UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 30, 2018, at 3:00 p.m.

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1. 17-20220-E-13 HLG-5 | **WILLIAM/FAYE THOMAS** **Kristy Hernandez** | **OBJECTION TO CLAIM OF ROBERT S. PUTNAM, CLAIM NUMBER 12** **12-27-17 [82]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 27, 2017. By the court's calculation, 34 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has not been set properly for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 12-1 of Robert Putnam is xxxxxxxxxxxx.

William Thomas, Jr., and Faye Thomas, Chapter 13 Debtor, ("Objector") filed an Objection to Claim requesting that the court disallow the claim of Robert Putnam ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $118,156.92. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case was May 17, 2017. Notice of Bankruptcy Filing and Deadlines, Dckt. 9. The Proof of Claim was filed on May 30, 2017. Clerk's Registry of Claims.

NOTICE OF MOTION AND HEARING

Objector provided thirty-four days' notice of this Motion. Federal Rule of Bankruptcy Procedure 3007(a) requires a minimum of thirty days' notice of the hearing, and Local Bankruptcy Rule 3007-1(1)(b)(1) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total forty-four days. Objector has provided ten days fewer than the minimum. Based on the short notice period, the court could deny the Objection without prejudice.

However, Creditor has responded to the Motion. In light of the response, the court deems the notice provided to be sufficient. The court will take into account the shortened notice period in considering requests for further briefing and proceedings on the merits of the Objection.

CREDITOR'S OPPOSITION AS STATED IN DECLARATION

Creditor filed a Declaration on January 8, 2018. Dckt. 87. FN.1. In the first sentence of Creditor's lengthy Declaration, he admits that his claim was filed on May 30, 2017, in the amount of $118,156.92. There is no debate between Debtor and Creditor as to when the claim was filed.

FN.1. Creditor filed the Declaration and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Creditor has not filed a separate "opposition" to the Objection providing the legal points and authorities, as well as legal arguments in opposition. LOCAL BANKR. R. 9004-2. The Declaration does not contain any citations to legal authorities. The court accepts the Declaration as an "opposition" and the testimony provided therein.

Creditor testifies that his claim is for attorney's fees he billed to Affiliated Professional Services, Inc. ("APS") in a state court action entitled *Affiliated Professional Services, Inc. v. Glen Van Dyke, et al.*, El Dorado County Superior Court Case No. PC20120541. Creditor argues that he represented APS until May 2017—at which time he withdrew because of health reasons. Creditor argues further that APS is Debtor's alter ego. *Id.* at 1:26.5–27.5.

Creditor states that his understanding with Debtor was that Creditor would be part of any settlement discussions in the state court proceeding, to ensure that he was compensated for the hours he had billed in the case. When the case settled (allegedly "for no money"), Creditor argues that he acquired a new claim against Debtor for intentional interference with prospective economic advantage. *Id.* at 3:11–20. Creditor appears to argue that the new claim is a basis for the current claim, despite being filed late; Creditor acknowledges, though, that he did not become aware of the new claim until August 2017. *Id.* at 3:19–23.

Creditor recounts the facts that led to filing the state court action, including the terms of his contingency fee agreement with APS. *Id.* at 3:24–7:11. Creditor then mentions that Debtor informed Creditor on March 17, 2017, that Debtor had filed a bankruptcy case. Creditor did not file a claim at that time, apparently believing that his claim against APS was active outside of Debtor's bankruptcy case (Creditor is not exactly clear about why he did not file a claim). *Id.* at 7:12–16. Creditor seems to argue that his claim for attorney's fees arises by Debtor assigning the rights to proceeds from the state court action to the claimholders in Debtor's Chapter 13 case. *Id.* at 7:16–19.

Creditor discusses conferences, substitution, and eventual settlement that occurred during the state court action, including Creditor's disagreement with settling the action. *Id.* at 7:20–12:8. Creditor pleads that if his claim is not allowed, then he "will be forced to declare bankruptcy because [he] used [his] home equity line of credit to cover most of [his] living expenses during the four years that [he] worked on" the state court action. *Id.* at 12:18–21.

