UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 28, 2017, at 3:00 p.m.

---

1. **12-20900-E-13 MET-2** | **TRAVIS GATUS** **Mary Ellen Terranella** | **MOTION FOR SUBSTITUTION OF CHERYL GATUS FOR TRAVIS A.GATUS, JR. AND SUGGESTION OFDEATH 1-28-17 [31]**

Final Ruling: No appearance at the February 28, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 January 28, 2017. 28 days' notice is required. That requirement is met.

The Motion for Substitution 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 Substitution is granted.

Debtor's wife Cheryl Gatus brings this motion to give notice of the death of her husband, Travis Gatus Jr., debtor in the instant case. Cheryl Gatus requests that the court substitute her in as debtor pursuant to Federal Rule of Civil Procedure 25, as incorporated by Federal Rule of Bankruptcy Procedure 7025 and Local Rule 1016-1. Ms. Gatus seeks the following relief:

A. Substitution as the representative for or successor to the deceased debtor in the bankruptcy case;

B. Continued administration of a case under Chapter 13;

C. Waiver of post-petition education requirement for entry of discharge; and

D. Waiver of the certificate requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, responds to the Motion to state that the case completed at 100% to creditors. The Trustee is not certain if any life insurance was received. Furthermore, the Trustee has a balance on hand of $549.55 available if Debtor's counsel moves for additional attorney fees for filing this Motion.

DISCUSSION

The court grants the Motion and substitutes Cheryl Gatus as debtor for her deceased husband, Travis Gatus Jr. Creditors have been paid in full.

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 Substitution filed by the Debtor's wife 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 for Substitution of Deceased Party is granted pursuant to Federal Rule of Civil Procedure 25 as incorporated by Federal Rule of Bankruptcy Procedure 7025 and the case will continue to be administered under Chapter 13.
>
> **IT IS FURTHER ORDERED** that the post-petition education requirement for Travis Gatus Jr. required for the entry of discharge is hereby waived for cause.
>
> **IT IS FURTHER ORDERED** that the financial certificate requirements for entry of discharge in a Chapter 13 case is not waived, and such certification shall be made by the above representative of the deceased Debtor.

2. **12-20900-E-13** **TRAVIS GATUS** **MOTION FOR COMPENSATION FOR**
MET-3 **Mary Ellen Terranella** **MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S)**
2-11-17 [39]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 11, 2017. 14 days' notice is required. That requirement was met.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

Counsel Debtor is requesting additional fees, which reasonable amount she has voluntarily reduced to 1/3 of the actual amount, to ensure that the Plan is fully funded, the discharge entered, and case closed. In light of the amount of the reasonable fees requested, the further reduction by counsel, and there being no significant real party in interest having an "interest" in objecting to fees in light of this being a 100% unsecured dividend case, there is no reason for counsel to expend further uncompensated time attending a hearing.

The Motion for Allowance of Attorneys' Fees is granted.

Mary Ellen Terranella, the Attorney for Debtors, ("Applicant") for Travis Gatus, Jr., ("Client"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 12, 2016, through February 8, 2017. Applicant requests fees in the amount of $549.55.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

"No-Look" Fees

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases,

may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES REQUESTED

Applicant seeks compensation for unanticipated work performed in connection with the death of the debtor and the filing of a motion to substitute. Applicant presents actual fees totaling $1,060.00 for 5.30 hours of work. However, Applicant voluntarily reduces her fees to $549.55. The Trustee indicated that a sum of approximately $549.55 was on hand.

Total Hours: 5.30 unanticipated hours

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $549.55

The Chapter 13 Trustee filed a statement of nonopposition. Dckt 44.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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 Mary Ellen Terranella ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing Mary Ellen Terranella is allowed the fees in the amount of $549.55 as a professional of the Estate.

3. 13-24610-E-13 DAX/TINA CHAVEZ
PGM-6 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
1-31-17 [146]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 28, 2017 hearing is required.

The Debtor having filed a Notice to Withdraw Application for Additional Attorney Fees, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Compensation the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

4. **16-28010-E-13 AP-1** | **MYRANDA AGUILAR** **Matthew Gilbert** | **OBJECTION TO CONFIRMATION OF PLAN BY WELL FARGO BANK, N.A. 1-25-17 [22]**

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.

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 January 25, 2017. By the court's calculation, 34 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor's Chapter 13 Plan does not provide for the full value of Creditor's claim.

B. Debtor's Chapter 13 Plan fails to properly provide for a cure of Creditor's pre-petition claim in full.

C. Debtor fails to apply all disposable income to the Chapter 13 Plan.

The Creditor's objections are well-taken.

The objecting Creditor asserts a claim of $214,945.34, with a pre-petition arrearage of $22,936.23, in this case. The Debtor's Schedule D estimates the amount of the Creditor's claim as $214,977.00 and indicates that it is secured by a first deed of trust on the Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because the Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

The Creditor first alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the Creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

The objecting Creditor holds a deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts $22,936.23 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Creditor alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 100 percent dividend to unsecured claims, which total $2,511.12, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $2,638.25. Thus, the court may not approve the Plan.

