

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**December 20, 2016 at 2:00 P.M.**

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1.	<a href="#"><u>11-31603</u></a> -C-13 PGM-3	JAGENDAR/PREMILA SINGH Peter Macaluso	MOTION TO REDUCE PERCENTAGE TO GENERAL UNSECURED CREDITORS 10-26-16 [ <a href="#"><u>86</u></a> ]
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**Tentative Ruling:** The Motion to Reduce Percentage to General Unsecured Creditors has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Reduce Percentage to General Unsecured Creditors 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).

<p><b>The court's decision is to deny the Motion to Reduce Percentage to General Unsecured Creditors .</b></p>
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The Debtors move to request that the percentage due to general unsecured creditors be reduced from 25.5% to 22%. Debtors are currently in month 64 of a 60 month plan as of the filing of the motion. The debtor had non-exempt assets equal to \$19,176.00. The debtor has paid into the plan \$19,176.00 for the distribution to unsecured creditors. The debtors move to have the percentage reduced to 22% but allege that they do not attempt to reduce the dollar amount due to unsecured creditors.

## **Trustee's Response**

The Trustee opposes the motion on three grounds:

- A. The debtors have not stated legal authority for the motion as required under LBR 9014-1(d)(6).
- B. No declaration has been filed and the Trustee is not certain the court has sufficient evidence to grant the motion.
- C. The debtors' plan indicated a 25.5% dividend to unsecured creditors. There is a pending motion to dismiss to be heard on January 18, 2017. Approximately \$2,500 is needed to complete the plan and to pay unsecured creditors 25.5%.

## **Discussion**

The court does not have evidence of good faith regarding a modification of the plan. The debtors assert that the plan payment amounts will not change. However, it appears that a modification is required as the debtors are attempting to pay less than originally contemplated in the confirmed plan. Simply meeting the best interests of creditors test is not sufficient. Payments must be made in accordance with the confirmed plan. As a result, the motion will be denied.

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

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

The Motion to Reduce Percentage to General Unsecured Creditors 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 Reduce Percentage to General Unsecured Creditors is denied.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2016. 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 of the plan for the following reason:

A. The trustee asserts that the plan may not be the debtors' best effort. There are several expenses that were added without declaration or explanation. There are a number of expenses relating to home ownership that are not currently applicable as the debtors have stated that they are staying with a friend in Redwood City. Total expenses have more than doubled (without explanation) from the time of filing the petition to the current time.

**Debtors' Reply**

Debtors reply attempts to explain to the court and trustee the circumstances surrounding the changes in expenses and income. The debtors assert that they have talked to the trustee and have increased plan payments in an attempt to meet the concerns of the trustee. The court is persuaded that the debtors have adequately explained the changed circumstances and the increase in plan payments allow this plan to comply with the requirements of 11 U.S.C. §§ 1322 and 1325(a) and the plan will be 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 granted. The Debtors' Chapter 13 Plan filed on November 8, 2016 is confirmed, pending the amendments counsel for the Debtors' has suggested, 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.

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**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 8, 2016. 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).

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

- A. The debtors are delinquent \$313.00 under the terms of the proposed plan.
- B. The debtor is proposing to change creditor Ocwen from Class 1 to Class 4. The debtor has not provided sufficient information regarding the proposed trial loan modification including their payments on the loan modification so far.
- C. The trustee points out deficiencies in the service of 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.

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**Final Ruling:** No appearance at the December 20, 2016 hearing is required.  
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**Local Rule 9014-1(f)(1)** - No opposition filed: The Objection to Debtor's Claim of Exemption 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 15, 2016. Twenty eight days' notice is required. That requirement is met.

<b>The court's decision is to sustain the Objection.</b>
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Chapter 13 Trustee opposes Debtor's exemptions the basis that:

A. Debtors Schedule C lists a real property exemption of \$26,800.00 under CCC § 703.140(b)(1) while the limit under that statute as of the petition date in 2011 was \$22,075.00.

B. Debtor has made additional claims of exemption exceeding those allowed by statute including over exempting a 2000 Dodge Ram by \$500, a 2002 GMC Sonoma by \$3,150, and several other items that used left over amounts found in 703.140(b)(5) which do not exist.

### Discussion

The court finds the Trustee's argument well reasoned and will disallow the exemptions to the amount specified in the motion.

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

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

The Objection to Exemptions 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 Exemptions is sustained and the exemption in the 2000 Dodge Ram will be reduced by \$500, the exemption in the 2002 GMC Sonoma will be reduced by \$3,125, and the exemptions in the display cases, various collectibles, cash on hand, El Dorado Savings Bank account, and Cal Pers account will be \$0.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2016. 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:

A. The debtors are delinquent \$2,251.00 under the proposed plan.

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

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

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

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

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

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**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 23, 2016. 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 -----.

