Holdings attempted to mitigate its loss, but all parties interested in the space have declined to rent.

Mr. Mendoza's removal of walls and doors, and damage to the leased premises is in excess of \$42,000. The damage is pictorially documented. Mr. Mendoza objects to paying damages that were incurred due to his early termination of the lease.

Paragraph 13.2(a) of the Lease Agreement, attached as Exhibit A to the Exhibit List originally filed, provides for the recovery of reasonable attorneys' fees incurred to recover damages owed by Mr. Mendoza. A.I. Holdings paid an attorney \$150 to prepare the letter itemizing the amounts owed and the basis for no return of the deposit. The remainder of the attorneys' fees identified were associated with preparing the proof of claim, and does not cover additional fees incurred for the Objection to the Plan, which is also recoverable. (Claire Decl., ¶ 6.) Such fees are recoverable in a bankruptcy proceeding.

### **Discussion**

The court has sustained Debtor's Objection to the Claim of Creditor. Thus, Creditor's objection to the plan on account of nonpayment of its claim does not invalidate the plan. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the A.I. Holdings, LLC having been presented to the court, and upon

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 31, 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. [15-26843](#)-C-13 ENRICO MENDOZA OBJECTION TO CLAIM OF A.I.  
SNM-1 Stephen Murphy HOLDINGS, LLC, CLAIM NUMBER 5  
10-27-15 [[27](#)]

**Final Ruling: No appearance at the December 15, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 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.

<b>The Objection to Proof of Claim Number 5 of A.I. Holdings, LLC is sustained</b>
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Enrico Mendoza, the Debtor, ("Objector") requests that the court disallow the claim of A.I. Holdings, LLC ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$93,436.66. Objector asserts that the claim is disallowed as it is based on a rejected lease.

On July 22, 2014, Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building commonly known as 4851 Lone Tree Way, Suite A-2.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition(see docket #1). Debtor's Chapter

13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

1. California Law Limits a Landlord's Claim for Damages. A landlord's claim for damages is determined by state law and the terms of the lease, and then limited by 11 U.S.C. § 502(b)(6). *In re MDC Systems, Inc.*, 488 B.R. 74 (2013). The laws of the state in which the Leased Premises is located shall govern the validity, performance and enforcement of the Lease. The Leased Premises is located in the State of California. Therefore, A.I. Holdings may claim no more than is allowed by California law and the terms of the Lease.

2. Failure to Mitigate; Lease Rejected. In the State of California, A.I. Holdings cannot collect for breach of a lease rejected in bankruptcy, nor can it collect for breach of a lease for which it did not mitigate damages. When a lessee breaches a lease and abandons a rented property in the State of California, a landlord suing for breach of the lease is entitled to recover unpaid rent up to the time of the judgment and future rent owed under the lease, subject to the lessor's duty to mitigate his damages. *McLaughlin v. Walnut Properties, Inc.*, 14 Cal.Rptr.3d 369 (App. 2 Dist.). In the present case, Debtor rejected his ongoing obligations under the lease in the bankruptcy, and A.I. Holdings failed to mitigate its damages. Thus, under California law, A.I. Holdings does not have a claim for which it can collect.

3. Future Rent Cannot Be Recovered in Lump Sum. Pursuant to the United States Supreme Court's holding in *City Farmers Trust Co. v. Irving Trust Co.*, 299 U.S. 433 (1937), future rent may be demanded only in amounts and at times named in the Lease, and the total cannot be recovered at law in lump sum in advance of accrual of installments. In this case, A.I. Holdings is making a claim for \$41,832.85 in "Rent" incurred in the post-petition future period beginning September 2015 and ending August 2016 ("Future Rent"). This claim for Future Rent should be disallowed because it is a claim for rent not yet accrued.

4. Fees and Charges are Not collectible Under 11 U.S.C. § 502(b)(6). Debtor objects to A.I. Holding's claim for the following fees and charges: (a) "Inducement Recapture" of \$9,365.55; (b) "Office Repairs" of \$42,008.00; (c) "re-Key" \$178.95; (d) "Attorney Fees" of \$1,005.00; (e) "Removal of Abandoned Property" of \$96.75; (f) "Unpaid Late Fees" of \$28.94; and (g) "Utilities" of \$1,079.90.

(a) As to "Inducement Recapture," "Inducement Recapture" was rent that A.I. Holdings absolutely waived provided that Debtor did not default in his leasehold obligations. Hence, the "Inducement Recapture" was not "rent" at all, but in nature of default penalty, which landlord is not entitled to recover from bankruptcy estate as kind of "unpaid rent" under 11 U.S.C. § 502(b)(6)(B).