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 a Creditor with 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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

5. **16-28010-E-13** **MYRANDA AGUILAR** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Matthew Gilbert** **PLAN BY DAVID P. CUSICK**
1-25-17 [18]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 25, 2017. By the court's calculation, 34 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The Plan will exceed sixty months if an unsecured claim is filed.

The Trustee's objections are well-taken.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in over sixty months because Debtor provides for the U.S. Department of Education/Student Loan, in the amount of $53,836.00, as a secured claim in Class 4 with a $0.00 monthly payment. Debtor admitted at the First Meeting of Creditors held on January 19, 2017 that the student loans were deferred for one to two years. Debtor's Plan proposes to pay unsecured creditors a 100% dividend, and if this creditor files an unsecured claim, the Trustee will pay this claim. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Therefore, the Objection is sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

6. 16-24111-E-13 DRE-1 | **ABBIGAIL CLYMER** **D. Randall Ensminger** | **CONTINUED MOTION TO CONFIRM PLAN** **12-5-16 [79]**

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.

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 5, 2016. By the court's calculation, 52 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on January 5, 2017. Dckt. 94. The Trustee argues that Abbigail Clymer ("Debtor") cannot comply with the Plan under 11 U.S.C. § 1325(a)(4) for two reasons. **First, the Trustee asserts that the adequate protection payment amount is too low. Debtor proposes adequate protection payments of $150.00 per month while a reverse mortgage application** is processed, but the Trustee calculates that the monthly amount should be $399.93 based on Bosco Credit LLC's ("Creditor") Claim 1-2 for $68,561.79 with an interest rate of 8.75%.

Second, the Trustee opposes confirmation because he is not aware of any reverse loan application in process. The Trustee has not received any documents relating to such a loan, and there are no relevant documents on the court's docket.

JANUARY 31, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on February 14, 2017, due to reported medical issues for Debtor's counsel. Dckt. 102.

DISCUSSION

No further pleadings have been filed since the January 31, 2017 hearing.

The Trustee's objections are well-taken. Debtor has not proposed an adequate protection payment amount that satisfies 11 U.S.C. § 1325(a)(4). Additionally, Debtor has not filed any pleadings relating to a proposed motion to approve a reverse mortgage. 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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7. **16-24111-E-13** **ABBIGAIL CLYMER** **CONTINUED MOTION FOR RELIEF**
NLG-1 **D. Randall Ensminger** **FROM AUTOMATIC STAY**
8-24-16 [25]

BOSCO CREDIT, LLC VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditor Wells Fargo Bank, and Office of the United States Trustee on August 24, 2016. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

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.

The Motion for Relief from the Automatic Stay is granted.

Abbigail Clymer ("Debtor") filed the instant bankruptcy case on June 24, 2016. Dckt. 1. Bosco Credit LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6059 Kingwood Circle, Rocklin, California (the "Property"). Movant has provided the Declaration of Gina D'Elia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gina D'Elia Declaration states that there are two (2) post-petition defaults in the payments on the obligation secured by the Property, with a total of $594.58 in post-petition payments past due. The Declaration also provides evidence that there are ninety-seven (97) pre-petition payments in default, with a pre-petition arrearage of $26,811.99. Dckt. 27.

Movant's Motion for Relief from Automatic Stay lists two (2) bankruptcy cases–including the current one–commenced by Debtor, since September 4, 2009, that affect Movant's interest in the Property. Those cases are:

A. Case No. 09-39133

1. Filed: September 4, 2009

2. Type: Chapter 7

3. Date of Discharge: December 9, 2009.

4. This case was reopened on March 28, 2016. Movant requested relief from the automatic stay, which was denied as moot. Debtor also requested the court to convert the case to a Chapter 13, which was denied, and the case was closed once again on July 21, 2016.

B. Case No. 16-24111 (Current Case)

1. Filed: June 24, 2016

2. Type: Chapter 13

3. Instant Case

4. This case was filed while the prior bankruptcy action and Debtor's Motion to Convert the prior action were pending still.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on September 6, 2016. Dckt. 38. The Trustee states that Debtor is current on plan payments under the proposed plan filed on June 24, 2016 (Dckt. 5). The Trustee notes that no confirmed plan exists, and a proposed plan was denied confirmation on August 30, 2016 (Dckt. 34).

The Trustee supplies the following information:

A. Debtor has paid a total of $813.94 to date.

B. One disbursement of $300.00 has been made to Franklin Credit Management Corp., which represents two adequate protection payments of $150.00 for the months of July and August 2016.

DEBTOR'S OPPOSITION

Debtor filed opposition on September 7, 2016. Dckt. 44. Debtor asserts that she is currently in the process of seeking a loan modification of Movant's note and second deed of trust. Debtor believes the Chapter 13 plan will give her a "platform" from which to negotiate a restructuring with Movant over the note and second deed of trust ($68,887.35) and to protect the equity in her home ($81,312.65).

Debtor intends to file an amended plan with all necessary pages to replace the current plan that misses pages 3, 4, and 7.

Debtor states that she will continue to make plan payments of $406.97 per month, and $150.00 of that amount will be paid to Movant.

