

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

**December 16, 2014 at 2:00 p.m.**

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1. [11-38702](#)-C-13 VIRGIL/DIANA LYTAL MOTION TO INCUR DEBT  
RAC-4 Richard A. Chan 11-12-14 [[62](#)]  
**Thru #2**

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The motion seeks permission to ratify a loan Debtors took against Virgil Lytal's 401(k) on January 30, 2013, in the principal amount of \$6,000.00. The loan is being paid back at an interest rate of 4.25% by way of bi-weekly payroll deductions in the amount of \$82.00. The current balance on the loan is \$3,401.80.

Debtors' Declaration states that a portion of the loan was used to pay post-petition medical bills resulting from Debtors' daughter's surgery. The remaining funds were used to make Chapter 13 plan payments and on-going mortgage payments on Debtors' residence.

Debtors further testify that at the time the loan was taken out, Diana

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Lytal was working as a self-employed real estate agent and her income was sporadic. The situation was also complicated by Virgil Lytal's relocation to Hawaii for a job, while his wife and daughter remains in California pending the daughter's high school graduation.

In order to complete the Chapter 13 plan, Virgil Lytal took out the loan and did not inform his attorney or seek initial approval from the court. He testifies that he mistakenly believes that since the funds were coming from his 401(k), he was essentially borrowing from his own asset and not incurring debt in a matter requiring court approval.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted and Virgil & Diana Lytal, Debtors, are retroactively authorized to incur debt in the form of a \$6,000 loan against Virgil Lytal's 401(k) Account.

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The motion seeks permission to ratify a loan Debtors took against Virgil Lytal's 401(k) on September 16, 2013, in the principal amount of \$3,500.00. The loan is being paid back at an interest rate of 4.25% by way of bi-weekly payroll deductions in the amount of \$29.92. The current balance on the loan is \$3,083.16.

Debtors' Declaration states the loan was taken out to pay for major vehicle repairs.

Debtors further testify that at the time the loan was taken out, Diana Lytal was working as a self-employed real estate agent and her income was sporadic. The situation was also complicated by Virgil Lytal's relocation to Hawaii for a job, while his wife and daughter remains in California pending the daughter's high school graduation.

In order to complete the Chapter 13 plan, Virgil Lytal took out the loan and did not inform his attorney or seek initial approval from the court. He testifies that he mistakenly believes that since the funds were coming from his 401(k), he was essentially borrowing from his own asset and not incurring debt in a matter requiring court approval.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement,

"including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

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

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

**IT IS ORDERED** that the Motion is granted and Virgil & Diana Lytal, Debtors, are retroactively authorized to incur debt in the form of a \$3,500 loan against Virgil Lytal's 401(k) Account.

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtor's Chapter 13 Plan filed on  
October 27, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required.

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

The Chapter 13 Trustee opposes confirmation on the following basis:

1. Debtor did not appear at the First Meeting of Creditors held on November 13, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtor did not file all pre-petition tax returns required for the four years preceding the filing of the petition. 11 U.S.C. §§ 1308 & 1309(a)(9). According to the proof of claim filed by the Internal Revenue Service (Claim 2), no federal tax return was filed for 2013.
5. Debtor did not provide Trustee with business documents, including: Questionnaire, two (2) years of tax returns, six (6) months of profit and loss statements, six (6) months of bank statements, proof of license and insurance, or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This information is required seven (7) days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I). A business questionnaire and request for documents was mailed to Debtor on October 22, 2014.
6. Debtor did not comply with 11 U.S.C. § 1325(a)(2). On October 10, 2014, the court issued an Order Approving Payment of Filing Fees in Installments (Dkt. 6). According to the Order, installments are due on November 10, 2014, December 9, 2014, January 8, 2015, and February 9, 2015. Debtor has paid the first installment only.
7. Class 1 of the plan lists creditor Carrington and indicates arrears of \$110,000. The plan omits the monthly dividend to the arrears and the contract payment amount. Class 1 also lists Kocal HOA arrears of \$23,000 and does not list the monthly dividend to the arrears and the contract payment amount. The Trustee is unable to determine if the plan is feasible.
8. The plan does not provide for the secured debt of Capital One on a 2012 Ford Focus. Debtor lists the creditor on Schedule D at \$11,960 (Dkt. 1). The debt should be provided for in Class 2A of the plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtor wishes to conceal the proposed treatment of creditor.

Debtor paid the second installment payment on December 9, 2014. The remainder of the Trustee's objection is outstanding. 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

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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 of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. [14-30111](#)-C-13 PATRICK/SADIE BETITO  
MDE-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF  
PLAN BY CAPITAL ONE, N.A.  
10-20-14 [[22](#)]

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

Creditor, Capital One, N.A., opposes confirmation of the Plan on the basis that the plan does not provide for the curing of the default and maintenance of payments on it's secured claim. Debtor have omitted creditor's secured claim from the plan and have not provided for the treatment of arrears in the amount of \$347.63.

Further, creditor stresses that it's secured claim cannot be subject to a lien strip under the hanging paragraph of 11 U.S.C. § 1325(a) because it was a purchase money security interest incurred within 910 days prior to the filing of the petition and the collateral securing the loan is for the personal use of the Debtor.

The court has reviewed the plan and Debtors' schedules. 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

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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 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

Creditor, U.S. Bank, National Association, opposes confirmation of the Plan on the basis that the plan does not provide for the curing of the default and maintenance of payments on its secured claim. 11 U.S.C. § 1325(b). Creditor also argues against confirmation because the plan does not provide how Debtors will be able to make all payment under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

Creditor filed a proof of claim in the amount of \$742,543, including arrearage of \$149,040, which is secured by real property commonly known as 5855 Valle Vista Circle, Granite Bay, California.

According to the plan, Debtors have provided for the arrears in the amount of \$110,000; however, the arrearage amount is \$149,040. Debtors have not provided for the curing of the remaining default of \$39,040. Further, according to the plan, Debtors will make monthly payments of \$6,749 for 60 months to the Trustee for a base plan amount of \$404,964. However, according to Debtors' Schedules, Debtors have a monthly net income of only \$6,750. This amount is insufficient to fund the plan once the arrears on creditors claim are fully provided for.

The court has reviewed the plan and Debtors' schedules. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 25, 2014. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

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

The Bankruptcy Code permits the Chapter 13 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. 193 Baurer Circle, Folsom, California

The proposed purchasers of the Property are Chad & Kathleen Wright and the terms of the sale are that the purchase price shall be \$490,000.