DISCUSSION

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).

This bankruptcy case was filed on January 13, 2017. Creditor is not listed on the Verification of Master Address List to be given notice of the bankruptcy case. Dckt. 3. Creditor was not sent the Notice of Bankruptcy or a copy of the Chapter 13 Plan in this case. Dckt. 11. From the files in this case, it appears that the first time any pleadings or notices were served on Creditor in this case was this Objection to Claim. Cert. of Serv., Dckt. 33.

In his Declaration, Creditor states that he continued to serve as counsel for Debtor's corporation (now asserted to be Debtor's alter ego) until May 2017. That is four months after this case was filed.

Creditor asserts to be owed an obligation that was secured. The Declaration states that the asserted misconduct of Debtor that has caused the harm to creditor occurred in August 2017. Declaration ¶ 25, Dckt. 87. That is seven months after the bankruptcy case was filed.

Proof of Claim No. 12 was filed in the amount of $118,156.92, for which the basis of the claim is asserted to be "attorney's fees." In his Declaration, Creditor makes statements in the nature of the August 2017 claim being in the nature of then harming Creditor's rights and interests. In Paragraph 30, he states that in the settlement, for which the corporation received nothing, Debtor was given forgiveness of debts asserted against him personally.

Creditor goes further in his Declaration (the court offering no opinion as to whether the statements are credible or merely "sour grapes"), stating that Debtor transferred various assets to family members and that Debtor received income that was not disclosed in the bankruptcy case. Declaration ¶ 32, Dckt. 87.

From the pleadings, it is not clear when Creditor received notice of the bankruptcy case having been filed (whether formal notice or actual knowledge). Additionally, it is not clear whether Creditor is asserting a pre-petition claim or an obligation being asserted against Debtor for his conduct after January 13, 2017 (entering into the settlement that is alleged to have given Debtor forgiveness personally of his obligations while rendering the rights of the corporation on which Creditor had a lien valueless).

In reviewing Schedule E/F provided by Debtor under penalty of perjury, Creditor is not listed as a creditor who may have a claim against Debtors. Dckt. 1 at 25–28. On the Statement of Financial Affairs, Debtor does not list being a party to the lawsuit in which Creditor had an interest. *Id.* at 38, Question 9. Debtor further states on the Statement of Financial Affairs that they have not made any payments on personal debts within one year prior to the commencement of the bankruptcy case and did not make any gifts, which in the aggregate, total more than six hundred dollars within the two years prior to the commencement of the bankruptcy case. *Id.* at 38–39, Questions 8, 13.

Purported Settlement Agreement with Affiliated Professional Services, Inc.

On August 22, 2017, APS filed a "Notice of Settlement" advising that APS and Debtor entered into a settlement agreement resolving all claims in the action *Affiliated Professional Services, Inc. v. Glen Van Dyke, et al.* Dckt. 61. Thereon, APS gave notice it was withdrawing its motion for relief from the automatic stay.

Reviewing the Docket for this case, the court does not find a motion for authorization for Debtor, as the fiduciary of this bankruptcy estate in lieu of a trustee, settling rights of the estate or claims against the bankruptcy estate. Such settlements are not the "use of assets in the ordinary course of business," and as such court authorization is required. 11 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 9019 require procedure for obtaining authorization for a trustee, debtor in possession, or Chapter 13 debtor to compromise and settle claims against and rights and interests of the bankruptcy estate.

JANUARY 30, 2018 HEARING

At the hearing, **xxxxxxxxxxxxxxxxxxxxxx**.

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 Robert Putnam ("Creditor") filed in this case by William Thomas, Jr., and Faye Thomas ("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 12-1 of Robert Putnam is **xxxxxxxxxxxxxxxxxxxxxx**.

2. 17-25221-E-13 PGM-1 | **TOMMIE RICHARDSON** **Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN** **11-14-17 [32]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Confirm the Amended Plan is denied.