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

A. The debtor failed to appear at the First Meeting of Creditors. The Meeting has been continued to January 5, 2017.

B. Debtors' plan calls for payment of attorney fees of \$2,000 but fails to indicate whether counsel will file a separate motion for fees or paid in plan by complying with LBR 2016-1(c).

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

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**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 16, 2016. Fourteen days' notice is required.

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

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

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

- A. Debtor has failed to use the new official forms for his schedules.
- B. There are a number of incomplete documents. Debtor does not list a dividend to the unsecured creditors. Debtor misclassifies Ventura County Credit Union. Debtor lists "cramdown procedure" as a \$100 expense each month.
- C. Debtor is delinquent on \$250 in plan payments.
- D. The Debtor has a substantial amount of non-exempt equity but failed to propose a dividend to pay the unsecured creditors.

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

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

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

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

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

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**Tentative Ruling:** The Objection to Notice of Mortgage Payment Change 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 October 27, 2016. Twenty eight days' notice is required. That requirement was met.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(1). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Chapter 13 Trustee filed this objection with the intention of determining to whom to make payments. The Trustee and the creditor have worked out the correct address and name of the creditor and the Trustee will be sending payments to Ditech Financial LLC, 1400 Turbine Drive, Suite 200, Rapid City, South Dakota 57709. The Trustee subsequently requests that the objection 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 Notice of Mortgage Payment Changed 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 Exemptions is overruled.

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9.     [16-26730](#)-C-13     DAVID/NORMA STANLEY     CONTINUED OBJECTION TO  
DPC-1     Mohammad Mokarram     CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-10-16 [[13](#)]

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**Final Ruling:** No appearance at the December 20, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

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**Tentative Ruling:** The Motion to Sell 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 21, 2016. Twenty eight days' notice is required. That requirement was met.

The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy 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 Sell Property is granted.**

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

A. 4100 Summer Gate Ave, Vallejo, CA

The Debtor wishes to short-sell the property and the buyers, Norman and Heather Knight have agreed to purchase the property at \$499,000.00.

The principal amount owed on the first and only lien is \$578,446.00 however Select Portfolio Servicing has agreed to the selling price of \$499,000.00.

“(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

11 U.S.C. § 363(f)(1).

For this Motion, the Movant has established that § 363(f)(1) has been met.

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 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 Brian and Jasmine Jew (“Chapter 13 Debtors”) are authorized to sell pursuant to 11 U.S.C. § 363(b) to Norman and Heather Knight or nominee (“Buyer”), the Property commonly known as 4100 Summer Gate Ave, Vallejo, CA (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$499,000 on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 97, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker’s commission not to exceed 6% in the aggregate of the gross sales price may be paid to RE/MAX Gold/Wine Country Group as provided in the Purchase Agreement,

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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**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 11, 2016. 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 -----.

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

- A. The plan relies on the Motion to Value which is set for hearing on November 22, 2016.
- B. The plan is not the Debtor's best effort. It appears that the debtor's income is actually greater than \$6,700 which is listed on Schedule I. Additionally, there is a \$150 income tax expense which the debtor admitted is not a valid expense.

#### **Debtor's Response**

Debtor responds that the Motion to Value was granted by the court on November 29, 2016. Additionally Debtor has amended the plan to delete the \$150 expense and to propose slightly higher plan payments during the holiday months when the debtor is able to work more.

The court is convinced that the Plan does comply 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. The debtor shall notice and file a motion to confirm a plan.

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**Final Ruling:** No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2016. 35 days' notice is required. That requirement was met.

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

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

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, Debtors' Chapter 13 Plan filed on November 9, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 28, 2016. 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 not 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.

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

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

A. 1517 Maryland Avenue, West Sacramento, CA

The Debtors have completed plan payments and seek to sell to a bonafide buyer for \$205,000.00.

The principal amount owed on the first and only lien is \$578,446.00 however Select Portfolio Servicing has agreed to the selling price of \$499,000.00.

“(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

11 U.S.C. § 363(f)(1).

For this Motion, the Movant has established that § 363(f)(1) has been met. The trustee filed a non-opposition to the motion.