On December 1, 2014, the Chapter 13 Trustee filed a statement indicating that he has no opposition to the court granting the instant motion.

At the time of the hearing the court announced the proposed sale an

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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: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

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

**IT IS ORDERED** that Robert & Christina Quinlan, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Chad and Kathleen Wright or nominee ("Buyer"), the Property commonly known as 193 Baurer Circle, Folsom, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$490,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Docket 95, and as further provided in this Order.
4. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

No additional relief is granted.

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

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

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

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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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. 42 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 without prejudice.**

**PRIOR HEARING**

The Motion was initially scheduled to be heard on October 21, 2014. On October 16, 2014, the court approved a Stipulation entered into between the parties to continue the hearing to December 16, 2014.

As part of Debtors' response to the Trustee's and Creditor's objections, they requested a continuance to allow a formal Broker's Price Opinion to be presented to the Trustee for both real properties; to allow the Trustee to account for the nine bank accounts; to allow for analysis of the trust to be provided to the trustee, and to allow for the Debtors to address the best efforts.

However, Debtors do not address the lease issues present in the objections.

As of December 11, 2014, nothing new appears on the Docket for the



Motion and there is no indication that Debtors have resolved the following Objections:

### **CHAPTER 13 TRUSTEE OBJECTION**

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

1. Debtors' plan may fail Chapter 7 Liquidation under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$2,925 and the Debtors are proposing a 1% dividend to unsecured creditors.

**Residential Real Property:** Debtors list real property at 1141 El Sur Way, Sacramento, California on Schedule A. Debtors filed Amended Schedule A on September 9, 2014 and increased the value in the property from \$1.00 to \$680,000 (value is actually \$738,000 but Debtors reduced the value by 8%). Debtors claim that the value is the Zillow.com value. Trustee visited the Zillow.com website and found that the property has an estimated value of \$827,535. (Exh. A).

Based on Trustee's Zillow estimate, minus 8% cost fo sale, the net property value is \$761,332.20. After accounting for the mortgage loan, Debtors have \$136,165.27 in equity. Debtors exempted \$100,000 on Schedule C, leaving approximately \$36,165.27 in non exempt equity.

**Non-Primary Residence:** Debtors list on Schedule A interest in real property located at 10200 Tinker Court, Truckee, California with a value of \$100,000. Debtor's had originally listed the value of the property as \$60,000, but give insufficient information pertaining to the property to support any valuation. Trustee queries whether the value provided is proper.

**Bank Accounts:** Schedule B includes multiple bank accounts held at Wells Fargo Bank, N.A. All of the accounts are held in Debtors' trust, listed as an asset on Schedule B. Debtors do not disclose the true value of these accounts and did not provide Trustee with bank account statements for the time period prior to filing.

**Value of Trust:** Debtors list a family trust, The Paul and Lynda Fanfelle Family Trust on Schedule B with a value of \$1.00. Debtors report that the trust holds real property at 1141 El Sur Way, Sacramento California, real property at 10200 Tinker Court, Truckee, California, the contents of both properties, all bank, retirement, pension and 401K accounts; however, the value is only \$1.00. Debtors have provided insufficient information to support the valuation.

2. Trustee argues that the plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and proposing a 60 months plan paying \$1,975 for 12 months, \$2,500 for 12 months, and \$3,840 for 36 months with a

1% dividend to general unsecured claims. In Class 4 of the plan, Debtors indicate that their son is making ongoing auto payments to J.P. Morgan Chase Bank, N.A. of \$339.54 per month. Debtors list their son as a dependent on both Form B22C and Schedule J and report no income from their son on Schedule I. Debtors may not be reporting all income.

#### **CREDITOR'S OBJECTION**

Creditor, Mesa Leasing, Inc., objects to Debtors' Motion. Mesa is the owner and lessor of yogurt and food service equipment previously delivered to and located in Debtors' Sacramento yogurt retail shop. Prior to the filing, Debtors entered into a commercial lease agreement with Creditor and each Debtor signed a personal guaranty for all performances due under the lease.

Creditor argues that the plan is deficient for the following reasons:

1. Debtors have not reported all household income from their son.
2. Debtors are not using their best efforts because they are dealing inequitably among the secured creditors.
3. Repayment to Creditor is provided in Class 2. It is acknowledged that the debt is \$105,343 as set forth in the Proof of Claim. The regular payments under the contract are \$3,148 per month. Debtors propose to only pay \$675.00 per month in the first year; \$1,200 per month for the second year, at the end of 24 months the payment increases to \$2,450 per month for 19 months and then increases to \$2,850 for the remaining 17 months. Creditor argues that the equipment value is depreciating faster than the proposed payments provide and the plan does not come close to adequately protecting the Creditor's interests.

#### **TRUSTEE'S AMENDED OBJECTION**

Trustee amends his objection to add the following basis for denying the Motion:

1. Debtors misclassified the lease agreement with Pawnee Leasing Corporation, which is currently listed in Class 2 of the plan. Pawnee Leasing is described as a Class 2 secured creditor holding a purchase money security interest and is receiving payments of \$907 per month, with their claim amount being \$35,698.08 at 4% interest. Debtors' prior plan proposed to pay Pawnee \$380.00 per month.

Trustee argues that if the contract is not secured but, rather, a lease, it appears the claim would be more appropriately provided for in section 3.02 of the plan as an unexpired lease with regular payments paid by the Debtor and the plan curing any arrears.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the basis that it relies on a pending Motion to Value the secured claim of Redwood Credit Union. The court is prepared to grant the pending Motion, resolving the Trustee's objection.

Therefore, the objection will be overruled as moot.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 September 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of Redwood Credit Union, "Creditor" is granted.</b>
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Chevrolet Cobalt. The Debtor seeks to value the property at a replacement value of \$6,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on December 16, 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$14,554.56. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

The Motion for Valuation of

**December 16, 2014 at 2:00 p.m.**

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 Redwood Credit Union secured by a 2010 Chevrolet Cobalt, is determined to be a secured claim in the amount of \$6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$6,000 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2014. Forty-two days' notice is required. That requirement was not met.