Tommie Richardson ("Debtor") seeks confirmation of the Amended Plan because a property was being foreclosed upon. Dckt. 35. The Amended Plan proposes payments of $600.00 for sixty months with a 100.00% dividend to unsecured claims and a lump sum payment in month sixty from the "sale of real

property, adversary, or over-bid from foreclosure of real property." Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 18, 2017. Dckt. 38. The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3).

Additionally, Debtor admitted at the Meeting of Creditors that the federal income tax returns for the prior four tax years have not been filed. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). In the Chapter 13 Trustee's prior Objection to Confirmation (Dckt. 21), the Chapter 13 Trustee noted that Debtor's pleadings are not consistent about whether he receives pension funds, how much he receives, how long he has been receiving them, what his wife earns in wages, and whether he has received rental income. An accounting of Debtor's funds has not been provided yet. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's fees may not be reported accurately in this case. Prior documents, such as the Rights and Responsibilities, indicate that Debtor paid $500.00 before filing and that $4,000.00 is owed. Now, Debtor reports that $500.00 was paid and that $3,000.00 is owed.

The Chapter 13 Trustee is also concerned about the accuracy of documents about Debtor's real property. While the Chapter 13 Trustee is not concerned about the plan itself (because it proposes a 100.00% dividend), he is concerned that Debtor's interest in real property has not been made fully clear. The Chapter 13 Trustee objected previously on this ground because there was no information about when the property was purchased, how much was paid for the property, and whether Debtor and his non-filing spouse were married at the time. Debtor has not addressed those concerns although raised previously.

Also previously, the Chapter 13 Trustee noted that all debts may not be listed because the Chapter 13 Trustee received a letter dated June 26, 2017, about a "Cal State 9 Credit Union" loan and checking account. The Chapter 13 Trustee was not able to find anything that matched, however. He provided a copy of the letter to Debtor, who has not provided any additional information.

DEBTOR'S REPLY

Debtor filed a Reply on January 2, 2018. Dckt. 42. Debtor promises to file, serve, and set for hearing a new amended plan.

JANUARY 9, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on January 30, 2018, to allow Debtor make a required lump sum payment.

RULING

No further pleadings have been filed since the January 9, 2018 hearing indicating whether or not Debtor made the required payment.

Debtor's position suffers from several major failings. First, Debtor wants to file an amended plan, but then he asks in the Reply for the court to confirm the current plan. Dckt. 42. More significantly, the proposed plan manifests bad faith (not merely a lack of good faith) by Debtor. Under the Plan before the court (Dckt. 34), at some time in the next five years, when Debtor decides when it is in his best interests (without regard to his duties under the Bankruptcy Code), he may sell the real property and pay creditors. The only creditor being paid will be Wells Fargo Bank, N.A., for Debtor's 2014 Jaguar and Debtor's counsel. Though this case was filed in August 2017, Debtor has not even filed a motion to employ a real estate broker to sell the real property.

The lump sum payment to be made sometime during the sixty months of the Plan is stated to be made from "sale of real property, adversary, or over-bid from foreclosure of real property. Plan ¶ 1.02, Dckt. 34. No adversary proceedings have been filed by Debtor.

On Schedule A/B, Debtor lists the Oakland property as having a value of $1,000,000. Dckt. 13 at 3. On Schedule D, Debtor states that the Oakland property is encumbered by liens to secure the following claims: (1) Caliber Home Loans in the amount of ($333,006). *Id.* at 12. Thus, it would appear that the bankruptcy estate has $650,000 of recoverable equity in the Oakland Property.

However, on the Statement of Financial Affairs, Debtor states that a foreclosure of the $1,000,000 Oakland Property occurred on July 17, 2017. Statement of Financial Affairs Question 10, Dckt. 13. The present bankruptcy case was filed on August 8, 2017, one month later.

There is no adversary proceeding to vacate the foreclosure or any action being made to recover the $1,000,000 asset.

On Schedule A/B, Debtor lists a second property, the Graeton Circle, Mather, California Property. *Id.* at 4. Debtor states that he is not on title, but that this is community property. Though community property, Debtor states that his interest has a value of only $1.00. *Id.* Schedule A/B also provides the following information about the Mather Property: "FMV $300,000 - Secured Claim of $392K." *Id.* With that information, there is no value for creditors in this case.