(b) As to "Office Repairs," Debtor did not cause any unusual or substantial damage to the Leased Premises, and there is no evidence provided that there were any repairs done to the Leased Premises. Debtor concedes that he made minor changes to the drywall and drilled ten small holes in the floor near the wall. Please refer to the Declaration of Debtor filed herewith. However, the evidence provided by A.I. Holdings at page 32 of Proof of Claim #5, Part 2, titled "Williamson Ranch Office Repair," is a budget proposal that specifically includes a disclaimer that states it is based on a floor plan

from a third party and verbal direction provided by A.I. Holdings (the "Budget Proposal"). It is not indicative of any damage to the Leased Premises caused by the Debtor.

c) As to other fees and charges described as "re-Key," "Attorney Fees," "Removal of Abandoned Property," "Unpaid Late Fees," and "Utilities," landlord is not entitled to recover such fees and charges under 11 U.S.C. §§ 502(b)(6). 11. Failure to Comply with FRBP 3001(c). The proof of claim does not comply with FRBP 3001(c).

5. Security Deposit Offset. The pre-petition rent payment of \$3,121.85 for August 2015 is offset by Debtor's security deposit of \$3,121.85.

Trustee's Nonopposition

The Chapter 13 Trustee has no opposition to the Objection to Claim.

### **Legal Standard**

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**

Based on the evidence before the court, and lack of opposition to the Objection, the creditor's claim is disallowed in its entirety. 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 A.I. Holdings, LLC, Creditor filed in this case by Enrico Mendoza, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 5 of A.I. Holdings, LLC is sustained.

20. [15-28547](#)-C-13 SUN SIN  
Mark Wolff

OBJECTION TO CONFIRMATION OF  
PLAN BY OCWEN LOAN SERVICING,  
LLC  
11-13-15 [[17](#)]

**Final Ruling: No appearance at the December 15, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2015. Twenty-eight days notice is required. That requirement was met.

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

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

Ocwen Loan Servicing, LLC opposes confirmation of the Plan on the basis that the plan understates the arrearage owed to creditor holding a claim secured by the first deed of trust on debtor's primary residence.

It is anticipated that secured creditor's claim will show the pre-petition arrearage due secured creditor is \$20,195.06, whereas the Plan proposes to pay only \$18,000.00. Therefore, the Plan is not in compliance with the requirements of 11 U.S.C. §§ 1322(b)(3) and 1325(a)(5) and cannot be confirmed.

#### **Discussion**

Pursuant to 11 U.S.C. §§ 1322(b)(2), a chapter 13 plan may not modify the rights of a creditor as to its claim secured only by a security interest in the debtor's principal residence. The plan's understatement of the arrearage owed on a mortgage debt secured by debtor's primary residence violates said anti-modification provision.

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 Ocwen Loan Servicing, LLC 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.

21. [14-31849](#)-C-13 BRANDON/CHRISTINE MOTION TO MODIFY PLAN  
WW-1 MCMANIGAL 11-9-15 [[35](#)]  
Mark Wolff

**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 9, 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 is \$11,576.36 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$6,009.00 is due on December 25, 2015. Debtors have paid \$24,477.64 into the plan to date.
2. The plan will complete in 64 months, rather than the 60 months proposed, thereby exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d)(2).
3. Debtor's declaration (dkt. 37) has not been served.

The court has considered the Trustee's concerns and finds them to be valid. 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.

22. [15-28149](#)-C-13 CHRISTOPHER WYRICK  
DPC-1 Lauren Rode

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-24-15 [[16](#)]

**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 24, 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 continue the Objection to January 26, 2016.**

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that counsel of record, Lauren Rode, failed to appear at the meeting of creditors held on November 19, 2015. The Debtor Christopher Wyrick was present at the meeting, however was not examined by the hearing officer. The meeting was continued to January 7, 2016. Trustee requests that the court continue this objection to January 26, 2016 to take place after the continued meeting of creditors.

The court will grant the Trustee's request and continue the instant objection to a date after January 7, 2016.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to January 26, 2016 at 2:00 p.m.