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

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

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

1. The Motion was improperly set for hearing on the notice required by Local Bankr. Rule 3015-1(d)(1). To comply with FRBP 2002(b) and LBR 9014-1(f)(1), forty-two (42) days' notice is required. Debtor filed the Notice of Motion on November 17, 2014, providing only 29 days' of notice.
2. The Notice incorrectly states that the hearing for the Motion is on December 9, 2014. The Notice incorrectly states that the Amended Plan was filed on October 14, 2014, when it was filed on October 21, 2014.
3. The Proof of service indicates that Debtor served the Trustee and all parties of interest the amended plan and all motion documents on October 31, 2014, seventeen (17) days before the documents were filed with the court. Local Bankr. Rule 9011-1(e) requires that a proof of service be filed with the Clerk concurrently with the pleadings, served not more than three (3)



days after they are filed.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 25, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtors' second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-27085) was filed on July 9, 2014 and dismissed on September 19, 2014, for delinquent payments and inadequate prosecution. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor asserts that circumstances have changed since the previous filing. Debtor has been approved for a HAMP trial period loan modification on the loan on the principal residence. Since the previous case, Debtor's second deed of trust on the principal residence has been forgiven. Further, Debtor has gained new employment that will commence on December 15, 2014. The new employment will provide the income needed for Debtor to support plan payments.

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

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

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

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

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

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

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 7, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The amounts paid, as stated in Debtor's proposed plan, differ from the Trustee's records. Debtor lists the proposed plan payments as having paid \$13,350 to the Trustee. According to the Trustee, Debtor has paid \$75,568.43 through November 2014. The total amount paid incorporates an escrow payment in the amount of \$14,248, that the Trustee used to pay the arrears owing to Pennymac Loan Servicing as required by the plan.
2. Debtor was granted permission to sell real property, sold the

real property, and paid proceeds totaling \$47,829 to the Trustee.

3. Debtor has sought ex parte relief with regard to the proceeds. Debtor submitted to the Trustee an ex parte motion to address multiple forms of relief, including authorization to incur debt and to use \$3,800 of the money intended for reinvesting to pay the homeowners' association fees. Trustee believes this cannot be granted under the ex parte procedure and did not sign the motion.

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.

14. [14-24246](#)-C-13 CARL ASMUS AND JODI MOTION TO CONFIRM PLAN  
SAC-3 CAMPISI ASMUS 10-31-14 [[69](#)]  
**Thru #15** Scott A. CoBen

**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 31, 2014. Forty-two days' notice is required. That requirement was met.

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

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

Debtors seek confirmation of their Modified Plan filed on October 31, 2014 (Dkt. 73).

**CREDITOR JANA NEY WALKER OBJECTION**

Creditor, Jana Ney Walker, submitted a letter to the court objection to her classification as an unsecured creditor and asserting that she is secured. Attached to the letter is a secured agreement allegedly documenting that a loan made by Creditor to Debtors was secured by "Inventory/Furniture/Fixtures and Equipment."

Creditor asserts she was not notified of Debtors' bankruptcy. She asserts a claim of \$90,720.

**DEBTORS' RESPONSE**

Debtors' respond to Creditor's allegations. Debtors note for the court that Creditor Jana Walker Spano filed an unsecured proof of claim in the amount of \$90,720 on August 15, 2014 (Claim 6). The claim did not attached the

**December 16, 2014 at 2:00 p.m.**

**Page 30 of 79**

security agreement and relates to Debtors' purchase of a retail clothing store while has since been closed. According to Debtors, Creditor was able to retrieve all the collateral she wanted.

Debtors anticipate that the claim will be amended to be made secured and propose a preconfirmation modification to the plan. The modification will add the following language to the order confirming the plan: "The claim of Jana Walker Spano shall be provided for as a Class 3 claim under the First Amended Chapter 13 Plan."

Debtors provided the Declaration of Co-Debtor Jodi Campisi-Asmus, which stated the following:

1. In April 2013, Debtors purchased a retail clothing outlet in Roseville, California from Creditor, Jana Walker Spanos.
2. In September 2014, after Debtors defaulted on payments due to Creditor, Creditor came to the store and removed four pieces of mannequin art, valued at \$10,000. Creditor also took display tables, chairs, a ladder, a vacuum, a refrigerator, cleaning supplies, file cabinets, lounge chairs, an umbrella, a bench, an i-pod with music filed, and a fifty-two (52) inch television.
3. Creditor did not take basic mannequins, basic clothing inventory, a payment system, hangers, tags, tissue bags, a small refrigerator, a movie screen, some gondolas, and other items.

#### **CHAPTER 13 TRUSTEE OPPOSITION**

The Chapter 13 Trustee objects to confirmation on the following basis:

1. Debtor is \$4,300 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5,550.00 is due on December 25, 2014. Debtor has paid \$34,550.00 into the plan to date.
2. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to value the secured claim of J.P. Morgan Chase Bank, N.A.; however, Debtors have not obtained an order valuing the Bank's secured claim.
3. Debtors' plan does not reflect the Debtors' best effort. 11 U.S.C. § 1325(b). The plan may not pass the Chapter 7 Liquidation analysis test. 11 U.S.C. § 1325(a)(4). Debtors disclosed an interest in "Swak, LLC," with undisclosed assets of \$14,000. The Statement of Financial Affairs does not disclose any income from this business during the last two years. Debtors have not provided any business documents or tax returns for this business.

#### **DISCUSSION**

The court is sustaining the objection of the Chapter 13 Trustee and not confirming the plan on the grounds discussed in the Trustee's objection (Dkt. 85).

As to the Creditor's objection, the court is inclined to overrule it on the basis that it will be treated as a secured claim under Class 3 of the plan. The Debtors' testimony indicates that a substantial amount of collateral was already surrendered to Creditor and that the remainder is available for her to retrieve. While this might not be Creditor's preference, surrender of collateral securing a debt is an available remedy to the Debtors.