As further stated by the Chapter 13 Trustee, Debtor has provided conflicting, inconsistent statements under penalty of perjury as to his income. *See* Chapter 13 Trustee's Opposition, Dckt. 38 at 2:5.5–18. The Chapter 13 Trustee provides evidence that Debtor had rental income through April 2017, but such information was not disclosed on the Statement of Financial Affairs. *Id.* at 2:13–22.5.

In denying confirmation of the prior Plan, the court addressed some of Debtor's financial contentions. Civil Minutes, Dckt. 27. The court discussed Debtor's failure to provide for litigation to try to reverse the foreclosure sale in the prior Plan. The court's comments in connection with the prior Plan were pointed and direct:

> The conduct of Debtor shows a pattern of intentional misrepresentation and misstatement under penalty of perjury. Given that Debtor is represented by counsel, it appears clear that he knew of his obligations to be truthful and accurate and either intentionally hid such assets from his attorney, or the scheme to hide the assets is broader than merely Debtor.

Id. at 4. The current Plan does not provide for any more specific terms for a plan or demonstrate any action being taken by, or even to be taken by, Debtor.

A review of the docket shows that a new plan has not been filed. The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, 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 Amended Chapter 13 Plan filed by Tommie Richardson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

3. **17-25221-E-13** **TOMMIE RICHARDSON** **CONTINUED MOTION TO CONVERT**
FF-1 **Peter Macaluso** **CASE TO CHAPTER 7**
1-4-18 [44]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2018. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, ----------.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is denied.

This Motion to Convert the Chapter 13 bankruptcy case of Tommie Richardson, Jr. ("Debtor") has been filed by Seneca Leandro View LLC ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Unreasonable delay,

B. Failure to timely file a plan, and

C. Denial of confirmation.

Movant contends that there was a trustee sale for real property commonly known as 1902 and 1904 Filbert Street, Oakland, California ("Property"), on July 17, 2017. Movant argues that it had a valid

sale contract with Debtor for the Property and that it had given Debtor $15,000.00 "to bring the loan current." Dckt. 44 at 2:14.5.

Instead of using the funds as designated by the sale contract, Movant argues that Debtor pocketed the money and did not inform Movant that there was a pending foreclosure sale. Movant argues that conversion is in the best interest of creditors under 11 U.S.C. § 1307(c)(1), (3), and (5) because Debtor filed this case without listing Movant as a creditor.

Additionally, Movant argues that Debtor does not qualify for Chapter 13 because Movant's unsecured claim by itself exceeds the debt limit established by Congress (*i.e.*, $394,725.00).

JANUARY 23, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on January 30, 2018, for Movant's counsel to have an opportunity to appear. Dckt. 60.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Because this Motion was filed using the procedure under Local Bankruptcy Rule 9014-1(f)(2), Debtor was not required to file a written opposition. At the hearing, counsel for Debtor argued **xxxxxxxxxxxxxxxxxxx**

Debtor has filed a separate Objection to Movant's claim. *See* Dckt. 52. In short, that Objection argues that Movant's claim should not be allowed because it is unsupported by any evidence, including a copy of the sale contract that Movant argues in this Motion is the basis for its claim. While having Debtor's counsel argue that there should not be a claim, Debtor offers no testimony that there is not an obligation owning to Movant. Debtor puts no evidence at issue, but asserts only a legal argument over the "sufficiency" of the proof of claim.

A review of Movant's Proof of Claim (No. 7-1) discloses the following:

A. It is signed by Movant's counsel. While stated under "penalty of perjury," there is nothing to show that Movant's counsel has any personal knowledge of the underlying debt.

B. Creditor asserts a secured claim in the amount of $163,000.00. The collateral is asserted to be the funds held by the foreclosure trustee for the Filbert Street Property.

C. Creditor asserts an unsecured claim in the amount of $259,600.

D. The basis for the claim is stated to be: "Fraud in the inducement and Breach of Purchase Contract 1902-1904 Filbert St., Oakland CA and funds advanced."