SEPTEMBER 20, 2016 HEARING

At the hearing, the court denied the requested relief from stay based on 11 U.S.C. § 362(d)(4), and the court continued the matter on the requested relief from stay under 11 U.S.C. § 362(d)(1) because Debtor stated that she was attempting to find a roommate to increase her income, which was why Debtor had not filed an amended plan reflecting her current finances. Dckt. 59.

OCTOBER 25, 2016 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 6, 2016. Dckt. 70.

DECEMBER 6, 2016 HEARING

At the hearing, Debtor continued to profess an intention to diligently prosecute the sale of this Property. Additionally, Debtor asserts that she is diligently prosecuting a reverse mortgage that would pay Movant's claim. Creditor agreed to further continue the hearing for Debtor to try to get this Property marketed and sold. The court continued the matter to 3:00 p.m. on January 31, 2017. Dckt. 93.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on January 13, 2017. Dckt. 99. The Trustee reports that Debtor is current under the proposed plan, having paid a total of $2,441.82 (of which $900.00 has been disbursed to Creditor). The Trustee notes that he opposes Debtor's pending plan. *See* Dckt. 94.

JANUARY 31, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on February 14, 2017, due to reported medical issues for Debtor's counsel. Dckt. 104.

FEBRUARY 14, 2017 HEARING

As stated in the Civil Minutes from the February 14, 2017 hearing, Debtor has demonstrated that she is incapable of providing for Movant's claim or protecting her equity in the real property:

> Debtor has demonstrated that she is not capable of selling the property, giving up her home, and preserving her substantial equity. If the court were to grant this relief, it is likely that Debtor will lose this equity. Not because Creditor would take it, but because the nonjudicial foreclosure process is not one in which the Property would be actively marketed to achieve the best sales price reasonably possible.
>
> Rather than converting this case to one under Chapter 7 or allowing the Creditor to foreclose, the court addressed with both counsel another alternative. Debtor and Creditor confirm basic adequate protection terms and Debtor obtained the court authorized employment of a representative (such as a bankruptcy trustee or other person who understands the role of a fiduciary of the bankruptcy estate to market the property and generate the fair market value in a reasonable time. This will allow Creditor to be paid, without incurring the cost and expense of paying the first, foreclosure, holding costs, marketing, and the sale of property.
>
> The court continues the hearing to allow counsel for Debtor and counsel for Creditor to negotiate an adequate protection stipulation and upload a proposed order.

Civil Minutes, Dckt. 110.

As of the court's review of the file for this case at 4:21 p.m. on Friday February 24, 2017, no proposed adequate protection order had been lodged with the court. No stipulation has been filed in this case. No motion for appointment of a representative for the marketing and sale of the property has been filed.

It appears that, notwithstanding the court extending the extraordinary opportunity for Debtor and her counsel to prosecute this case, Debtor has refused to act. The Debtor's intransigence leaves the court with little basis for not granting the relief requested.

DISCUSSION

No further pleadings have been filed since the January 31, 2017 hearing.

At the November 16, 2016 hearing, the court continued the Chapter 13 Trustee's Motion to Dismiss to 10:00 a.m. on January 18, 2017. Dckt. 78. At that hearing on November 16, 2016, Debtor and Debtor's counsel assured the court that Debtor's plan is to sell her residence and protect what she computes to be $100,000.00 in equity.

However, a review of the Docket does not show any motion to approve the employment of a real estate broker or that Debtor is actively, in good faith, attempting to promptly sell the property.

Debtor filed an Amended Plan and corresponding Motion to Confirm on December 5, 2016. Dckts. 79 & 81. That plan's additional provisions call for Movant to receive adequate protection payments of $150.00 per month while Debtor seeks a reverse mortgage. The provisions call for a motion to approve the reverse mortgage to be filed with the court within fourteen days of its final approval, but before closing. If Debtor is denied the reverse mortgage, then the plan affords her seven days to sign a listing agreement with Granite Equities to list the Property for sale. If Debtor fails to list the Property for sale within seven days, though, then the Plan allows Creditor to file an ex parte motion for relief from the automatic stay.

A review of the docket shows that no motion to approve the terms of a reverse mortgage has been filed. Additionally, no motion to sell the Property has been filed.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $242,687.35 (including $68,887.35 secured by Movant's second deed of trust), as stated in Schedule D filed by Debtor. The value of the Property is determined to be $320,000.00, as stated in Schedules A and D filed by Debtor.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay as cause under 11 U.S.C. § 361(d)(1).

While Debtor professes to be prosecuting a Chapter 13 Plan, there is no proposed plan before the court. Confirmation was originally delayed due to what appears to have been a clerical error when the plan was filed (pages missing from Plan filed).

However, it was made clear to Debtor as early as August 4, 2016, that the Plan filed with the court was defective. Trustee's Objection to Confirmation, Dckt. 17. In the more than one hundred seventy (1702) days that have passed since that time, no action has been taken by Debtor to file an amended plan and motion to confirm an amended plan. Rather, Debtor is living in the no-plan limbo. That is not consistent with prosecuting this case in good faith.