23. [12-25750](#)-C-13 JOHNNIE/ROBBIE ARNOLD MOTION APPROVE NOMINATION OF  
Pro Se DEBTOR'S REPRESENTATIVE  
11-5-15 [[132](#)]

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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The Movant having filed a "Withdrawal of Motion" for the pending Motion to Approve Nomination of Debtor's Representative, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Approve

Nomination of Debtor's Representative, and good cause appearing, **the court dismisses without prejudice the Movant's Motion to Approve Nomination of Debtor's Representative.**

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

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

A Motion to Approve Nomination of Debtor's Representative, the Chapter 13 Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Nomination of Debtor's Representative is dismissed without prejudice.

**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 13, 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.

<b>The Motion to Value secured claim of the Franchise Tax Board, "Creditor," is granted.</b>
--

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of personal property listed on Debtor's schedule B, including:

Golden 1 Deposit Account	FMV: \$100
Wearing Apparel	FMV: \$100
iPhone & iPad	FMV: \$400
2006 Toyota Avalon	FMV: \$12,406

The Debtor seeks to value the property at a total fair market value of \$13,006.00 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).

Santander Consumer USA holds a purchase money security interest in the 2006 Toyota Avalon with a balance of approximately \$15,394.05. The Franchise Tax Board holds a recorded tax lien encumbering all property owned by Debtor in the amount of \$90,000. Movant is requesting that the tax lien held by Creditor Franchise Tax Board be determined to be secured in the amount of \$600, which is the equity remaining in Debtor's personal property after

taking into account the senior purchase money security interest.

## **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 \$90,000. Debtor avers that the value of the property securing such claim has a fair-market value of \$13,006.00. Debtor further asserts that Santander Consumer USA holds a purchase money security interest in the 2006 Toyota Avalon with a balance of approximately \$15,394.05. Therefore, Creditor's claim secured by a recorded tax lien is secured to the extent that there is equity in Debtor's property. Creditor's secured claim is determined to be in the amount of \$600.00. 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 the Franchise Tax Board secured by a tax lien recorded against Debtor's property, is determined to be a secured claim in the amount of \$600.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan.

25. [15-27153](#)-C-13 D JACK  
GLM-2 Mark Wolff

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-13-15 [[42](#)]

Also #26

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

<p><b>The objection to claimed exemptions is sustained, and the exemptions are disallowed in their entirety.</b></p>
--

Creditors James and Linda Hollaway object to the Debtor's use of two California exemptions.

First, in his Amended Schedule C, Debtor claimed as exempt pursuant to CCP § 703.140(b)(5) "Funds held in trust account of attorney - such funds are subject to attorneys claim for fees, amount in trust is \$68,000 and attorneys fees secured by such funds total approximately \$60,000 - net value of funds in trust is \$8,000" and valued at \$8,000. Exhibit B, Dckt. 67.

Debtor is not entitled to exempt the \$8,000 in trust funds, which arise out of court and arbitration proceedings raised by movants for financial

abuse of elders. These proceedings culminated in an arbitration award and state court judgment in favor of movants in the amount of \$149,800.56. Before judgment was entered, the arbiter ordered the amount of \$68,922 to be held in a trust account pending final judgment. Thus, the amount of \$68,922 is incorporated into the final judgment of \$149,800.56 per the amended arbitration award. Exhibit G, Dckt 67. Debtor maintains that the \$68,922 was never movants'.

Second, in his Amended Schedule C, Debtor claimed as exempt pursuant to CCP § 703.140(b)(5) "Possible community property interest in spouse's separate property, including Wife's real property (residence), regiment accounts (not property of estate), and household goods" and valued at \$5,000. Exhibit B, Dckt. 67.

## **DISCUSSION**

The court's review of the evidence reveals that Debtor has no legal basis for claiming the exemptions at issue. Creditors have filed an Objection to Confirmation of Plan, which came on hearing before this court on December 2, 2015, raising substantially the same concerns here raised. The court noted at the hearing that there still exist a number of uncertainties regarding Debtor's interest in the trust fund assets, whether Creditor is able to pursue an adversary proceeding in this action, and Debtor's interest in the community property assets.

The court further notes that in Debtor's previous Chapter 13 case, this court sustained a substantially similar objection, wherein Debtor attempted to claim the exact very same exemptions here claimed. The objection is sustained, and the claimed exemptions are disallowed.

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

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

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

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

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on October 29, 2015. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The objection to claimed exemptions is overruled as moot.**

Chapter 13 Trustee Jan P. Johnson objects to the Debtor's claim of California exemption without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

#### DISCUSSION

First, the court's review of the docket reveals that the spousal waiver has been filed. However, more importantly, the court notes that on November 10, 2015, Chapter 13 Trustee Jan P. Johnson filed and served a resignation of Trustee to parties involved. Having removed himself as standing Chapter 13 Trustee, this Objection shall be overruled as moot, as the Objector no longer has standing to object to the claimed exemptions.