Nothing else is provided by Movant in Proof of Claim No. 7-1.

Denial of Motion Without Prejudice

Here, Movant pounds the table as the "aggrieved" creditor, demanding that the case be converted to one under Chapter 7 to get the "bad guy" Debtor out of control in this case. However, for its proof of claim, Movant provides nothing more than its attorney stating that for some reason, based on some documents, Movant is somehow entitled to a $400,000+ claim in this case. Therefore, Movant is entitled to have Debtor booted.

The Declaration provided in support of the present Motion offers little credible testimony. Declaration, Dckt. 46. Alvin Cox, as the trustee of the Seneca Leandro View Trust, states he is the sole member of Seneca Leandro View, LLC, the Movant. He testifies that the basis for the claim being asserted by Movant is a "contract" between Debtor and Movant. Declaration ¶ 4, Dckt. 46. However, he does not provide any such "contract" to the extent that a written one exists. As discussed above, no "contract" is attached to Proof of Claim 7-1.

Further, Mr. Cox speculates, only being able to make the statement on "information and belief" that there was a foreclosure on the Filbert Street Property and a foreclosure trustee is holding $163,000.00 in proceeds from the sale. The court is unsure what legal basis there is for someone to testify under penalty of perjury in federal court based on speculative "information and belief." Federal Rule of Evidence 602 requires such a layperson witness to have personal knowledge of the facts to which he or she testifies. Mr. Cox admits that he has no such personal knowledge.

The declaration continues with Mr. Cox asserting "contentions" and "assertions," being careful not to actually provide any clear testimony under penalty of perjury based on his personal knowledge.

Movant has failed to provide evidence sufficient for the conversion of this case.

Though Debtor is prevailing on this Motion, the Objection to Claim is only slightly less worse in the presentation of legal rights and factual grounds than the present Motion. In large part, the Objection to Claim is little more than a "No you Don't" to Movant's "Yes we Do" contention as to whether there is an obligation owing to Movant. 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).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

In re Holm, 931 F.2d at 623 (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *In re Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Counsel for Debtor can consider whether the "no copy of contract" legal argument Objection as filed overcomes the prima facie validity of the claim filed by Movant's counsel for which no underlying documents are included with Proof of Claim No. 7-1.

As to converting the case under 11 U.S.C. § 1307(c)(1), (3), or (5), Movant's only argument for each is that this case was not filed in good faith because Debtor omitted listing Movant as a creditor. Failure to timely file a plan is not a valid ground in this case because a plan was filed timely at the beginning of the case. Denial of confirmation is not a valid ground because Debtor is seeking confirmation of an amended plan currently. As for unreasonable delay, Movant has not how conversion is in the better interest of all creditors, rather than having Debtor propose a plan that provides for Movant's claim.

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is denied without prejudice. The court has denied the present Motion without prejudice in light of Debtor's ephemeral Objection to Claim and lack of providing evidence countering Proof of Claim No. 7-1.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 13 case filed by Seneca Leandro View LLC ("a 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 Motion to Convert is denied without prejudice.

4. 17-26426-E-13 NF-1 — RICHARD/BARBARA BAILON — Nikki Farris — MOTION TO CONFIRM PLAN 12-12-17 [22]

Final Ruling: No appearance at the January 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2017. By the court's calculation, 49 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Richard Bailon and Barbara Bailon ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on January 5, 2018. Dckt. 27. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Richard Bailon and Barbara Bailon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 12, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

5. **14-27630-E-13** **ROSIE GOMEZ** **MOTION TO MODIFY PLAN**
FF-5 **Gary Fraley** **12-18-17 [73]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Confirm the Modified Plan is denied.