On Schedule I, Debtor states that her monthly gross income is $2,512.00. Dckt. 1 at 28. On Schedule J, excluding secured debt payment on her residence, Debtor states under penalty of perjury that her reasonable and necessary monthly expenses are $1,167.00. *Id.* at 30. No provision is made for property taxes or property insurance. No provision is made for any income taxes. Debtor purports to have monthly food and housekeeping supplies expenses of only $200.00 per month. Allowing $50.00 per month for household supplies, Debtor purports to pay only $1.66 per meal (assuming a 30 day month). This does not appear to be reasonable.

Additionally, Debtor lists no expenses for home maintenance, repair, or upkeep. This too appears unreasonable.

Debtor's real property is stated to have a value of $320,000.00. Schedules A/B and D, Dckt. 1. Wells Fargo Bank, N.A. is listed as having a claim in the amount of $169,000.00 and Movant is listed as having a Claim in the amount of $70,000.00. By Debtor's calculation there is approximately a $90,000.00 equity cushion for both creditors.

Debtor purports to make $406.97 in monthly payments, of which $150.00 would be paid to Movant. There is no indication as to why or how this is a reasonable payment.

Wells Fargo Bank, N.A. has filed its proof of claim, stating a secured claim in the amount of $169,008.61. Proof of Claim No. 5. The monthly payment on this claim is stated to be $917.70. *Id.* Debtor has listed $938.00 on Schedule J as the payment for her home.

Movant has sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). The court having denied the proposed amended plan, no motion to sell the Property having been presented to the court, and cause being shown by Movant, the Motion for Relief from the Automatic Stay is granted.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief From the Automatic Stay filed by Bosco Credit LLC ("Movant") 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 immediately vacated to allow Bosco Credit LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 6059 Kingwood Circle, Rocklin, California.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.
>
> No other or additional relief is granted.

8. 13-22012-E-13 KENNETH/KRISTINE THOMPSON MOTION TO MODIFY PLAN
PGM-3 Peter Macaluso 1-17-17 [149]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Correct 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 January 17, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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 hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on March 7, 2017.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 13, 2017. Dckt. 158.

The Trustee objects to the treatment of creditor Employment Development Department's ("Creditor") two claims of $621.81 and $431.74 in this case. Debtor's Schedule D does not list the amount of the Creditor's claim or indicate that it is secured by a deed of trust on the Debtor's residence. The Plan provides for treatment of this as a Class 4 claim to be paid by Debtor's son, but (because the Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

The Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the Creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6).

The Trustee also objects to confirmation of the plan due to substantial good faith issues. The Trustee alleges that the two declarations are conflicting as to the ownership of the business. Debtor states in their declaration that the business was turned over to Debtor's son in January 2016. Dckt. 151. However, Debtor states that there was never a transfer of ownership to the son. Debtor's son's declaration stated that ownership of the business was transferred to him by Debtor on January 1, 2016, and Debtor was not insured or liable in any regards to the business. Dckt. 153.

Debtor filed a reply indicating that these deficiencies would be cured prior to the hearing. The court does not see evidence of these problems being addressed. However, in light of the fact that the

deficiencies appear to be curable, and taking due consideration of the Debtor's request for an extension in light of the circumstances, the court will continue the hearing to 3:00 p.m. on March 7, 2017.

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 the hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on March 7, 2017.

9. **16-28316-E-13** **SHARRY STEVENS-GOREE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Gary Fraley** **PLAN BY DAVID P. CUSICK**
2-1-17 [29]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 1, 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The plan relies on a Motion to Value Collateral being filed.

B. The plan relies on a Motion to Avoid Lien.

C. Debtor did not list a creditor on Schedule D and provide for it in the plan as a secured priority.

The Trustee's objections are well-taken.

A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Santander Consumer USA. Debtor has failed to file a Motion to Value the Secured Claim of Santander

Consumer USA, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Avoid Lien being filed for Citibank that was filed on February 28, 2017. Dckt. 23. If the lien avoidance motion is not filed and granted, Debtor's plan does not have sufficient monies to pay the claim in full. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

In Proof of Claim No. 4-1 the Internal Revenue Service asserts $19,311.71 in claims, consisting of $4,513.19 as a secured claim, $9,378.19 as a priority unsecured claim, and the balance as a general unsecured claim. The Debtor's Schedule D estimates the amount of the Creditor's claim as $19,311.71. However, the Plan does not provide for it as a secured claim but as an unsecured priority claim only. The Trustee alleges that Debtor might be trying to provide a tax expense in Schedule J to provide for payment of the claim.

The Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the Creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. **16-28316-E-13** **SHARRY STEVENS-GOREE** **MOTION TO AVOID LIEN OF**
FF-2 **Gary Fraley** **CITIBANK, N.A.**
1-30-17 [23]

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.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on January 30, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required. However, the Motion and supporting pleadings were not properly served on the creditor, Citibank, N.A., a federally insured financial institution.

The Motion to Avoid Judicial Lien 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Sharry Stevens-Goree ("Debtor") commonly known as 156 Ritter Court, Fairfield, California ("Property").