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

**IT IS ORDERED** that the Melvin and Patricia Purbaugh (“Chapter 13 Debtors”) are authorized to sell pursuant to 11 U.S.C. § 363(b) to Deer Creek Enterprises, Inc. or nominee (“Buyer”), the Property commonly known as 1517 Maryland Avenue, West Sacramento, CA (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$205,000 on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 128, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker’s commission not to exceed 6% in the aggregate, to be divided to Excel

Realty as provided in the Purchase Agreement.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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**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 31, 2016. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The claim of Patelco Credit Union should be paid through the Trustee where it is a short term debt that does not extend beyond the length of the plan. The debtors must give justification for their desire to make payments outside of the plan.

**Debtor's Response**

The debtors respond that the interest rate of paying the creditor outside of the plan is very favorable. Significantly, the last payment on this debt is within 30 days of the end of this plan. If one month longer, then it would technically meet the automatic right to have it paid directly by Debtor. The debtors assert that this favorable interest rate is the "cause" required to make a payment outside of the plan.

**Discussion**

The court is convinced that the debtors have cause to make this payment outside of the plan.

The Plan complies does comply 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 Motion to Confirm the Plan is granted and the Debtors' Chapter 13 Plan filed on October 31, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**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 23, 2016. 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 -----.

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

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

- A. Debtor's plan proposes to pay \$377 per month with 0% dividend to unsecured creditors. Debtor asserts having a valid EEOC complaint against her former employer and the trustee requests that any non-exempt proceedings resulting from the claim be paid into the plan.
- B. The plan relies on a pending motion to value collateral which is set for December 6, 2016.

**Debtor's Response**

Debtor responds that she will include the language suggested by the Trustee into the plan. The motion to value was granted on December 9, 2016.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection 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 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 19, 2016, as amended at the hearing to state ~~XXXXXXXXXXXXXXXXXX~~, is confirmed and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the foregoing amendment, 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.

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16. [11-41247](#)-C-13 KAREN WALKER-PUGH  
DPC-1 Peter Macaluso

CONTINUED MOTION TO DETERMINE  
FINAL CURE AND MORTGAGE  
PAYMENT  
RULE 3002.1  
10-21-16 [[174](#)]

Also #17

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 21, 2016. Twenty eight days' notice is required. That requirement is met.

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

**The court's decision is to set the following briefing schedule: xxxxx.**

The Trustee brings this motion to determine the amount still due to the mortgage on the 1st Deed of Trust on Debtor's residence.

#### **Debtor's Response**

Debtor responds that she has started a trial loan modification that is scheduled to end on December 1, 2016. Debtor requested a continuance to complete the loan modification payments to December 20, 2016.

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

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

The Motion to Determine Final Cure and Mortgage Payment 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 **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on August 22, 2016. Twenty-eight days' notice is required. That requirement was met.

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

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

The Motion to Approve Loan Modification filed by Karen D. Walker-Pugh, ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,200.00 a month to \$3,300.79 a month.

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

**Trustee's Opposition**

The additional provision of the confirmed plan included Ensminger Provisions with the Trustee paying \$1,456 as the monthly contract installment. Debtor has not filed supplemental schedules I or J in support of the motion reflecting the ability to pay \$3,300.79.

**Debtor's Reply**

The Debtor has completed ALL payments required pursuant to the confirmed plan, and with this loan modification, will not complete the plan with further arrears.

The Debtor has completed all plan payments and has therefore opposed the Trustee's request to file supplemental schedules as the plan payments have ended and the payments now due to the Creditor are to be paid directly, whether the loan modification is approved or not.

In this instance, the \$3,300.79 is \$1,100.00 more than the \$2,200.00 for which the Debtor has been paying, and will require the Debtor to obtain assistance from her mother, Betty Walker, whom lives in the home and will be providing for this increase from her retirement funds.

However, given the \$96,853.40 in arrears that would survive the discharge the loan modification is a just result and the subject agreement will assist the Debtor in being able to make current loan payments and to keep the real property.

In this instance, the agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, and/or any Discharge that the Debtor may receive in this case.

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

Trustee no longer opposes the motion.

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

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

The Motion to Approve the Loan Modification filed by Karen D. Walker-Pugh 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 Approve the Loan Modification is granted.

\*\*\*\*

**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 16, 2016. 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 -----.

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

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

A. The debtor lists King Law Office in Class 5 but it does not appear that counsel qualifies as a Priority Creditor.

It appears that the \$2,000.00 listed as a Class 5 claim erroneously duplicates the \$2,000.00 administrative expense provided by King Law Office in this Plan. Debtor filed an Amended Plan correcting this on December 7, 2016, the hearing for confirmation of which is set for January 24, 2017.