Rosie Gomez ("Debtor") seeks confirmation of the Modified Plan because Debtor believed that when she ran out of payment labels in January 2017 that she had completed the Chapter 13 plan. Dckt. 76. Debtor will make up the additional difference in Chapter 13 plan payments by having her son make supplemental payments of $561.19 on top of the original plan payment of $1,005.37. The Modified Plan will total $1,566.56, with Debtor continuing to pay the original $1,005.37 and her son supplementing by paying $561.19 to conform with the Modified Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 16, 2018. Dckt. 86. The Chapter 13 Trustee asserts that Debtor is $621.74 delinquent in proposed plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has supplied insufficient information relating to Debtor's son's contribution under the Modified Plan. Debtor has not provided sufficient facts to show the Debtor's son can pay, including his specific profession. Without an accurate picture of the financial reality in this case, the court cannot determine whether the Plan is confirmable.

RULING

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Rosie Gomez ("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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6.	**17-25945-E-13** **DPC-1**	**HARRY/JOSEPHINE NASH** **Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-25-17 [37]**

Tentative Ruling: 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 Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 25, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing **----------**.

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. Harry Nash ("Debtor") cannot make plan payments because it overlaps with his spouse's plan in the spouse's case;

B. There is undisclosed property from a probate for Debtor's mother-in-law that has not been settled, and there are no legal fees listed on Schedule J in connection with the pending probate;

C. The Plan is not Debtor's best effort because he did not file the required attachments for business income, he did not disclose retirement income from his spouse's previous spouse, and he did not reveal income listed on his 2015 and 2016 federal tax returns; and

D. There are several inaccuracies on Debtor's schedules and Statement of Financial affairs regarding incorrect names and addresses, omitted bank accounts, undisclosed retirement accounts, and unreported income.

NOVEMBER 21, 2017 HEARING

At the hearing, the Chapter 13 Trustee concurred with Debtor's request to continue the hearing on this Motion to afford counsel time to request that this case be consolidated with the case of his spouse. Dckt. 48. The court continued the hearing to 3:00 p.m. on January 30, 2018. Dckt. 49.

DISCUSSION

At the December 19, 2017 hearing, the court granted Debtor's motion to consolidate this case with Case No. 17-25972 pursuant to Federal Rule of Bankruptcy Procedure 1015(b) and 11 U.S.C. § 302(b). Dckt. 61. The court issued an order declaring that Josephine Nash's case (No. 17-25972) is the joint case with Debtor's case and that they are consolidated substantively. Dckt. 63.

Debtor has not responded to this Objection, but he has amended the petition, schedules, statement of financial affairs, and disposable income calculation since Josephine Nash was added as a party to this case. *See* Dckts. 66–68. Debtor has not amended the calculation of disposable monthly income, which shows Debtor (without his spouse added) as having negative disposable income. *See* Dckt. 42 at 10. Debtor's amendments to the petition add the information for Josephine Nash and her finances, including a "doing business as" of Young People's Performing Arts. Dckt. 66.

On Amended Schedule I, Debtor states that he and his wife have $17,037.60 in combined monthly income. Dckt. 66 at 24. On Amended Schedule J, Debtor states he and his wife have $9,037.60 in reasonable and necessary monthly expenses. *Id.* at 26.

The Statement of Financial Affairs now includes the missing information that the Chapter 13 Trustee revealed previously, and it includes the correct pension amount of $5,791.00 that was misstated previously. *Id.* at 28; *see also* Dckt. 43 (prior Statement of Financial Affairs listing $5,700.00 from pension).

Debtor has disclosed numerous items since this case was consolidated with his spouse's case, and he continues to assert monthly net income of exactly $8,000.00. Dckt. 66 at 26. The proposed Plan calls for monthly payments of $8,000.00. Dckt. 18.

Debtor, over multiple filings and months, appears to have addressed all of the problems preventing confirmation of the Plan. At the hearing, the Chapter 13 Trustee confirmed that the Objection has been resolved and that the Plan can be confirmed now.

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 David Cusick ("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, and Harry Nash and Josephine Nash's ("Debtor") Chapter 13 Plan filed on September 20, 2017, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. 18-20148-E-13 PGM-1 | **SHANEE WILLIAMS** / **Peter Macaluso** | **MOTION TO EXTEND AUTOMATIC STAY** / **1-15-18 [11]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 15, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, ----------.

The Motion to Extend the Automatic Stay is denied.