The Certificate of Service for this Motion states that it was served by **First Class Mail** on the following persons:

Office of the US Trustee
501 1St - Ste 7-500
Sacramento, CA 95814

Citibank, N.A.
P.O. Box 6241
Sioux Falls, SD 57117

Trustee in Bankruptcy
David P. Cusick
5 P.O. Box 1858
Sacramento, CA 95812-1858

The Moore Law Group
A Professional Corporation
P.O. Box 25145
Santa Ana, CA 92799-2652

Sharry Lynn Stevens-Goree
156 Ritter Court
Fairfield, CA 94534

Dckt. 28. Also attached to the Certificate of Service is the Mailing Matrix in this case, which includes the following address for any persons with the word "Citibank" in their name:

CitiBank
Processing Center
Des Moines IA 50363-0001

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The FDIC online database provides the following information as to the address of Citibank, N.A., a federally insured financial institution:

Headquarters:
701 East 60th Street North
Sioux Falls, SD 57104

https://research.fdic.gov/bankfind/results.html?name=citibank&fdic=&address=&city=&state=&zip=.

Service was not made to that address and is not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on Citibank, N.A.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

In addition to having failed to comply with the service requirements of Federal Rule of Bankruptcy Procedure 9014(b) and Federal Rule of Bankruptcy Procedure 7004(h), the pleadings have been dumped into a Post Office Box. This is insufficient service.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on February 13, 2017. Dckt. 33. The Trustee notes the judicial lien of Citibank, N.A. was recorded on April 24, 2012. The Trustee also alleges that the Internal Revenue Service has filed a proof of claim on February 11, 2014, in the amount of $19,311.71, only $4,513.19 is claimed as secured. The Trustee is not certain Debtor's calculation of "Net Impaired exemption" is correct.

In raising the point, the Trustee does not provide any economic analysis. If service had been proper, it appears the court would have had to duplicate the work already done, but not stated in the Response, to determine if this relief may properly be granted under the Bankruptcy Code. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Or, the court may have concluded that it disagrees with Debtor's valuation of the property, with the creditor valuing it even lower and there being no recoverable value for the judgment lien. Even if there were a small value, the Creditor may well have made the economic determination that chasing an $11,000 judgment lien by potentially satisfying a $334,000 senior debt was not financially prudent.

DENIAL OF MOTION WITHOUT PREJUDICE

The court denies the Motion without prejudice. Debtor having been tipped off by the Trustee as to a possible computational problem, can proactively address it when filing and (properly) serving a new motion.

The court shall issue an order substantially in the following form:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid judgment lien of Citibank, N.A. is denied without prejudice.

11. 15-22019-E-13 JAP-2 | **KATHY COARD** | **James Pixton** | **MOTION TO MODIFY PLAN** | **1-17-17 [74]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 17, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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 without prejudice.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 13, 2017. Dckt. 83.

The Trustee asserts that Debtor is $1,398.64 ahead in plan payments, which represents less than one month of the $2,456.36 plan payment. The Trustee's records reflect that Debtor has actually paid a total of $54,379.16, instead of $52,971.52 under the modified plan through January 2017.

The Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent post-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). The Trustee requests the status of Debtor's 2016 tax filing. The Trustee is uncertain if Debtor is including the 2016 tax year in this provision, and if it is seeking to exclude it, a reason must be presented.

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

12. 16-26920-E-13 EILEEN DAVIDSON MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 1-10-17 [22]

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.

Correct 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 10, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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 granted and the Plan, as amended at the hearing, is confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed an Response on February 7, 2017. Dckt. 31. The Trustee does not oppose Debtor's Motion to Confirm First Amended Plan provided the plan payments are clarified in the order confirming. Section 1.01 provides Debtor shall pay $185.00 for two months and $279.00 for fifty-seven months beginning January 2017, and Section 1.03 provides the plan payments will continue for sixty months unless all allowed unsecured claims are paid in full in a shorter time.

The first payment was due on November 25, 2016, and the third payment was due on January 25, 2017. The Trustee believes Debtor is proposing $270.00 for fifty-eight months not fifty-seven months. Debtor has paid $185.00 per month for November and December 2016, and $270.00 for January 2017.

DEBTOR'S REPLY

Debtor filed a Reply on February 21, 2017. Dckt. 33. Debtor agrees with the Trustee's assessment and states that Section 1.01 reading "$185.00 x two and $270.00 x fifty-seven" was a scrivener's error. The section should read "$185.00 x two and $270.00 x fifty-eight." Debtor requests that this change be made in the Order Confirming.

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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on January 10, 2017, as amended at the hearing to provide for there to be "$185.00 x two and $270.00 x fifty-eight" in payments, is confirmed. 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.

13. **16-27420-E-13** **JUDITH DARNOLD** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Steele Lanphier** **12-21-16 [18]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2016. By the court's calculation, 34 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). 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. At the hearing **----------.**

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. The Plan relies on filing a Motion to Value Secured Claim of Financial Freedom and Heritage Credit Union, for which no motion had been filed.

The Trustee's objections are well-taken.