B. Debtor lists the total amount of unsecured claims incorrectly.

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

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19. [15-27153](#)-C-13 D JACK  
[15-2241](#) WW-2  
HOLLAWAY ET AL V. CUSICK ET AL

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF WOLFF AND WOLFF  
FOR MARK A. WOLFF, DEFENDANT'S  
ATTORNEY(S)  
11-22-16 [[100](#)]

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**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 Debtor and Debtor's Attorney on November 22, 2016. Twenty eight days' notice is required. That requirement is 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.**

Mark A. Wolff, Attorney for Debtor, ("Applicant") for D. Brent Jack, ("Clients"), makes a motion to assess costs after trial

Mr. Wolff contends that between August 3, 2016 and November 17, 2016 he incurred \$26,285.00 in fees and \$378.50 in costs for work completed in the trial held in the adversary proceeding to determine the dischargeability of certain debts.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to Federal Rules of Civil Procedure 68, as incorporated by Federal Rules of Bankruptcy Procedure 7068,

(a) At least 14 days before the date set for trial, a party defending against a claim may serve on an

opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

### **Judgment Award**

Prior to the November 9, 2016 trial, Defendant D. Jack made an offer of judgment in the amount of \$150,000 to the Plaintiff Hollaways. The Hollaways did not accept the offer. In the trial held on November 9, 2016, and concluded on November 16, 2016, the court entered a judgment that stated that the arbitration award against Defendant D. Jack was excepted from dischargeable.

Plaintiff asserts that the amount excepted from discharge is \$149,800.56, as that was the amount that the arbitrator found D. Jack must return to the Hollaways. However, the arbitration award also specified that D. Jack must pay prejudgment interest on the sum of \$126,826 running at the legal rate from May 2013 until paid and attorneys fees in the amount of \$113,980.40.

As a result, Plaintiff's offer of judgment is not more favorable than the actual award granted to the Hollaways. Additionally, the court notes that the Plaintiff has offered no statutory basis for the granting of a fee award under any applicable statutes.

### **Opposition**

Attorney for the Hollaways object to the fee application. Mr. Wolff contended that because he offered a settlement amount greater than the amount actually awarded to the Hollaways, they must pay his legal costs for the trial in the adversary proceeding. Defendants assert that the amount offered by Mr. Wolff was not actually greater than the award won during the trial. Additionally, Mr. Wolff has offered no evidence that the attorney fees are reasonable or what he did to earn them.

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 Mark Wolff is denied.

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Also #21

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 22, 2016. Twenty-eight days' notice is required. That requirement was met.

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

<b>The Motion to Value secured claim of CarFinance, "Creditor," is to be set for an evidentiary hearing on <span style="color: red;">xxxxxxxxxxxxxxxxxx</span>, 2017.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2006 Mercedes Benz. The Debtor seeks to value the property at a replacement value of \$2,863.00 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 Creditor, CarFinance, filed an opposition suggesting that the value of the collateral should be worth no less than \$9,550.00.

The Trustee indicated that the debtor did not provide enough information about the vehicle.

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

**IT IS ORDERED** that disputed material facts existing, the court will set an evidentiary hearing.

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**Final Ruling:** No appearance at the December 20, 2016 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 22, 2016. 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.

<b>The Motion to Avoid Lien is granted.</b>
---

A judgment was entered against the Debtor in favor of State Farm Mutual Automobile Ins. Co. for the sum of \$5,932.77. The abstract of judgment was recorded with Solano County on April 4, 2013. That lien attached to the Debtor's residential real property commonly known as 2715 Marcel Lane, Fairfield, CA. The trustee filed a non-opposition to the motion.

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 \$355,000.00 as of the date of the petition. The unavoidable consensual liens total \$280,888.76 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.200 in the amount of \$100,000.00 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 MINUTE ORDER**

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

**IT IS ORDERED** that the judgment lien of State Farm Mutual Automobile Ins. Co., Solano County Superior Court Case No. CGC-12-518377, Document No. 201300033880, recorded on April 4, 2013, with the Solano County Recorder, against the real property commonly known 2715 Marcel Lane, Fairfield, CA, 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2016. 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:

- A. Debtors have paid ahead \$600 under the proposed plan.
- B. The plan contemplates a payment of \$1,000 in attorneys fees but no motion for additional attorney fees has been filed.
- C. The Debtors have classified Greenlight Financial Services as a Class 1 creditor while that creditor has been confirmed as class 4 to be paid outside the plan.

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

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

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

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

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

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**Also #24**

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**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, considering the opposition to this motion. If there is further opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 6, 2016. Fourteen days' notice is required.