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

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

27. [15-27955](#)-C-13 JITENDRA/JEANNETTE SINGH OBJECTION TO CONFIRMATION OF  
DPC-1 Mark Wolff PLAN BY DAVID P. CUSICK  
11-17-15 [[23](#)]

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.

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Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 17, 2015. Fourteen days' notice is required. This requirement was met.

The court's decision is to overrule the Objection.

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Safe Credit Union and Springleaf Financial Services listed in Class 2C. To date, Debtor has not filed such motion.

The docket reflects that Debtors have filed the Motions to Value upon which Trustee bases his objection, heard by the court on December 8, 2015 at which time the court granted such motions. Having resolved Trustee's basis for objection, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan filed on October 12, 2015 is confirmed.

28. [13-20356](#)-C-13 HENRY/KATHERINE KANAE  
PGM-1

MOTION TO MODIFY PLAN  
11-10-15 [[88](#)]

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

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

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

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

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

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal

Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to continue the Motion to Confirm the Modified Plan to January 12, 2016 at 2:00 p.m.**

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 are \$6,630 delinquent in plan payments to the Trustee to date. The plan cannot be confirmed as Debtors do not appear able to make plan payments, 11 U.S.C. § 1325(a)(6).
2. There are certain discrepancies in the budget. Debtors' prior schedule J budgeted \$75.00 per month for homeowner's insurance and \$464 per month for property taxes, even though Debtors indicated taxes were included in the mortgage payment. Debtor's supplemental schedules no longer include such taxes and insurance. Moreover, Nationstar filed a secured claim for \$575,208.39 with \$55,423.08 in arrears. The Mortgage proof of claim attachment indicates the mortgage arrears included an escrow shortage of \$21,438.94, and Debtor's mortgage payment including escrow effective February 1, 2013 was \$4,282.63. An escrow analysis was also attached to the proof of claim reflecting a pre-bankruptcy escrow balance of - \$19,517.57, a monthly principal and interest payment of \$3,768.46, a monthly base escrow of \$514.17, for a total monthly mortgage of \$4,282.63 effective February 1, 2013. Where Debtors' original budget includes taxes and insurance and now does not, and where creditor's proof of claim included an escrow deficiency in the mortgage arrears and projected continuing escrow payments, Trustee is uncertain who is paying the taxes and insurance on Debtors' property or if the mortgage payment to be paid under the confirmed plan is an amount sufficient to cover the mortgage and escrow.
3. Debtors' supplemental J budgets \$100 per month for a retirement fund loan repayment. Debtors' prior schedule J did not include this expense. Trustee is unable to locate where Debtors received court permission to borrow funds from their retirement account. Trustee has filed 6 notices of default and two motions to dismiss based on delinquency throughout the life of the plan.
4. Debtors have not adequately explained the changes in their income and expenses. Debtors' prior schedule I provided a breakdown of withholding expenses where the current schedule does not. Trustee cannot determine what Debtor has lumped into the increased withholding amounts. Debtors' expenses for a family of four appear unreasonably low. Food decreases from \$450 to \$350, clothing from \$80 to \$20, medical from \$100 to \$10, and transportation from \$440 to \$330. Where Debtors propose to increase plan payments from \$5,606 to \$6,630, and provide supplemental schedules reflecting a reduction in net monthly income, Debtor should provide an explanation as to changes made in expenses and how Debtor plans to maintain the plan

payments proposed when they have been unable to maintain smaller payments in the past.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's concerns, first, providing that they have paid their November plan payment of \$6,630 and are current under the terms of the proposed modified plan. Second, to address the issues identified by Trustee's opposition, Debtors state they will meet with counsel and submit appropriate documents supplementing the instant motion. Debtors request a continuance in order to fully address Trustee's concerns.

#### **DISCUSSION**

The court shares Trustee's concerns, and is not convinced at this time that Debtors will be able to maintain plan payments, given the unexplained reduction in expenses and their inability to maintain plan payments of a lesser amount in the past. However, the court will grant Debtors' request and continue the instant motion in order to permit Debtors time to gather necessary documents to supplement this Motion to Modify.

The motion is continued to January 12, 2016 at 2:00 p.m.