At the previous hearing, the Trustee agreed to a continuance to allow Debtor to complete the first meeting of creditors. Debtor did attend the Meeting of Creditors held on January 26, 2017. However, the Trustee alleges that the Plan calls for valuation motions in error.

First, the claim of Financial Freedom is perhaps not listed correctly in Class 2B. Schedule D lists the amount of the claim at $332,744.49 and the value of the collateral at $261,000.00. Class 2B lists the value amount to be paid through the plan as $4,000.00 with the total claim as $332,744.49. Additionally, this is a reverse mortgage so the claim may not be subject to valuation. Regardless, the Debtor has not filed a Motion to Value.

Second, the 2012 Chrysler Sebring, which is the security for a loan by Heritage Credit Union, does not qualify for a Motion to Value Collateral as the debt was incurred within 910 days in September of 2014, while the claim was filed on December 16, 2016.

The court is not convinced that the Plan is feasible. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Financial Freedom and Heritage Credit Union, listed in Class 2B. Debtor has failed to file a Motion to Value the Secured Claim of Financial Freedom and Heritage Credit Union, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the 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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. **16-28127-E-13** **CARLOS/ANGEL LORTA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **W. Scott deBie** **PLAN BY DAVID P. CUSICK**
1-25-17 [27]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

The Objection to Confirmation is dismissed without prejudice.

The Chapter 13 Trustee having filed an *Ex Parte Motion to Dismiss* the pending Motion on February 15, 2017, Dckt. 39; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the *Ex Parte Motion* is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Confirmation the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 39, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Objection to Confirmation the Chapter 13 Case is dismissed.

15. 12-39728-E-13 MARK/TIFFANY WOLFGRAM AMENDED MOTION TO MODIFY PLAN
WSS-10 W. Steven Shumway 1-13-17 [155]

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.

Correct 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 January 13, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 13, 2017. Dckt. 164.

The Plan violates 11 U.S.C. § 1325(b) because the Plan will complete in less than the permitted sixty months without providing a reasonable explanation. Debtor has proposed a plan term of forty-nine months. Debtor filled out Form B22C, indicated the applicable commitment period is three years, but the Form was not completed properly because Debtor's income was left blank. The Statement of Financial Affairs reflected some income for the applicable period, but was not clear if Debtor had any income from July 1, 2012, to November 7, 2012. The Trustee also did not object to Debtor's previously proposed sixty month plan.

The Trustee also argues that the motion does not cite applicable code such as 11 U.S.C. § 1329, which is required under Local Bankruptcy Rule 9014-1(d), and Federal Rules of Bankruptcy Procedure 9013.

Trustee believes that if the motion is granted, the Plan will complete after the Trustee disburses most of the $27.76 to two unsecured claims in the amount of checks less than $15: Franchise Tax Board and State Board of Equalization.

REVIEW OF MOTION

The Motion fails to state any grounds with particularity for why the plan term should be reduced. Further, as discussed below, there are no grounds stated with particularity upon which the court can grant the requested relief.

FAILURE TO COMPLY WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 9013

Debtor in this case has filed a pleading titled "Amended Motion for Confirmation of Modified Plan." Dckt. 155. Debtor is represented by very experienced counsel who has appeared in this court on numerous occasions during the past seven years (as well as having practiced in this District for decades). Counsel is well aware of the basic pleading requirements under the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure, and that this court requires the parties to actually comply with the rules.

Federal Rule of Bankruptcy Procedure 9013 requires that the motion itself state with particularity the grounds upon which the requested relief is based. The motion is a separate document from the points and authorities, each declaration, and the exhibits (which may be filed as one document). L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents.

Here, the totality of the grounds which Debtor and their attorney, in compliance with the certifications they make pursuant to Federal Rule of Bankruptcy Procedure 9011, consist of the following:

A. "Debtors, through their attorney, W. Steven Shumway" state the grounds upon which the relief is requested."

B. "The court has authority to hear this motion pursuant to 11 USC 1324."

C. "Debtors are eligible to file a plan for a term less than 60 months."

D. "Debtors are filing a modified plan to lower the term of their plan to 49 months. This will still provide a dividend to unsecured creditors."

E. "Debtors request the court confirm their modified Chapter 13 plan."

Motion, Dckt. 155. These "grounds," are little more that several summary conclusions and a demand that the court "GRANT THE MOTION - NO GROUNDS OR LAW NECESSARY." Such a Motion is not presented in good faith and appears to be part of a bad faith scheme to abuse the Bankruptcy Code and mislead the court into granting relief not permitted under the Bankruptcy Code.

The sum total of the testimony Debtor is able, or willing, to provide the court with evidence to support confirmation consists of the following:

A. "I, Mark Wolfgram, declare . . ."

B. "I am one of the Debtors in the above referenced case. I have personal knowledge of the facts contained in this declaration."

C. "We wish to modify the term of our plan and lower it to 49 months."

D. "We reviewed the income and expense projections filed when we modified our plan in November 2013. Our income and expenses are about the same as they were at that time. Included as an exhibit to my declaration is a income and expense projection."