The Motion to Extend the Automatic Stay was not 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.

<b>The Motion to Extend the Automatic Stay is denied.</b>
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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 third bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-27388) was dismissed for Debtor's failure to make plan payments. Debtor's second bankruptcy case (No. 16-24174) was dismissed for failure to 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 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, Debtors fell behind on plan payments due to payments being required to be made to SMUD. Since then, one of the debtors has returned to the workforce and plan payments are likely to be completed.

### **TRUSTEE'S OPPOSITION**

Trustee opposes the motion on three grounds:

A. The debtor has not filed all necessary documents. So far, five payments totaling \$781.72 have become due but the debtors have not made a payment to the Trustee.

B. The documents filed were not properly served.

C. The documents did not contain the docket control number.

### **DISCUSSION**

The debtors have explained to the court the circumstances behind this third filing to the court's satisfaction. With regard to the procedural errors, the court understands the confusion given this case was initially filed in Department A. However, as the debtors have had two previous cases dismissed for failure to make plan payments, the court is concerned with the debtors delinquency. If the debtors are current as of the hearing, the court is inclined to grant the motion.

It is significant that the Debtors' prior two cases have been dismissed due to defaults in plan payments. Motion, ¶ 5; Dckt. 13. It is asserted in the Motion that Debtor defaulted because SMUD required a deposit equal to two months payment.

However, currently, the debtors have not 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 denied and the automatic stay is not extended.

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 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 denied and the automatic stay is not further extended.

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**Tentative Ruling:** The Motion to Determine Utility Deposit 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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 6, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The Motion to Determine Utility Deposit is granted and the court determines that the deposit is in the amount of \$302.50.</b>
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The debtors move the court for an order to determine the utility deposit required for Sacramento Municipal District ("SMUD"). SMUD requires a deposit equal to two times the average bill. The debtors have filed two previous cases that were dismissed for failure to make plan payments in part because SMUD required a large deposit both times. The debtors currently have \$302.50 deposited with SMUD. The debtors seek to have the court determine what deposit amount should be required.

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

The trustee has pointed out potential procedural deficiencies with the filings in this case.

The court notes that the case was initially filed in a different department. The court requests that the debtors serve the correct trustee for future filings. The court will set a hearing to determine the deposit amount and requests supplementary briefing from any and all parties including the actual approximate

bill per month.

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 Determine Utility Deposit filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the court determines that the deposit paid to Sacramento Municipal District for electric service is \$302.50.

**IT IS FURTHER ORDERED** that if Debtor fails to timely pay a utility bill to SMUD, then SMUD may set for hearing on at least ten-days notice a motion to increase the deposit or for relief from the automatic stay to exercise its rights for a non-paying utility customer.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2016. 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 objects to the motion to confirm plan on the basis that:

A. Debtors original Schedule I listed net business income at \$3,355.00 per month. Debtors filed an amended Schedule I that lists income at \$4,500.00 per month. There is no explanation to this increase in income.

**Debtors' Reply**

Debtors' attorney argues that since the Amended Schedules I and J are signed under penalty of perjury, as were Original Schedules I and J, the Amended Schedules are correct.

The debtors have not produced the explanation required. The court does not know which, if either, time Debtors purport to make income and expense information under penalty of perjury is correct.

Debtors have filed an "Amended Schedule I," which (if truthful) corrects the income information to be that Debtors' net income from the business has been \$4,500.00 a month since the case was filed on November 3, 2015 - more than a year ago. Debtors apparently erroneously stated that the income was only \$3,355.00 on Original Schedule I. Dckt. 1 at 25. Thus, for thirteen months Debtor has had an *additional*

\$1,145.00 a month of projected disposable income, which aggregates to \$14,885.00 of monies that have not been accounted for in this case.

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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

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**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 May 2, 2016. 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 objects to the motion to confirm plan on the basis that:

A. The Plan proposes that Wells Fargo's secured claim for a 2009 Mercedes Benz will be paid directly by Debtor's spouse/inlaws. However, the original plan differed in this respect. The Trustee has already disbursed \$2,775.34 which the instant Amended Plan no longer authorized, so the Trustee objects that confirmation of the plan is not proposed in good faith. Furthermore, Debtor's spouse does not show any separate income and no declaration has been filed by relatives showing ability and intent to make these payments. Finally, the Wells Fargo debt will mature within the life of the plan, contrary to the stated terms of the plan.

B. The plan proposes to pay Ditech but additionally requested that the Trustee file an interpleader action. The plan proposes that the payments to Ditech be held until determination of payments, but does not suggest what will happen in the case of determination not occurring until outside the proposed length of the plan.