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 continued to January 12, 2016 at 2:00 p.m.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 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 \$450 delinquent in plan payments to the Trustee to date.
2. The proposed monthly payment of \$450 is insufficient to satisfy the monthly dividends to secured creditors. After Trustee fees, this amounts to \$425.82 per month. However, Debtor proposes to increase dividends to secured creditor, A-L Financial Corp to \$383 per month, and the administrative expenses to \$44 per month for a total of \$427.

**DEBTOR'S RESPONSE**

Debtor responds to Trustee's opposition stating (1.) Debtor has paid the delinquent amount due on November 25, 2015 in the amount of \$452. On December 7, 2015, Trustee posted a \$452.00 payment. Next, Debtor proposes additional language to the Order Confirming as follows: "Commencing with the

trustee payment due 11/25/15, debtor shall pay \$452.00 per month to Chapter 13 trustee for thirty-six (36) months." This is an increase of \$2,00 and should resolve the problem raised by Trustee.

The court is satisfied that Debtor has sufficiently addressed Trustee's concerns, and will grant the instant motion. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed on November 3, 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 commencing with the trustee payment due 11/25/15, debtor shall pay \$452.00 per month to Chapter 13 trustee for thirty-six (36) months."

30. [15-28162](#)-C-13 THOMAS/BECKY BOYES  
DPC-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-24-15 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor did not appear at the first meeting of creditors on November 19, 2015. Debtor Becky Boyes appeared, stating her power of attorney for Mr. Boyes, however Trustee believes Becky Boyes cannot testify as to Thomas Boyes' personal knowledge. The meeting was continued to January 7, 2016.
2. Debtors; plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$31,318.36 and Debtor proposes to pay unsecured creditors 1% totaling \$221.30.
3. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Wheels Financial Group listed in Class 2B. To date, Debtor has not filed such motion.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's objection stating the following:

1. Although a debtor is required to appear at the 341 meeting, an allowed and valid power of attorney may substitute the need for appearance under the Bankruptcy Code. Debtors appeared as Trustee's offices on November 24, 2015 to provide ID cards and Social Security Cards. Further, Trustee is in possession of a copy of the power of attorney which is valid for all legal purposes.
2. Debtors' budget may be considered lean, but does provide 100% to unsecured creditors. Debtors' plan payment is \$3,400 per month for 60 months. The plan provides 100% to unsecured creditors and debtor is not required to pay more than 100% to general unsecured creditors.
3. Debtors state they will file and serve a Motion to Value Collateral on or before December 7, 2015.

The court notes that Debtors have filed Motion to Value Collateral on December 7, 2015, Dckt. 21, resolving Trustee's third basis for objection. However, Trustee's other two basis remain outstanding. First, Debtors assert that although 11 U.S.C. § 343 requires a debtor to appear for examination, an allowed and valid power of attorney may substitute the need for

appearance under the bankruptcy code, without pointing to any legal authority whatsoever to substantiate that assertion. Debtors do not provide the reason why Debtor is not able to appear, and apparently feel that any person with a power of attorney may negate the requirement of 11 U.S.C. § 343 that the petitioning debtor appear. Next, while Debtors state that the Plan provides 100% to unsecured creditors, and therefore survives liquidation analysis, Debtors' actual plan, Dckt. 5, proposes 1% to unsecured creditors. 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.

31. [15-27668](#)-C-13 PHILLIP POLK  
DPC-1 David Foyil

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-17-15 [[25](#)]

**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 17, 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 -----  
-----.

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

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

1. The plan exceeds 60 months, and instead will complete in 560 months, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d). The plan proposes to pay \$73.00 for 60 months, totaling \$4,380. However, Debtor owes \$36,281 to El Dorado County Department of Child Support Services, and priority claims must be paid in full. Further, Debtor owes \$2,500 in attorneys fees.
2. The plan is not Debtor's best efforts, 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$73 for 60 months with a 0% dividend to unsecured creditors. Debtor admitted at the first meeting of creditors that he shares expenses with a roommate, however Debtor's schedule J filed November 12, 2015 does not reflect shared expenses.
3. Debtor does not appear able to make plan payments required, 11 U.S.C. § 1325(a)(6). Debtor provided the Trustee with a Domestic Support Obligation Checklist, which provided that he pays \$400 per month for on-going child support, however Debtor has failed to list this in schedule J.