E. "The modified plan that we are proposing represents the best efforts that we can offer at this time."

F. "We filed our bankruptcy to pay our taxes and to take care of debts that we could not pay."

G. "Neither of us have a domestic support obligation."

H. "We have filed all applicable tax returns."

Declaration of Mark Wolfgram, Dckt. 157. This declaration provides little personal knowledge testimony of substance to provide evidence for the court to confirm a modified plan as permitted under 11 U.S.C. §§ 1329, 1325, and 1322. It appears, as with the Motion, Debtor is unable (or unwilling) to provide testimony to support confirmation. Rather than testimony to provide evidence, Debtor merely dictates his personal findings of fact and conclusions of law to the court.

What is clear is that Debtor and counsel have proceeded with a plan to try to improperly shorten the Chapter 13 plan. The only reason for this as stated in the Motion is that this is Debtor's "wish." There are no sufficient grounds to grant the relief requested.

Unfortunately for Debtor and counsel, the court properly applies the law. Debtor has demonstrated not only a lack of good faith, but affirmative bad faith in the present motion. This bad faith may so permeate the two debtors, as well as their counsel, that they are unable to provide any credible testimony in this, or any future, bankruptcy case.

Debtor has failed to set forth grounds upon which the requested relief can be granted. Debtor has failed to present competent, personal knowledge testimony in support of confirmation. Debtor has failed to present evidence in support of confirmation. The totality of Debtor's conduct demonstrates bad faith in the prosecution of this case.

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 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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

16. 14-23440-E-13 PGM-2 | **TOSHIBA FRANCOIS** **Peter Macaluso** | **MOTION TO MODIFY PLAN** **1-12-17 [51]**

Final Ruling: No appearance at the February 28, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 12, 2017. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified 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). 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 Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on February 13, 2017. Dckt. 60. Debtor proposed to increase the monthly plan payments, and the dividend to the unsecured creditors will remain at 0.0%. Debtor is current under the proposed feasible modified plan. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Modified Chapter 13 Plan filed on January 12, 2017, is confirmed. Debtor's Counsel 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.

17. 16-25441-E-13 AVELINO SANTOS MOTION TO CONFIRM PLAN
BLG-3 Chad Johnson 1-6-17 [84]

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.

Correct 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 January 6, 2017. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 7, 2017. Dckt. 101.

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of forty-four months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims.

The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of

such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 100 percent dividend to unsecured claims, which total $26,837.00, over forty-four months. Though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $5,156.68, he proposes to fund it with only $1,271.00 per month, extending the plan to four years, interest-free for creditors holding priority and general unsecured claims.

Review of Plan

For the first three months of the Plan, Debtor will have paid in $3,840.00 (with the last payment having been made in November 2016. Beginning in January 2017, Debtor is to pay $1,271.00 per month for forty-one months.

The financial information provided is taken from Schedule I and J, filed in August 2016. Beginning with Schedule I, Debtor's income information is summarized as follows:

Gross Income	$6,985.00
Taxes, Medicare, and Social Security	($100.60)
Mandatory Retirement Contribution	$0.00
Voluntary Retirement Contribution	($795.00)
Repayment to Debtor for Retirement Fund Loan	($186.23)
457 Plan	($200.00)
CCPOA Dues	($90.00)
Other Amounts	($106.98)
	$5,506.19

Dckt. 1 at 28–29. On Schedule B Debtor lists the 457(b) Plan and a Roth IRA. *Id.* at 14. Though a correctional officer, Debtor does not list a CalPERS retirement on Schedule B. On top of this, Debtor reports receiving $1,631.00 in monthly retirement or pension income. This takes Debtor's total monthly income to $7,137.19.

On Schedule J, Debtor lists having monthly expenses (for himself only, having no dependents) of $3,500.59. *Id.* at 30–31. The allocation of expenses appears to be questionable in the following areas:

A. Food and Housekeeping Supplies.....($200)
B. Medical and Dental Expenses.....($ -0-)
C. Transportation.....($100.00)

Id. at 30. These do not appear reasonable, even for one person. Debtor has two vehicles listed on Schedule B (not counting the third vehicle that is stated to be his daughter's vehicle). Under the Plan, Debtor provides for paying for one of the vehicles, a 2012 Lexus. That is the only one of the two vehicles of Debtor subject to a creditor's lien. *Id.* at 19.

Taken at face value, Debtor could be funding the plan with $3,636.60.

But Debtor is choosing not to so fund the plan, instead with only $1,271.00 per month, leaving $2,365.00 per month unaccounted for. Over the forty-four months of the Plan, that totals $104,060.00 that just "disappears." Debtor does not need to extend his $11,562.45 of general unsecured claims (amount stated in Plan) over forty-four months at no interest.

Taken from the face of the Plan, the following claims must be provided for by Debtor:

A. Class 1.....None
B. Class 2
    1. Lexus.....($18,272.70) at 4.5% interest

C. Class 3, Surrender

    1. Residence, Creditors with liens to foreclose

D. Class 5 Unsecured Priority

    1. Franchise Tax Board.....($15,780.71)

E. Class 6, Special Treatment Unsecured Claims

    1. None

F. Class 7, General Unsecured Claims

Chapter 13 Plan, Dckt. 89.