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

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

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

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

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



15. [14-24246](#)-C-13 CARL ASMUS AND JODI MOTION TO AVOID LIEN OF  
SAC-4 CAMPISI ASMUS CITIBANK SOUTH DAKOTA, N.A.  
Scott A. CoBen 11-4-14 [[75](#)]

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

The Motion to Avoid Lien 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 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 Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$7,063.61. The abstract of judgment was recorded with Sacramento County on August 31, 2010. That lien attached to the Debtor's residential real property commonly known as 837 Morton Way, Folsom, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$510,000 as of the date of the petition. The unavoidable consensual liens total \$657,005 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Citibank (South Dakota) N.A., Sacramento County Superior Court Case No. 34-2008-00008714-CL-CL-G, Book No. 20100831, recorded on August 31, 2010, with the Sacramento County Recorder, against the real property commonly known 837 Morton Way, Folsom, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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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 10, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds, which are identical to the grounds objected upon to Debtor's previous Motion to Confirm (See Dkt. 51):

1. Debtor's original Schedule A does not list the 144 Camino Del Mar, Cabo San Lucas Property, and Debtor has not indicated the reason for not initially including this asset in his Schedule A filed on March 10, 2014. Dckt. No. 11.
2. Debtor's Plan, in Section 2.15, provides for a 0% dividend to unsecured claim holders; however, the Additional Provisions state that all gross proceeds from the sale will go to the Trustee for a 100% disbursement to all creditors and for cost of sale requirements. The Plan must pay a 100% dividend to unsecured claim holders, or the Plan will not meet the Chapter 7 liquidation analysis as the non-exempt assets total \$1,284,125.00.
3. Debtor does not list the date sold and transferee of automobile on the statement of financial affairs, Question No. 10. Debtor

lists a transfer of a 99 F550 on the Statement of Financial Affairs, Question No. 10, in the amount of \$17,000.00; however, Debtor does not list the date sold, and the name and address of the transferee. The Debtor has filed a response to this issue on Dckt. No. 49, which states that the information requested cannot be provided, as the "item was sold at auction and Debtor does not have that information." Debtor could provide information regarding the auction itself, which would presumably resolve the matter.

4. Debtor may also not be able to make the payments under 11 U.S.C. § 1325(a)(6) because of excess contingent unsecured debt. An unsecured claim was filed on July 9, 2014, by Pension Plan for Pension Trustee Fund for Operating Engineers in the amount of \$653,185.00. The claim appears to be for a contingent withdrawal liability under ERISA Section 4203(a). While the plan calls for various sales, Dckt. No. 117, the Debtor may not be able to generate sufficient funds to pay the claims proposed, unless the contingent liability is resolved.

#### **CREDITOR WELLS FARGO BANK, N.A. OBJECTION**

Wells Fargo Bank, N.A. holds a claim evidenced by a promissory note executed by the Debtor in the original principal sum of \$143,000 and secured by a deed of trust encumbering real property commonly known as 745 Alta Powerhouse Road, Alta, California.

Wells Fargo objects on the basis that the plan does not provide for a cure of any arrears or any post-petition payments as required under the loan. Instead, the plan proposes a sale of the property within twenty-four months from the petition filing date. 11 U.S.C. § 1322(b).

Debtor cannot afford to make the payments under the plan or comply with the plan. On March 10, 2014, Debtor filed Amended Schedules I & J reflecting disposable monthly income of \$155 per month. This amount is insufficient to provide for Creditor's secured claim. 11 U.S.C. § 1325(a)(5).

#### **CREDITOR TRI COUNTIES BANK OBJECTION**

Tri Counties Bank holds a \$485,940 claim against the estate, secured by property located on Whitcolm Avenue, Colfax, California and properties located on Railroad Avenue, Grass Valley, California.

Tri Counties objects to the plan on the basis that it fails to pay the Bank any interest on its claim, as required under 11 U.S.C. § 1325(a)(5). Tri Counties further objects on the basis that the plan does not provide for the Bank retaining its lien, as required by 11 U.S.C. § 1325(a)(5). Finally, the Bank objects on the basis that the plan has not been proposed in good faith, as the length of time it proposes for liquidation of personal and real property is unreasonable. 11 U.S.C. § 1325(a)(3).

#### **DEBTOR'S RESPONSE TO THE CHAPTER 13 TRUSTEE**

In response to the Chapter 13 Trustee, Debtor asserts:

1. At the time the petition was filed, Debtor was still assessing

the status of the property in Mexico. The property was intended to be listed on Schedule B, but was inadvertently left out. The property was disclosed at the 341 Meeting, but still lacked final determination on its status. When amendments to Schedules were filed in July, Debtor scheduled it on Schedule A, out of an abundance of caution and in an effort to list it in the least favorable to the Debtor and most favorable to a determination that the case should pay 100% of all claims.

2. The lack of clarity regarding the dividend to unsecured creditors was due to an automatic setting on the plan preparation software. The additional provisions are the correct amount and Debtor proposes a correction to be made in the order confirming the plan.
3. Debtor has not recollection as to the purchase of the automobile on the statement of financial affairs, as the item was sold through an auction by Richie Brothers prior to the filing. Debtor's counsel requested information on the sale from Richie Brothers, but has not received any further information. It was disclosed to the Trustee that the sale was to an unrelated party.
4. As for the Pension Plan Claim, Debtor states he is planning on objecting to the claim as the creditor has never had a contractual obligation that was approved by the Debtor. The debt was originally listed as contingent because Debtor has no paperwork to confirm or deny his personal obligation. Debtor now believes his personal obligation on the debt is \$0.00.

#### **DEBTOR'S REPLY TO WELLS FARGO BANK, N.A.**

In response to Wells Fargo Bank, N.A., Debtor states that he intends to either amend the classification of the creditor to Class 3 surrender or permit the Creditor to file a motion for relief and not oppose the motion.

As for the current plan, Debtor asserts that the plan will pay the arrears once more property is liquidated and funds are in the Chapter 13 Trustee's possession.

#### **DEBTOR'S REPLY TO TRI COUNTIES BANK**

In response to Tri Counties Bank Debtor states that the plan does not proposed treatment that would remove the liens and the argument the Bank is making is a "red herring" designed to "begin a laundry list of 'things not assured.'" Debtor concludes that lien rights have not been called into question with the plan.

As for Tri Counties objection based on the amount of time provided for the plan and the lack of Debtor's intent to pay interest on the claim, Debtor state he is amenable to reviewing a stipulation to allow additional accrued interest to be reviewed.

## DISCUSSION

After reviewing the plan, objections, and Debtor's responses, the court's decision is to deny the Motion to Confirm.

As to the Trustee's Objection, what remains outstanding is whether the Trustee is satisfied as to the Debtor's explanations regarding the Mexico property and automobile purchase and the status of the Pension Plan Claim.

Treatment of Wells Fargo Bank, N.A.'s claim remains unresolved as Debtor proposes to either change the classification of claim or encourage the creditor to file an unopposed motion for relief from stay. The change in classification would require a modification.

The Tri Counties Bank objection lacks some veracity; however, the court agrees that the uncertainty concerning the time in which the personal and real properties suggests that the plan was either not proposed in good faith or is not feasible.