**DEBTOR'S RESPONSE**

Debtor responds to Trustee's objection to plan, providing the following:

1. Debtor filed an accurate schedule J on November 12, 2015. The previously filed schedules I & J were based upon Debtor's recollection of income and expenses without having reviewed his monthly expense billing statements and banking records. Debtor has concurrently with this response filed an amended schedule I & J, reflecting the following:
  - a. Debtor is a co-owner on a mobile home with Delores Fahlander. Other than a shared housing arrangement, they are not in any personal relationship, and do not co-mingle their income or living expenses. Each shares one-half of the space rent where the mobile home is located. The rent varies because the rent includes their metered use of water. Upon reviewing the average water use, the actual monthly average rent that Debtor pays is \$275, one-half, of the total rent.
  - b. The total monthly homeowner's insurance is \$28, Debtor pays ½ at \$14.00.
  - c. The electricity and gas is \$140, Debtor pays ½ at \$70.
  - d. The telephone, cell phone, internet, and tv services average \$202 per month.
  - e. The food and household supplies is \$250 per month.
  - f. The expense for personal care products of \$20 per month, \$30 less than previously estimated.

- g. The expense for prescriptions is \$60 per month and \$20 per month for non-cover co-pay.
  - h. The transportation expense is \$40 per month, a reduction of \$60. The supplemental insurance through Humana is \$14 per month.
  - i. Vehicle insurance is \$52 per month.
  - j. Property tax on the mobile home is \$5 per month.
  - k. ½ the lease payment on a 2014 Kia Sorento is 148 per month. The lease is in the name of Delores Fahlander, and Debtor has no legal liability. However, Debtor uses the vehicle fifty percent, and it is the only mode of transport Debtor has.
  - l. Debtor has removed the monthly maintenance from his budget.
  - m. The pet care expense is \$15, a reduction of \$35 originally estimated.
  - n. An expense for tobacco products was added to Debtor's expenses at \$70 per month.
2. Based on the above, Debtor has a disposable income of \$76.00 per month to fund his plan. Debtor consents to an order confirming plan modifying the monthly plan payments to \$76.00.
3. Domestic Support Obligations Checklist was sent to Trustee's office indicating a monthly obligation of \$300. This amount represents the amount that the creditor attempted to collect toward pre-petition arrears. Debtor does not have on-going domestic support obligations. The only support obligation is an arrearage. The Debtor is not currently married and has no minor children. There is no legal basis for domestic support obligations to arise during the course of this case.

Debtor has submitted as response to Trustee's objection, addressing the several concerns raised by Trustee. Debtor points out that the domestic support obligations raised by Trustee are not ongoing support payments, and instead that the amount that creditor has attempted to collect are pre-petition arrears. Moreover, Debtor explains his relationship with his roommate with regard to the splitting of expenses, and has submitted amended schedules to reflect this explanation, dckt. 31. The court is not satisfied, however, that Debtor's plan is due to complete within the 60 month period. As Trustee points out, Debtor owes \$36,281 to El Dorado County Department of Child Support Services, \$2,500 in attorneys fees. Debtor has not addressed this concern, and 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.

32. [15-28074](#)-C-13 PHILLIP/TRUDY MENDOZA  
APN-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
11-18-15 [[17](#)]

Also #33

**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 18, 2015. Fourteen days' notice is required. This requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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Creditor, Wells Fargo Bank, N.A., holds a security interest in a 2010 Chevrolet Suburban owned by Debtor. Creditor opposes confirmation of the Plan on the basis that based on Debtor's stated intent not to reduce Creditor's claim based on the value of the property as a Class 2 claim, Creditor objects to the \$13,964 claim listed in Debtor's proposed plan. Creditor contends that the amount of its secured claim is \$14,599.17. Further, Creditor objects to the \$232.73 in monthly adequate protection payments offered under the proposed plan, in that the value of Creditor's security will depreciate at a much higher than the adequate protection payments provided. Further, Debtor has attempted to avoid paying Creditor interest on its secured claim. Instead, Creditor asserts that the interest rate should be 6.25% based on the national prime rate of interest and Debtor's risk of default.

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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

33.	<a href="#">15-28074</a> -C-13	PHILLIP/TRUDY MENDOZA	OBJECTION TO CONFIRMATION OF
	DPC-1	Peter Cianchetta	PLAN BY DAVID P. CUSICK
			11-24-15 [ <a href="#">22</a> ]

**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 24, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor has failed to provide Trustee with Employer payment Advices received 60 days prior to filing under 11 U.S.C. § 521(a)(1)(B)(iv).
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtors have not provided Trustee with business questionnaire. The Statement of Financial Affairs appears to list 3 active businesses. Bfa Handyman Services; Geez Ink; Happy Bear Forest.