**Status Report Filed by Debtor's Counsel**

On December 15, 2016, Debtor's counsel filed a status report in this case. Unfortunately, counsel reports that the Debtor is still suffering from a significant medical impairment. Dckt. 87. It is reported that Debtor's mother, Ida Foster, is seeking to be appointed as the Debtor's conservator, but that has not been "finalized. It is reported that Ida Foster has been in bankruptcy herself, with the case being dismissed. 15-28707.

It is reported that Ida Foster has been making the plan payments for Debtor to date, but no explanation as to how Ida Foster has been able to make her own expense payments and fund this Chapter 13 Plan. In her case, Ida Foster was unable to make the minimal \$100 a month payments.

This bankruptcy case was filed on February 1, 2016. Debtor's counsel reports that her client, Sheila Foster, suffered the debilitating illness in June 2016 and has: (1) not regained consciousness, (2) is unable to speak, (3) cannot walk, and (4) cannot follow simple commands. Status Report, p. 2:5.5-6.5.

Debtor's counsel provides a medical report to substantiate the contention that Debtor is disabled and unable to prosecute this case. Unfortunately, the letter merely says that Debtor was hospitalized on June 12, 2016 and remains hospitalized. (It appears that this is an inaccurate statement, in that Debtor's counsel states that Debtor is not "hospitalized," but has been moved to a long term care facility). This letter is dated June 23, 2016, so the information therein may be inaccurate. Additionally, the letter states "For purposes of protecting patient confidentiality, details of Ms. Foster's hospitalization are not disclosed in this letter." Exhibit A, Dckt. 89. Though wanting the court to rely on information, Debtor's counsel produces a letter stating that no information is being provided.

Counsel has also provided the declaration of Ida Foster. Dckt. 88. In it she states that the Debtor has no income, but that Ida Foster is filing for Social Security Disability benefits for Debtor. Ida Foster advises the court that Ida Foster has more than enough money to fund the plan because Ida Foster receives: (1) Social Security Benefits, (2) a federal retirement, and (3) a retirement from her ex-spouse.

When Ida Foster filed bankruptcy, she stated that she received \$1,569.00 in retirement, \$248.00 in Social Security, \$100.00 in Food Stamps, and required \$250.00 a month in assistance from her daughter, Sheila Foster, the Debtor in the current case. No reference is made to a retirement benefit being received for an ex-husband. 15-28707; Schedule I, Dckt. 1 at 26-27. Ida Foster's finances were so dire that she required Food Stamps and \$250.00 a month from her daughter to make ends meet. Now, Ida Foster purports to have sufficient monies to pay her expenses and fund a plan for this Debtor.

In her Chapter 13 case which was dismissed because she was unable to make even the \$100.00 a month plan payments, Ida Foster was represented by Mary Ellen Terranella. In this Chapter 13 case, Ms. Terranella is the attorney of record for Debtor Sheila Foster.

Though Ms. Terranella has known that her client, Debtor Sheila Foster, has been incapacitated and by the evidence presented by counsel clearly not legally competent, Ms. Terranella has allowed Ida Foster to "run Debtor's finances." Those Ms. Terranella has known that her client in this case does not have the capacity to give counsel any direction, she has allowed Ida Foster to be the "client," though there has been no showing that Ida Foster has a durable power of attorney, a medical power of attorney, or has been appointed as conservator.

Though counsel has known, as told the court for more than six months now that she does not have a client that can communicate, does not have a client that can give counsel direction, and does not have a client that is legally competent, counsel has done little to act for her client (the client in this case) to

protect her client's rights and interests. Rather, counsel has let her client from the other case fill the role, without any legal authority, for the legally incompetent client.

Counsel has made no attempt to get Ida Foster appointed as a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014 the personal representative for the legally incompetent Debtor in this case.

In reviewing the Civil Minutes for hearings in this case for the present Motion, for the July 19, 2016 hearing, the court states:

JULY 19, 2016

At the hearing Counsel for Debtor reported that Debtor is still hospitalized and incommunicative. Counsel reported that if Debtor has not regained consciousness by September, then it was likely that a conservator or personal representative would be sought.

Civil Minutes, Dckt. 80 at 2. September 2016 has come and gone, with no action being taken for Debtor or by counsel without a legally competent client in this case.

The court not only denies the Motion to Confirm Plan, but refers this matter to the U.S. Trustee for her action to investigate what is transpiring in connection with the Debtor who is legally incompetent in this federal court proceeding, to report the situation to adult protective services to investigate who is giving medical direction and instruction for the legally incompetent Debtor, and what action, if any, needs to be taken to properly protect the legal rights and interests of Debtor.