The court takes specific issue with the statement in the Additional Provision in the plan that provides, concerning personal property listed: "These items will be sold within 12 months from filing date." Debtor's petition was filed on February 24, 2014 and as far as the court is aware, one piece of personal property has been sold. We are halfway through the month of December and the court has no confidence that the personal property listed in the Additional Provisions will be liquidated by February 15, 2015. Debtor has given the court no reason to believe this proposition.

The real properties listed in the Additional Provisions are to be sold within twenty-four months from the filing date. Twenty-four months is a considerable amount of time and without more evidence that sales are likely to occur at a sooner date, the plan is not sufficiently feasible.

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.

17. [14-21752](#)-C-13 SCOTT MILES  
LBG-12 Lucas B. Garcia

OBJECTION TO CLAIM OF PENSION  
PLAN FOR PENSION TRUST FUND FOR  
OPERATING ENGINEERS, CLAIM  
NUMBER 16  
11-4-14 [[201](#)]

**Tentative Ruling:** 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).

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 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 4, 2014. Forty-four days' notice is required; however, only forty-three (43) days' was provided. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was not 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).

<b>The Objection to Claim of Pension Plan for Pension Trust Fund for Operating Engineers is overruled.</b>
--

Scott Daniel Miles, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Pension Plan for Pension Trust for Operating Engineers ("Creditor"), Proof of Claim No. 16 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$653,185. Objector asserts that the claim is not substantiated with enough particularity, pursuant to FRBP 3001(c). Debtor alleges he is not personally liable for the subject debt as the claim is for a deficiency balance and the claim does not show how the deficiency was determined.

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).

Debtor's most recent Amended Plan was filed on October 10, 2014. In Class 7, Debtor is proposing to pay a 0% dividend to unsecured claims that are not entitled to priority.

Debtor's objection relates to the general unsecured claim of Claimant, which would be classified under Class 7 of the plan.

The court is perplexed as to Debtors' motivation in seeking to disallow the instant unsecured claim, as Debtors' confirmed plan is paying a 0.00% dividend on general unsecured claims. Debtors' pleadings and declaration shed no light on their motivation and without further discussion the court is not prepared to sustain the objection.

The court is also overruling the Objection on the grounds that it was served with insufficient notice. The Proof of Service states the papers were served on November 4, 2014. The hearing on the matter takes place on December 16, 2014. The amount of service required is forty-four (44) days and Debtor only provided forty-three (42) days worth of notice.

Based on the evidence before the court and the lack of notice, the creditor's claim is allowed. The Objection to the Proof of Claim 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 Objection to Claim of Creditor  
filed in this case by Debtor having been  
presented to the court, and upon review of the  
pleadings, evidence, arguments of counsel, and  
good cause appearing,

**IT IS ORDERED** that the objection to  
Proof of Claim Number 16 is overruled.



18. [14-21752](#)-C-13 SCOTT MILES  
PJR-3 Lucas B. Garcia

MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7 AND/OR  
MOTION TO DISMISS CASE  
11-21-14 [[211](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Creditor, Tri Counties Bank, seeks an order of the court pursuant to 11 U.S.C. § 1307 & FRBP 1017(f) converting the case to Chapter 7 or dismissing the case.

Specifically, Tri Counties argues that "cause" exists to convert or dismiss the case on the basis that Debtor is causing unreasonably delay that is prejudicial to creditors and due to the bad faith of the Debtor in filing the case. 11 U.S.C. § 1307(c)(1).

Tri Counties Bank acquired a loan Debtor originated with Citizens Bank of Northern California for the principal sum of \$500,000. In January 2013,

**December 16, 2014 at 2:00 p.m.**

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Debtor and Tri Counties executed a security agreement, whereby Debtor granted the Bank a security interest in certain collateral. The security interest was perfected by Tri Counties when it filed a UCC-1 filing statement with the California Secretary of State on March 12, 2013, filing number 137351410277. Beginning November 15, 2013, Debtor defaulted on the obligation by not making monthly payments.

Creditor asserts the following as a basis for conversion or dismissal:

1. Debtor has yet to propose a feasible plan and caused unreasonable delay to his creditors. None of the three plan proposed by Debtor were feasible or properly provided for the Debtor's secured claims. Creditor understand that Debtor is not uses the property he seeks to sell to fund his plan and sees no justification for the sale taking two years.
2. The plan was file din bad faith. The debtor admitted that he filed the instant case to control the order in which he liquidates his assets; however, in the first nine months he has liquidated only one piece of real property, a vehicle. Debtor did not appear at the original 341 Meeting, did not initially provide tax documents to the Trustee, and did not disclose all his assets in his schedules.

#### **DEBTOR'S OPPOSITION**

In Opposition to the Motion, Debtor presents the following:

1. The Motion was provided with incorrect notice as both this court and the court of the Honorable Judge Holman were listed on the notice. Debtor argues this creates the possibility and likelihood of confusion.
2. Debtor argues that Tri Counties Bank will be the only creditor to benefit from dismissal or conversion. The current plan before the court will provide payment of 100% to unsecured creditors. If the case is dismissed, Tri Counties will be permitted to foreclose on any or all of the cross-collateralized properties and sell them for as little as will cover their not. If the case is converted, Tri Counties has not asserted that the sale will be any more expeditious than if it were to occur through Chapter 13.
3. Debtor attributes the delays to the Creditors who have been objecting to the plan and not providing language that will satisfy their concerns with the plan.

#### **DISCUSSION**

The court agrees that the Notice provided with the Motion is sufficiently confusing that it requires the Motion to be denied without prejudice. (Dkt. 212). The Notice caption provides that the hearing will take place in front of Judge Christopher Klein in Courtroom 33, the second line of the body of the Notice states that the hearing will take place in Courtroom 35. Further down the body of the notice, it states that the hearing will take place before Judge Holman.

Creditor is attempting to convince the court that dismissal or conversion of the case is in the best interest of creditors; however, many of the creditors with interest in the case may be prejudiced by the inconsistent language in the notice.

For this reason, the Motion is denied without prejudice.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The Notice of Hearing identifies the plan as First Modified Plan dated November 3, 2014. The correct title is First Modified Chapter 13 Plan filed November 3, 2014. Additionally, the Notice states the correct hearing date in the caption, but misstates the date as November 3, 2014 in the body of the Notice.
2. The Motion to Confirm identifies the plan as the First Modified Plan dated November 3, 2014; however, the correct title is First Modified Chapter 13 Plan filed November 3,

2014.