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

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

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

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

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

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 10, 2015. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The Trustee objects to the Debtor's exemption of real property commonly known as 6421 Hogan Drive, Sacramento, California under 11 U.S.C. § 522(b)(3)(B). This statute requires both a specific type of interest in real property—that is, tenancy by the entirety or joint tenancy—and that the interest is exempt from process under applicable non-bankruptcy law. Debtor does not describe his interest in the property on his schedule A as either "Tenancy in Common" or "Tenancy by the Entirety," as he does with other interests in property. Debtor has not proved that the interest in the property is "exempt from process under applicable non-bankruptcy law."

The court's review of the schedules reflects that Trustee is correct in pointing out that Debtor has not qualified the claimed exemption under the applicable law. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

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

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

**IT IS ORDERED** that Objection is sustained and the claimed exemption in real property commonly known as 6421 Hogan Drive, Sacramento, California, is disallowed in its entirety.

35. [15-27679](#)-C-13 RICHARD GIVENS  
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-17-15 [[20](#)]

**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 17, 2015. Fourteen days' notice is required. This requirement was met.

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

<b>The court's decision is to sustain the Objection.</b>
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the first meeting of creditors on November 12, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written

statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).

3. The plan proposes payments of \$550 for 60 months, however Debtor lists Ocwen Loan Servicing payments in class 1 of \$2,000.
4. It appears that the plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals \$2,000 and Debtor is proposing a 0% dividend to unsecured creditors.
5. Debtor is \$550 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5510 is due November 25, 2015. The case was filed on September 30, 2015, and Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

The court has reviewed the basis for objections raised by Trustee, and agree that the plan as proposed cannot be confirmed at this time. 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.

Also #37

**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 19, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditor, U.S. Bank, N.A., as Trustee for Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, Series 2006-WF2, is a secured creditor and holder of the note a deed of trust encumbering real property commonly known as 1078 Rathbone Circle, Folsom, California. Creditor opposes confirmation of the Plan on the basis that Debtor's secured debt likely exceeds the chapter 13 debt limits under 11 U.S.C. § 109(e). 11 U.S.C. § 109(e) prescribes that secured debts must be less than \$1,149,525. Here, Creditor's secured claims are approximately \$1,730,999, and thus Debtor does not qualify for relief under chapter 13 and this case should be converted to chapter 11, 7, or dismissed.

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 U.S. Bank, N.A., as Trustee for Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, Series 2006-WF2 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. [15-27886](#)-C-13 CHIN WONG  
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-17-15 [[23](#)]

**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 17, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor did not appear at the first meeting of creditors on November 12, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor has not provided Trustee with Employer Payment Advices received 60 days prior to filing.
4. Debtor's plan may not comply with applicable provisions of the Bankruptcy Code, 11 U.S.C. § 1325(a)(1). Debtor's plan proposes to pay 10% interest on arrears to Wells Fargo in Class 1, as Debtor has left the box for the interest rate blank, however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e), unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.
5. Debtor's plan does not provide for a dividend to pay unsecured creditors.
6. The plan proposes payments of \$490 for 36 months, however Debtor lists Wells Fargo Mortgage payment in Class 1 at \$1,890.

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

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

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

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

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

**Final Ruling:** No appearance at the December 15, 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 28, 2015. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 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.

39. [15-27991](#)-C-13 MICHAEL COUGHLIN  
AP-1 Julius Engel  
Also #40

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
11-19-15 [[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 19, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Creditor Wells Fargo Bank, N.A. is a secured creditor, holder of the Note secured by recorded deed of trust encumbering real property 879 Wallace Drive, Woodland, California. Creditor opposes confirmation of the Plan on the basis that Debtor's plan fails to provide for Creditor's claim listed on schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide for the treatment could indicate Debtor either cannot afford plan payments or that Debtor wants to conceal the proposed treatment of creditor.

Creditor raises a legitimate concern as to the feasibility of the proposed plan due to Debtor's failure to provide treatment for Creditor's secured claim. 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.