Shanee Williams ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition

pending in the past year. Debtor's prior bankruptcy case (No. 17-20156) was dismissed on July 28, 2017, after Debtor failed to turn over tax refunds. *See* Order, Bankr. E.D. Cal. No. 17-20156, Dckt. 32, July 28, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was misinformed about whether she had to turn over tax refunds to the Chapter 13 Trustee.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 18, 2018. Dckt. 19. The Chapter 13 Trustee is uncertain whether Debtor has acquired any new debt since the prior case. In the prior case, Debtor scheduled nonpriority unsecured debt of $12,541.59. Case No. 17-20156, Dckt. 1 at 23. The current case reports nonpriority unsecured claims at $64,262.56. Dckt 1 at 29.

DISCUSSION

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). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has 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 Chapter 13 Trustee has shown that Debtor may have acquired as much as $51,720.97 in unsecured debt since the prior case.

Additionally, Debtor's only explanation as to why the prior case was dismissed is that she was misinformed about whether she had to turn over tax refunds to the Chapter 13 Trustee. Debtor presented the same argument for the July 26, 2017 hearing that resulted in her prior case being dismissed. Case No. 17-20156, Dckt. 30. Debtor did not provide any testimony then why she was unsure of the terms of the Chapter 13 plan that she and her attorney of record presented.

Instead, Debtor, then and now, relies upon saying that she did not know she had to turn over the funds. Debtor appeared to explain in July 2017 that she did not provide the tax refunds because she used them to support her income after being terminated from employment in February 2017. *Id.* That explanation is not sufficient to extend the stay now.

The Motion is 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 Extend the Automatic Stay filed by Shanee Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

8. 17-24453-E-13 MWB-2 | **MICHELLE QUINLIVAN** **Mark Briden** | **CONTINUED MOTION TO CONFIRM PLAN** **9-26-17 [66]**

Final Ruling: No appearance at the January 30, 2018 hearing is required.

On November 28, 2017, the court entered an Order Denying Michelle Quinlivan's ("Debtor") Amended Plan of August 30, 2017. Dckt. 96. The court having denied confirmation already, **the Motion to Confirm Amended Plan is removed from the calendar.**

9. **17-24453-E-13** **MICHELLE QUINLIVAN** **MOTION TO CONFIRM PLAN**
MWB-3 **Mark Briden** **12-6-17 [102]**

Final Ruling: No appearance at the January 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 6, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Michelle Quinlivan ("Debtor") filed a Third Amended Plan and corresponding Motion to Confirm on January 16, 2018. Dckts. 119, 120.

From the pleadings on the docket, Debtor appears to have tried to withdraw the Second Amended Plan and motion to confirm it, but Debtor filed the withdrawal attached to a Docket Control Number for the First Amended Plan that was denied in November 2017. *See* Dckt. 117 (referencing Docket Control Number MWB-2, instead of MWB-3). Nevertheless, filing a new plan is a de facto withdrawal of the pending plan.

The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by Michelle Quinlivan ("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 as moot, and the proposed Chapter 13 Plan is not confirmed.

10. 17-26156-E-13 DPC-1 | **THOMAS FOX** **Diana Cavanaugh** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-1-17 [16]**

Final Ruling: No appearance at the January 30, 2017 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, 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 was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on October 2, 2017, is confirmed.**

Counsel for Thomas Fox ("Debtor") shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. 17-23580-E-13 DEBORAH MATTIUZZI MOTION TO CONFIRM PLAN
RWH-3 Ronald Holland 11-17-17 [45]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2017. By the court's calculation, 74 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Confirm the Amended Plan is denied.

Deborah Mattiuzzi ("Debtor") seeks confirmation of the Amended Plan because it cures a mistake found in the Original Plan, now providing for the claim of Plum Tree Homeowners Association as a Class 2 secured claim, and the Plan increases the plan payment to provide for the interest of that claim. Dckt. 47.