3. The Declaration in support identifies the plan as First Modified Plan Dated November 3, 2014; however, the correct title is First Modified Chapter 13 Plan filed November 3, 2014. Additionally, the Declaration refers in items 5 and 7(f) as the First Modified Chapter 13 Plan on September 25, 2014.
4. Debtors have filed the same plan except for the signature page purportedly signed August 12, 2014, September 25, 2014, and August 12, 2014. Trustee requests a wet signature for all documents filed by the Debtors related to the motion.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following basis:

1. Debtor seeks to value the secured claim of Green Tree Servicing, LLC. The Motion to value the claim was heard and denied at the hearing on November 18, 2014. Unless Debtor files and receives approval for a new motion, she cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

Debtor filed a new Motion to Value the secured claim of Green Tree Servicing, LLC, to be heard on January 27, 2015. The court will continue the Trustee's objection to January 27, 2015 to be heard in conjunction with the Motion to Value.

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

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

The 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 is continued to January 27, 2015 at 2:00 p.m.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Creditor, Melissa Ericsson, opposes confirmation of the Plan on the basis that Debtor is not committing all disposable income into the plan, Debtor's bad faith nondisclosure of assets, Debtor's bad faith in over-deducting for taxes, Debtor not disclosing all household income, and the plan not adjusting to increase payments when Debtor's oldest daughter turns eighteen (18) years old. Melissa Ericsson is Debtor's ex-spouse.

Creditor asserts that the plan was not proposed in good faith because Debtor's future income is understand. 11 U.S.C. § 1325(a)(3). Creditor asserts that Debtor's employment with Cal Fire enabled him to earn annual gross wages of approximately \$90,000 to \$120,000 until 2013-2014, when he was placed on administrative leave. Debtor returned to employment in July 2014, and Creditor argues there is no reason why he will not return to the same level of annual gross earnings.



Debtor's plan is based on projected gross wages of \$7,200 and his income does not reflect his overtime. Creditor asserts there is guaranteed overtime the Debtor will be paid.

Creditor argues that Debtor overstated his expenses for rent and food. In an expense statement filed with the state court, Debtor stated that rent was \$1,200 and food was \$500. In the expense statement with the bankruptcy court, Debtor represents that rent is \$1,400 and food costs \$1,000 per month.

Creditor asserts that Debtor's income does not include income from his son, who should be contributing \$1,600 per month per state court documents.

Creditor asserts that the plan does not provide for known priority claims. 11 U.S.C. § 1322(a)(2). Debtor's Schedule E lists Siskiyou Modoc Regional DCSS as a priority debt of \$0.00. Creditor argues Debtor could easily obtain an estimate of this amount. Jeanne Marie Bohm filed claim 4 for \$1,815, asserting priority status under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). Also, the California Franchise Tax Board filed a priority claim (3) for the amount of \$423.96. Debtor's plan does not provide for these claims.

Debtor is currently making \$1,000 child support payments on account of his sixteen year-old daughter. Creditor argues that once Debtor's daughter reaches the age of maturity, he will not longer be required to make this DSO payment and the plan does not adequately provide for known changes in Debtor's financial circumstances.

Creditor asserts that it is standard for Debtor to over deduct for taxes to lower the net monthly income and increase the tax refund. If this continues, the monthly payment to unsecured creditors should be increased based on the over deduction.

A review of Schedule B does not disclose vacation creditors Debtor accumulates as a State of California employee.

#### **DEBTOR'S RESPONSE**

Debtor responds to the objection of Creditor. Debtor concedes that the plan does not account for future earnings of the Debtor and argues that whether his wages will return to the level they were prior to administrative leave is unknown. Debtor asserts it is also unknown whether the overtime he received will return.

Debtor states that since the state court papers were filed, his rent has increased from \$1,200 to \$1,400 and his food costs have increased since his son is living with him. Debtor testifies that the expenses are accurate and reasonable.

Debtor declares that at the time he filed his petition, his son was not making \$1,600 and was not contributing to the household income.

As for the claim of Siskiyou Modoc Region DCSS, Debtor states that if he owes it a priority claim, then a claim will be filed and the Debtor will have to modify the plan and pay the claim. At the time of filing the petition, Debtor asserts that \$0.00 was owed. Debtor intends on objecting to

the claim of Jeanne Marie Bohm since it is not secured, is not priority, and should be treated as a general unsecured claim. Debtor paid the priority claim of the FTB in full last month.

Debtor will modify the plan to account for the increase in income after his daughter reaches the age of maturity.

Debtor asserts that he no longer over deducts his taxes as it was a luxury he could afford while married but is no longer an option. His deduction accurately reflect the amount he anticipates will equal his annual tax obligation and he anticipates receiving little, if any, tax refunds.

As for the vacation creditors, Debtor has been on administrative leave and is unaware if any credits have accrued of it they were all used to pay his salary during the past year. Debtor will make an inquiry with his employer and Schedule the credits on Schedule B, if necessary.

## **DISCUSSION**

The court is satisfied with many of the Debtor's explanations concerning the numerous issues raised by Creditor.

The court is not prepared to confirm the plan because it requires further substantiation on a couple matters.

First, Debtor declares that when papers were prepared for his bankruptcy, his son was not contributing to household finances. Decl. of Richard Anderson. Debtor's petition was filed on September 12, 2014. On August 5, 2014, Debtor submitted income and expense forms to the Siskiyou County Superior Court stating that his son, aged 20, had monthly gross income of \$1,600 and was contributing to household expenses (Exh. A, Dkt. 21). Debtor made this representation to the state court a month before he filed his bankruptcy petition. The court finds it hard to believe that Debtor's son was not contributing to the household in September 2014 when the state court papers explicitly state he was contributing in August 2013. Debtor needs to account for the household contributions his son has been making.

Second, Debtor increased food expenses to \$1,000 per month because his son is now living with him. According to Debtor's declaration, his son has a job and earns \$1,600. Not only should his son's income contribute to household expenses; however, \$1,000 per month in food costs is excessive and not reasonable, without further justification.

Third, if Debtor can ascertain the date on which he will no longer be paying domestic support obligation on account of his daughter, he should provide for an increased payment and reflect that change in his plan and distribution.

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.