40. [15-27991](#)-C-13 MICHAEL COUGHLIN OBJECTION TO CONFIRMATION OF  
DPC-1 Julius Engel PLAN BY DAVID P. CUSICK  
11-17-15 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 17, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor's plan fails to provide treatment for Wells Fargo Home Mortgage's deed of trust and Wyndham Resort listed on schedule D. While treatment is not required under 11 U.S.C. § 1325(a)(5), failure to provide can indicate Debtor's inability to make plan payments or efforts to conceal treatment.
2. The plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$16,550 and Debtor is proposing a .41% dividend to unsecured creditors, which totals \$245.
3. It appears Debtor cannot make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor admitted at the first meeting on November 12, 2015 that he was paying \$4,500 in alimony and has not listed this expense in schedule J.
4. Debtor admitted at the first meeting that he sold his auto for \$7,000 and gifted it to his grandson.

Trustee has raised a number of concerns; the court will not confirm the plan at this time. 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.

41. [15-27997](#)-C-13 JOSHUA SPEER AND LORIN  
DPC-1 BALBI  
Ronald Holland

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-24-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2015. Fourteen days' notice is required. This requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan does not provide for the secured claim of the U.S. Department of Housing and Urban Development in the amount of \$112,263.70, filed on October 21, 2015, Proof of Claim 1. While treatment is not requires under 11 U.S.C. § 1325(a)(5), failure to provide can indicate Debtor's inability to make plan payments or efforts to conceal treatment.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's objection, providing that the claim of the U.S. Department of Housing and Urban Development was inadvertently omitted. The claim is for a "write-down" portion of the first mortgage that resulted from a modification of the first mortgage by Wells Fargo Bank. This claim is not to be paid until the subject property is sold, transferred, or refinanced. There are no payments due on said claim and the balance accrues no interest. The claim of this creditor should be in Class 4 of the plan with no payments due, including this claim will not change any other tem of

the plan. Debtors propose that the court confirm the plan with additional provision amending the plan to provide for this creditor in Class 4 with \$0 per month.

The court is satisfied that Debtor has adequately addressed Trustee's concern, and will confirm the plan with clarifying language in the order confirming the plan. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by 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 October 14, 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 secured claim of the U.S. Department of Housing and Urban Development in the amount of \$112,263.70 shall be included in Class 4 with a payment of \$0 per month." 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.

42.	<a href="#">15-28074</a> -C-13    PHILLIP/TRUDY MENDOZA Peter Cianchetta	OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT LLC 12-2-15 [ <a href="#">26</a> ]
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**Tentative Ruling:** The Objection to Plan was improperly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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.**

-----

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 2, 2015. Twenty-eight days' notice is required. This requirement was not met.

The Objection to the Plan was not properly set for hearing on the  
**December 15, 2015 at 2:00 p.m. - Page 66**

notice required by Local Bankruptcy Rule 9014-1(f)(1) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). At the hearing -----  
-----.

<b>The court's decision is to overrule the Objection. However the Plan is not confirmed.</b>
--

Creditor, Bosco Credit LLC, opposes confirmation of the Plan. However, Creditor has not properly noticed the instant Objection to Confirmation of Plan.

#### **NOTICE ISSUE**

LBR 9014-1(f)(1) requires that "the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date." An opponent is required to file a written opposition where 28 days' notice is provided.

LBR 9014-1(f)(2) requires that alternatively, "the moving party may file and serve the motion on at least (14) days prior to the hearing date." No written opposition is required where 14 days' notice is provided.

Here, Movant's notice of hearing provides that the Objection is brought pursuant to Local Rule 9014-1(f)(1)(ii), and notes that opposition is required at least 14 days preceding the noticed date of hearing. However, Movant served the Objection on December 2, 2015, only 13 days prior to the date of hearing. Furthermore, the court cannot construe this Objection noticed pursuant to LBR 9014-1(f)(2), because aside from the fact that Movant specifically noted that the Objection is brought pursuant to (f)(1) notice, as noted before, Movant has only provided 13 days' notice.

On this basis, the court will overrule the Objection. However, the court notes that an Objection to Plan has been filed by (1) Wells Fargo Bank, N.A., which the court has sustained, and (2) Chapter 13 Trustee, which the court has continued to January 2016. Therefore, although the court is overruling the instant objection based on notice deficiency, the plan is not confirmed.

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

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

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

The Objection to the Chapter 13 Plan filed by the Creditor Bosco Credit LLC 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, however based on other Objections to Debtor's Chapter 13 Plan before the court, the 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.

No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

<b>The Motion to Sell Property is granted.</b>
--

#### **PREVIOUSLY**

The Motion to Sell Property was continued to 2:00 p.m. on December 15, 2015 on December 8, 2015. The continuance was to allow for other potential bidders to attend, Debtor reporting that the stalking horse buyer had failed to make the required deposit.

#### **MOTION**

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.