The Amended Plan provides for plan payments in the amount of $2,577.00 per month for two months, $2,622.00 per month for thirty-three months, and $8,900, or any necessary amount, to pay all remaining Class 5 and 7 claims in full on or before month 36. The Amended Plan also provides for Arrearage Dividends paid as set forth in Section 2.08(c) of the Amended Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 16, 2018. Dckt. 56.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 130 months due to the Plan estimating unsecured claims at $6,379.24, while a review of the Proofs of Claim filed indicates the general secured claims total $86,185.09, as well as an increase in the recurring Nationstar Mortgage payment from $1,534.97 to $1,699.01, effective November 1, 2017. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan indicates that Debtor will sell real property located at 2791 McBride Lane, #188, Santa Rosa, California, ("Property") by May 30, 2020. Debtor proposes to use the proceeds to pay all secured liens against the Property and the remainder to pay off the Plan. While Schedule A/B values the Property at $346,000, according to Schedules C and D, there is only $10,261.23 of equity in the Property. Due to Debtor's limited equity in the Property, the Chapter 13 Trustee is uncertain that a sale of the Property will generate proceeds sufficient to completely pay off the Plan.

The Chapter 13 Trustee asserts that the Employment Development Department has a claim for $64,660.36 in priority unsecured debt and $63,440.56 in general unsecured debt. Proof of Claim 4, filed on October 19, 2017. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, 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 Amended Chapter 13 Plan filed by Deborah Mattiuzzi ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

12. 17-27484-E-13 PLC-1 | **EDUARDO/MONICA SANTOS** **Peter Cianchetta** | **MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION 12-27-17 [18]**

Final Ruling: No appearance at the January 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 27, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Sierra Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $8,845.00.

The Motion filed by Eduardo Santos and Monica Santos ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Maxum 1800SR boat, ending in hull number C606 ("Property"). Debtor seeks to value the Property at a replacement value of $8,845.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 16, 2018. Dckt. 25. The Chapter 13 Trustee notes that Creditor is listed on the schedules and in the Plan as having a claim for $9,000.00 against a property value of $6,080.00. He notes that Creditor filed Proof of Claim 1-1 as a secured claim for $9,752.53 against a property value of $10,100.00 listed in a NADA Valuation Report. *See* Claim 1-1.

RULING

Creditor filed Proof of Claim 1-1 on December 1, 2017, asserting a secured claim of $9,752.53, secured by the Property with a value of $10,100.00. Attached to that Proof of Claim is a NADA Valuation Report dated November 27, 2017, showing a total average retail price for the Property of $10,100.00. Creditor has not opposed the current Motion, however.

The lien on the Property secures a purchase-money loan incurred on April 18, 2009, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,752.53. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized, based on Debtor's assertion of value at $8,845.00. Creditor's secured claim is determined to be in the amount of $8,845.00, the value of the collateral. *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 to Value Collateral and Secured Claim filed by Eduardo Santos and Monica Santos ("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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Sierra Central Credit Union ("Creditor") secured by an asset described as 2006 Maxum 1800SR boat ("Property") is determined to be a secured claim in the amount of $8,845.00, 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 $8,845.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

13. **17-27484-E-13 DPC-1** | **EDUARDO/MONICA SANTOS** **Peter Cianchetta** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-21-17 [13]**

Final Ruling: No appearance at the January 30, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection.

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") holding a secured claim opposes confirmation of the Plan on the basis that Eduardo Santos and Monica Santos ("Debtor") cannot afford to make the payments or comply with the plan under 11 U.S.C. §1325(a)(6). Debtors' plan relies on a Motion to Value Collateral being filed for Sierra Central Credit Union ("Creditor").

JANUARY 23, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on January 30, 2018, to be heard in conjunction with Debtor's motion to value. Dckt. 28.

RULING

A review of Debtor's Plan shows that it relies on the court valuing Creditor's secured claim. That motion was filed on December 27, 2018. Dckt. 18. That motion was heard and granted at the January 30, 2018 hearing. The Chapter 13 Trustee's only ground for opposing the Plan was that it relied upon a motion to value being granted. That ground has now been resolved, and the Plan can be confirmed.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") holding a secured claim 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, and Eduardo Santos and Monica Santos's ("Debtor") Chapter 13 Plan filed on November 13, 2017, is confirmed. Counsel for 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.