**December 16, 2014 at 2:00 p.m.**

**Page 50 of 79**

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

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

22. [14-30160](#)-C-13 JANINE AMOS  
DPC-1 Jasmin T. Nguyen  
**Thru #23**

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-20-14 [[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 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that it relies on the pending Motion to Value the secured claim of Citibank, N.A. If the Motion to Value is not granted, Debtor lacks sufficient monies to pay the claim in full and cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

At the hearing on December 16, 2014, the court is prepared to grant the Motion to Value the secured claim of Citibank, N.A.

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 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 10, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [14-30160](#)-C-13 JANINE AMOS  
JTN-1 Jasmin T. Nguyen

MOTION TO VALUE COLLATERAL OF  
CITIFINANCIAL/CITIBANK, N.A.  
11-13-14 [[16](#)]

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5380 Jacinto Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$185,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$211,088. Citibank, National Association's second deed of trust secures a loan with a balance of approximately \$14,621. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5380 Jacinto Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$185,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

**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 December 2, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation based on the following:

1. The plan does not pass Chapter 7 liquidation analysis. 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$4,204 and Debtors propose a 4% dividend to unsecured creditors, with amounts of approximately \$61.75. According to Debtors' Schedules B & C, non-exempt equity exists in the following personal property:

Checking account:	\$104
Stamp Collection:	\$50
Estimated 2014 Tax Refund:	\$4,000
3 German Shepards & 3 Llamas:	\$50



2. Debtors' Schedule B lists on line 21: "Labor dispute filed by Kristina Walker, \$51,068." Schedule C exempts the full amount under CCP § 704.140.

Section 704.140 states:

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

A review of § 706.010 et seq. indicates a restriction on the amount that may be exempted:

Except as otherwise provided in this chapter, the amount of earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the judgment debtor's earnings under federal law in Section 1673(a) of Title 15 of the United States Code. 706.050. (a) Except as otherwise provided in this chapter the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order shall not exceed the lesser of the following:

(1) Twenty-five percent of the individual's disposable earnings for that week.

The exemption Debtor claims on Schedule C exceeds the allowable amount under the status by \$38,301.

#### **DEBTORS' RESPONSE**

Debtors state that they will have to modify their plan in the future, to include the 2014 tax refund and the possible labor claim award.

Debtors filed amended Schedules B & C, changing the exemption on the 2014 tax refund.

Debtor states that if any claim amount is awarded in favor of debtor under the labor dispute, those funds will be made available to the Trustee, since there isn't an exemption for the claim.

#### **TRUSTEE'S RESPONSE**

**December 16, 2014 at 2:00 p.m.**

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Trustee states that he does not oppose confirmation of the plan if the Order Confirming specifies that in the event of any award to Debtor from the pending Labor Claim, the funds from the award shall be paid into the plan.

Trustee also requests that Debtors pay any income tax refunds into the plan.

## **DISCUSSION**

The court concurs with the Trustee and will permit confirmation of the plan on the basis that certain language is included 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 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that in the order confirming the plan, Debtor will include language indicating that if any award is made to Debtor based on the pending Labor Claim, the full amount will be turned over to the Chapter 13 Trustee to be paid through the Chapter 13 Plan.

**IT IS FURTHER ORDERED** that Debtor will turnover to the Chapter 13 Trustee any monies resulting from filing 2014 Tax Returns, to be paid through the Chapter 13 Plan.

25. [14-27671](#)-C-13 RAUL/ALMA ANGEL  
JME-2 Julius M. Engel

MOTION TO VALUE COLLATERAL OF  
OCWEN FINANCIAL SERVICES,  
S.R.L., LLC  
12-2-14 [[43](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 2, 2014. Fourteen days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of Ocwen Loan Servicing, S.R.L, LLC, "Creditor," is denied</b>
---

#### **IDENTITY OF CREDITOR**

A review of the docket demonstrates that the proper named creditor on the subject loans is Deutsche Bank National Trust Company and that Ocwen Loan Servicing, LLC is the loan servicer. There is no document on the Docket transferring the claim filed in Deutsche Bank National Trust Company's name (Claims 16 and 17) to Ocwen Loan Servicing, LLC and nothing indicating that Ocwen has authority to act on behalf of Deutsche.

The court will not enter an order altering the legal rights of a creditor unless that Creditor is properly named in the motion. Here, Debtor's moving papers all seek to value the secured claim of Ocwen Loan

Servicing, LLC; however, Ocwen Loan Servicing is not the entity with the secured claim.

The Debtor's previous efforts at valuing this secured claim were denied for similar reasons. See Dkt. 36. However, since the denial of the previous Motion, claims 16 and 17 were filed, indicating the name of the proper creditor. Therefore, the court's decision is to deny the motion without prejudice to refiling.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on November 13, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor's plan relies on a Motion to Value the secured claim of Navy Federal Credit Union; however, not Motion has been filed. Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).
4. Section 2.06 of the plan does not indicate if attorneys' fees are going to be sought by motion or by compliance with the local rules.
5. Debtor's petition does not indicate any prior filings; however, a review of the court docket shoes that Debtor filed a prior Chapter 13 case on July 30, 2014 (14-27781), that was dismissed on August 18, 2014.
6. Debtor may not be able to make the plan payment under 11 U.S.C. § 1325(a)(6). The plan calls for payments of \$1,850 per month. Debtor's Schedule J indicates net income of \$1,250.

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

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

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

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

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

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtor's Chapter 13 Plan filed on  
October 31, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the

**December 16, 2014 at 2:00 p.m.**

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



28. [14-27884](#)-C-13 KENNETH CARPENTER AND MOTION TO CONFIRM PLAN  
DPR-1 NANCY GRIMALDY 10-22-14 [[39](#)]  
David P. Ritzinger

**Final Ruling:** No appearance at the December 16, 2014 hearing is required.  
-----

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

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

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtor's Chapter 13 Plan filed on  
October 22, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the

**December 16, 2014 at 2:00 p.m.**

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

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

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

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

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

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-28178) was filed on August 12, 2014 and dismissed on November 21, 2014, for Debtor's failure make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed provide adequate protection. 11 U.S.C. § 362(c)(3)(C)(i)(II)(bb). The presumption of bad faith may be rebutted by clear and convincing evidence.

*Id.* at § 362(c)(3)(c).

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor argues the instant case was filed to cure pre-petition arrears owed on her vehicle. Debtor is employed for temporary employment and has current gross monthly income of \$2,411 and net monthly income of \$2,212. Debtor's Schedule I and B22C reflects that there are sufficient wages to cover obligations in addition to a Chapter 13 plan payment.