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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 12, 2016. Fourteen days' notice is required.

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

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

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

- A. Debtor is \$3,000 delinquent in plan payments and has paid \$0 into the plan.
- B. Plan fails to provide for the secured claim of the Internal Revenue Service in the amount of \$9,000.00. The plan proposes to pay the Internal Revenue Service in Class 5 as a priority debt in the amount of \$110,000.00 whereas the proof of claim states a priority claim in the amount of \$118,590.36.
- C. Debtor has failed to file income taxes for 2013, 2014 and 2015.
- D. Debtor admitted at the meeting of creditors that he failed to provide for an expense of \$100. Therefore, the debtor is unable to make plan payments.

E. Based on all of the debtor's documents, it is unclear what the debtor's true monthly income is. Additionally, the debtor has a listed expense of \$26,357.59 labeled as "other expenses" and these expenses are never specified.

F. Form 122C-1 is not complete and the debtor has failed to list any income of the last 6 months prior to filing.

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.

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**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 14, 2016. 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).

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

- A. Debtor is delinquent \$3,750 under the terms of the proposed plan.
- B. Debtor proposed a monthly dividend of \$0 for the arrearage dividend on the Class 1 claim of Residential Credit Solutions. The plan is not feasible with a \$0 monthly dividend to the creditor.
- C. The declaration filed by the debtor does not explain the rent or home mortgage expense on Line 4 of Schedule J of \$420.00.

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 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.

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Also #30

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2016. 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:

A. Debtors are delinquent \$150 under the proposed plan.

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

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

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

The Motion to Confirm the Modified Chapter 13

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

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

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WHEELS FINANCIAL GROUP, LLC  
VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 27, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion for Relief From the Automatic Stay is granted.**

Creditor, Wheels Financial Group, LLC, dba Loanmart, seeks relief from the automatic stay with respect to the vehicle commonly referred to as the 2004 Nissan Maxima.

The Francis Wambu Declaration states that the Debtor has not made any post-petition payments on the note, with a total of \$7,122.04 in post-petition payments past due. Debtor obtained the note six days prior to filing for bankruptcy and has made no payments on the note at any time.

**DEBTOR'S RESPONSE**

Debtor responds that Debtor and Wheels Financial Group, LLC, dba Loanmart have tentatively agreed to an arrangement in which Debtors would pay the principal amount, \$3,434.00, at 10 percent interest, as opposed to the interest rate of over 100% specified in the loan contract.

## TRUSTEE RESPONSE

The Trustee points out that this creditor is not listed in the debtors' filed schedules nor provided for in the confirmed plan. The Trustee asks that this hearing be continued to allow the debtors to file and set for hearing a modified plan to resolve this issue.

The court determines the result of this motion in light of its ruling on the Motion to Modify plan. With confirmed denied, the Motion for Relief is granted.

No other or additional relief is granted by the 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 for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wheels Financial Group, LLC, dba Loanmart, its agents, representatives, and successors, to repossess and/or dispose of the property commonly known as a 2004 Nissan Maxima.

\*\*\*\*

**Final Ruling:** No appearance at the December 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 12, 2016, 2016. 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.

<b>The court's decision is to sustain the Objection and deny confirmation of the proposed Chapter 13 Plan.</b>
--

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

- A. Debtor cannot make plan payments because the debtor's disposable income is \$151.00 per month while the proposed plan payments are \$1,250.00 per month.
- B. Debtor failed to complete Form 122C-1.
- C. Plan fails to provide a monthly dividend to pay attorney fees.

#### **Debtor's Reply**

Debtor replies that he will file, set, and serve an amended plan to address the Trustee's issues.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court will continue the matter to allow the debtor time to file an amended plan.

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

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

The 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 of the Plan is sustained and confirmation is denied.

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32. [16-26774](#)-C-13 BRENDA SMITH  
DPC-1 Marc Caraska

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-16-16 [\[20\]](#)

Also #33

\*\*\*\*

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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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 16, 2016. Fourteen days' notice is required.

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

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

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

A. The plan relies on the Motion to Value (see matter #33).

The court has granted the Motion to Value, resolving the first basis of objecting to confirmation.

B. The plan is not the debtor's best effort. The trustee believes that the debtor's income is understated on the means test and based on the Statement of Financial Affairs the trustee believes that the debtor's net income is much higher than that stated. Furthermore, the trustee points out that there is a monthly entertainment budget of \$1,068.47, which is substantially higher than the proposed monthly plan payments of \$797.87.