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor is \$1,740 delinquent in plan payments to the Trustee to date. According to the proposed modified plan, payments of \$40,210 have come due. Debtor has paid a total of \$38,470 to the Trustee with the last payments totaling \$1,670 having posted on November 6, 2014.
2. According to the Trustee's calculations, the plan will complete in more than 60 months, possibly 82 months, exceeding the time allowed under 11 U.S.C. § 1322(d).

3. Debtors could take a better course of action with regard to treatment of post-petition mortgage fees of Wells Fargo Financial California, Inc.
4. Debtors may have additional disposable income.

**DEBTOR'S NON-OPPOSITION**

Debtors filed a statement asserting that they agree with the Trustee's objections and indicating that an Amended Plan correcting the issues will be filed.

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

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

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

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

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

31. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA MRL-8 ALICE MAY Mikalah R. Liviakis MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS' ATTORNEY(S) 11-18-14 [[136](#)]

**Tentative Ruling:** The Motion for Compensation 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Compensation 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 Motion for Allowance of Professional Fees is denied.**

**FEES REQUESTED**

Mikalah Liviakis, the Attorney ("Applicant") for Issac Nyden & Carola May, the Chapter 13 Debtors ("Client"), requests the court permit additional fees pursuant to Local Bankruptcy Rule 2016-1(c)(3).

Local Bankr. Rule 2016-1(c)(3) provides:

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's

attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed.

***Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.*** Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 1 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Local Bankr. R. 2016-1(c)(3)

Applicant provides the following explanation of services that were substantial and unanticipated post-confirmation work:

- a. Contact with Debtors to keep them updated on the case.
- b. Negotiations with Frank Bloksberg regarding objections
- c. Drafting a Stipulation to resolve Bloksberg's objections
- d. Drafting an amended to Debtor's schedules
- e. Drafting a motion to avoid lien
- f. Attendance at hearings

For these services, counsel is requesting \$3,726 in fees and \$0.00 in expenses.

#### **CHAPTER 13 TRUSTEE RESPONSE**

Trustee does not oppose the requested fees. However, it appears counsel is opting out of the Guidelines for payment of attoreny's fees and he should normally do so in the Order Confirming the Plan. Trustee submitted the Order Confirming on November 19, 2014 after the plan was confirmed on November 13, 2014.

#### **APPLICANT'S RESPONSE**

Attorney responds and states that he is not opting out of the Guidelines, but that he is requesting compensation on the basis that substantial and unanticipated work was necessary to get the case confirmed. He is seeking additional compensation for those services under LBR 201691(c)(3).

#### **DISPOSITION**

The court is not persuaded that counsel has met his burden in showing that the fees requests are based on services that were substantial and unanticipated. Counsel's declaration merely states the conclusion that at some point in time it became clear that substantial and unanticipated post-confirmation work was required. Counsel offers no arguments as to why the court should perceive the work completed post-confirmation as substantial or unanticipated.



Federal Rule of Bankruptcy Procedure 9013 requires that motions states *with particularity* the grounds upon which relief is sought. Here, the particularity required by the local rules is lacking and the court is not persuaded to grant the motion.

Debtors' plan was confirmed by the court at the hearing on November 4, 2014. The minute order granting the Motion to Confirm was entered November 13, 2014 (Dkt. 135). The order confirming the plan was entered December 1, 2014. The work conducted post-confirmation (post November 4, 2014), per counsel's timesheet (Dkt. 138), includes phone conversations with Debtors and Counsel for Objecting Creditor and drafting of the Motion for Compensation. From the court's perspective, continued negotiations with Objecting Creditor and post-confirmation with Debtors are not unanticipated given the history of this case and the general role of Chapter 13 counsel. Further, the total time spent on the phone with these parties is 90 minutes. The other 30 minutes billed was for preparation of the Motion for Compensation. The court is not convinced that 90 minutes of post-confirmation conversations with client's and continued negotiations with an objecting Creditor are substantial considering the nature of this case.

Finally, in Counsel's response, he states the additional work was necessary to get the case confirmed. If the work was necessary to achieve confirmation, how can counsel argue the services were for substantial and unanticipated *post-confirmation* work?

The court shall issue an 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 Allowance of Fees and Expenses filed by Mikalah Liviakis ("Applicant"), Counsel for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

The Motion to Avoid Lien 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 Motion to Avoid Lien is denied.**

Debtor seeks to avoiding the fixing of a lien issued against Debtor pursuant to California Labor Code § 3722. The lien was issued by the Labor Commissioner, representing the Director of Industrial Relations, as Administrator of the Uninsured Employer's Fund as a penalty lien in the amount of \$3,000. The lien was recorded with the Sacramento County Recorder's Office on November 7, 2013. See Exhibit 2, Docket 12.

Debtor seeks to avoid the lien pursuant to 11 U.S.C. § 522(f). Section 522(f) permits a Debtor to avoid a lien to the extent it impairs an exemption. § 522(f)(1). The liens subject to section 522(f) include judicial liens, with exception, and nonpossessory, nonpurchase-money security interests. See § 522(f)(1)(A)-(B). The subject lien, in favor of the California Department of Industrial Relations, is a statutory lien and not subject to avoidance under 11 U.S.C. § 522(f). Debtor has presented no compelling legal standard under which the court could properly avoid the fixing of this lien.

A minute order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 to Avoid Lien is denied without prejudice.

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 8, 2014.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-35555) was filed on December 10, 2013 and dismissed on February 12, 2014, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor argues that the prior case was dismissed only because he has been promised a fulfillment of a payment on a government contract that would have cured all mortgage arrears. In order to receive the funds, he needed to focus all attention on his work and could not continue with his bankruptcy. For the present case, Debtor asserts he has rearranged his income stream to avoid the irregular payment by Federal and State contracts. Debtor's attorney takes responsibility for the delay in filing with the last case, due to holiday and personal time taken.

Debtor's counsel asserts that administrative of the current case will be facilitated by the extension of the stay because it will prevent creditors from engaging in self-help efforts before the 341 Meeting takes place and permit Debtor to timely reorganize.

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

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

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

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

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

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

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

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 8, 2014.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-29945) was filed on October 5, 2014 and dismissed on November 25, 2014, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, the previous case was dismissed because of counsel's inadvertent failure to file Form B22C, all other documents were timely filed. All initial documents were filed on December 1, 2014 for the current case. Debtors have proposed a plan that dedicates their disposable income to the repayment of creditors, have disclosed assets and liabilities, and are making a good faith effort to comply with all of the requirements of the code.

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

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

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

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

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

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