The Trustee points out that on Schedule I Debtor's gross income is listed at \$10,400 a month. The Statement of Financial Affairs lists year to date income for Debtor of \$50,460 for the first nine months of the year. However, on Form 122C-1 Debtor lists her income as \$7,000.00 a month. On the payroll advice produced the Trustee for September 30, 2016, Debtor's gross income is stated to be \$52,440.00, which averages to \$8,740.00 a month.

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

\*\*\*\*

33.     [16-26774](#)-C-13     BRENDA SMITH     MOTION TO VALUE COLLATERAL  
MAC-1     Marc Caraska     OF  
JPMORGAN CHASE BANK, N.A.  
10-28-16 [[15](#)]

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**Final Ruling:** No appearance at the December 20, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 28, 2016. Twenty-eight days' notice is required.

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

<b>The Motion to Value secured claim of JPMorgan Chase Bank, N.A., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2009 Jaguar XF. The Debtor seeks to value the property at a replacement value of \$8,826.00 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 in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$17,800. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$15,675.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a purchase-money loan on the collateral commonly known as a 2009 Jaguar XF, is determined to be a secured claim in the amount of \$8,8620.00, 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 \$8,8620.00

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2016. 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).

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

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:

- A. Debtor is delinquent \$230 under the terms of the proposed plan.
- B. Debtor has filed a Schedule I that indicates that his monthly net income has increased from \$4,129.93 to \$4,463.94 without explanation.

**Debtors' Reply**

The debtors filed a reply indicating that:

- A. Debtors are no longer delinquent under the proposed plan.

B. Debtors filed a declaration explaining the reasons for the increase in net income.

The modified Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted, Debtors' Chapter 13 Plan filed on November 3, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 1, 2016. Forty-two days' notice is required. That requirement was met.

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

<b>The court's decision is to grant the Motion to Confirm the Plan.</b>
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The Chapter 13 Trustee objects to the motion to confirm plan on the basis that:

A. The plan proposes that the Trustee hold payments to CLC Consumer Service pending a resolution between the debtor and CLC to determine the validity of the second deed. The terms require that an adversary proceeding be filed by December 1, 2016 and no adversary proceeding has been filed.

B. Two amended plans have been filed on November 1, 2016. The trustee is unsure which plan was actually served.

**Debtor's Reply Declarations**

Debtor filed a declaration explaining that the adversary proceeding has been delayed due to the fact that debtor's loan has been sold without debtor's knowledge and he is attempting to figure out who services the loan. The attorney for the debtor also filed a declaration explaining which plan was actually served to creditors.

The Trustee's concerns have been assuaged. The Plan does comply 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 Motion to Confirm the Plan is granted, Debtors' Chapter 13 Plan filed on November 1, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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**Final Ruling: No appearance at the December 20, 2016 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 1, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

**The Objection to Proof of Claim Number 6 of Sierra Pacific Mortgage Company is reduced by \$252.39 and no amount greater than \$0 is allowed for pre-petition default.**

Patricia Hall, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Sierra Pacific Mortgage Company ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$1,382.08 and stated that the amount necessary to cure any default as of the date of the petition is \$252.39. Objector asserts that after asking for an account activity statement, it was clear that the debtor had \$0 in default.

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).

Based on the evidence before the court, the creditor's claim is reduced by \$252.39 and no amount greater than \$0 is allowed for pre-petition default. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of, Sierra Pacific Mortgage Company, Inc. Creditor filed in this case by the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 6 of Sierra Pacific Mortgage Company, Inc. is sustained and the claim is reduced by \$252.39 of the claim is disallowed, and no amount (\$0.00) is allowed for any pre-petition default.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2016. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to grant the motion to confirm 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:

A. Debtor's Plan proposes to change creditor Caliber Home loans from Class 1 to Class 4 based upon a trial loan modification. A trial loan modification cannot be made a permanent plan term. Debtor needs to seek approval of a permanent loan modification.

B. Debtor is delinquent \$50.00 under the proposed plan terms.

**DEBTOR'S REPLY**

At the previous hearing, Debtor requested that the hearing on the Motion to Modify be continued to allow time to file and hear a motion on a permanent loan modification. The court granted the loan modification on October 12, 2016. Debtor requests a continuance to resolve the permanent loan

modification matter with the mortgage company.

The court notes that a Notice of Mortgage Payment Change has been filed on November 30, 2016. As such the court will grant the motion to confirm the modified plan.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted, Debtor's Chapter 13 Plan filed on September 15, 2016 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.

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