To repay the Class 2 secured claim over forty-eight months, the monthly payment would be $417.00 (computed using the Microsoft Excel Loan Calculator Program).

With a monthly plan payment of $3,636 per month, and assuming that from the payments to date, and with from the first $3,636 payment Debtor's attorney will be paid in full for his $4,000.00 fees, the Plan could be funded as follows:

Monthly Plan Payment	$3,636	
Chapter 13 Trustee Fees (Est. 7%)	($254)	
FTB Priority Claim of $15,780.71	($1,315)	Amortized Over Only 12 Months
General Unsecured Claims of $11,562.45	($963)	Amortized Over Only 12 Months
	$1,104	

Even with significantly increasing the monthly plan distributions to get the general unsecured and priority unsecured claim which are not being paid any interest satisfied in full in twelve months, there is still an "extra" $1,104 per month from unaccounted-for moneys for Debtor.

As properly objected to by the Trustee, Debtor fails to show any proper, good faith, grounds for extending the repayment of unsecured claims while $100,000+ of unaccounted-for income just disappears.

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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

18. **16-27641-E-13** **MONICA STEINHART**
DPC-1 **Marc Carpenter**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-11-17 [21]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

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 January 11, 2017. 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled, and the Plan is confirmed.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor's plan relies on a Motion to Value Secured Claim of Golden One Credit Union, set for hearing on February 28, 2017.

A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Golden One Credit Union. This motion was continued to coincide with the Motion to Value. The court notes that the Motion to Value is unopposed. As a result, the Objection to Confirmation 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 to Confirmation of the Plan is overruled, and Debtor's Chapter 13 Plan filed on November 17, 2016, is confirmed,

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

19. 16-27641-E-13 MAC-1 | **MONICA STEINHART** **Marc Carpenter** | **MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION 1-5-17 [14]**

Final Ruling: No appearance at the February 28, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 5, 2017. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion to Value 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of The Golden 1 Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $9,000.00.

The Motion filed by Monica Steinhart ("Debtor") to value the secured claim of The Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 BMW 3 Series ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee filed a Response on February 13, 2017. Dckt. 25. The Trustee asserts that Debtor included Creditor of the proposed plan for a 2009 BMW 328i with a value of $9,000.00. The Trustee also points out that the Creditor has filed a Proof of Claim No. 2, which claims $14,790.16 as secured.

While the Proof of Claim controls over what the Debtor may assert, it is this court's order that controls over the Proof of Claim. Here, Creditor has elected not to oppose the Motion. In light of the evidence presented in support of this Motion, Creditor may have overvalued the 2009 vehicle.

The lien on the Vehicle's title secures a purchase-money loan incurred in 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,790.16 (stated in Proof of Claim No.2). Therefore, the 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 $9,000.00, the value of the collateral. The moving party has provided the Declaration of Monica Steinhart to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Steinhart Declaration offers evidence that the Vehicle is $9,000.00. Debtor has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle, listing it at $8,103.00 (same as Schedule D). 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). Creditor filed Proof of Claim No. 2 on December 8, 2016, stating that the amount secured for the Vehicle is $14,790.16. Absent any further evidence of valuation, the court will use the evidence provided in the motion. *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 Secured Claim filed by Monica Steinhart ("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 The Golden 1 Credit Union ("Creditor") secured by an asset described as 2009 BMW 3 Series ("Vehicle") is determined to be a secured claim in the amount of $9,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $9,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

20. 16-28446-E-13 DPC-1 | **CRAWFORD JOHNSON** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-1-17 [26]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on February 1, 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meetings of Creditors.

B. Debtor is delinquent in plan payments.

C. Debtor has failed to provide tax returns.

D. Debtor's Chapter 13 documents are incomplete.

E. Debtor fails the Chapter 7 liquidation analysis.

F. Debtor failed to list a prior bankruptcy case.

The Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee asserts that Debtor is $230.00 delinquent in plan payments, which represents one month of the $2,855.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Also, the Trustee argues that the 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).

The Trustee states that Debtor cannot make the payments under the plan or comply with the plan according to 11 U.S.C. § 1325(a)(6):

A. Schedule J lists Debtor's net income as ($220.00).

B. Section 2.15 is blank. Debtor failed to list a dividend to the unsecured creditors.

C. The Plan filed on December 30, 2016, appears to contain six pages. The second page was titled "Chapter 13 Proposed Payment Plan" where neither box was marked in Section 6 as additional provisions being appended to the Plan. It also appears to be a misfiled document. The Plan overall fails to provide any treatment to creditors.

D. Debtor failed to choose and check the appropriate box whether or not additional provisions are attached to the Plan.

E. The Plan fails to provide for any treatment to Caliber Home Loans on Schedule D. Schedule J lists a mortgage expense in the amount of $1,750.00. The treatment to and for Caliber is unknown.

F. The creditors listed on Schedule E do not appear to qualify as priority unsecured creditors. Schedule F was marked that Debtor has no creditors holding unsecured claims to report on Schedule F. It is not clear if Debtor completed Schedules E and F properly.

G. The Statement of Financial Affairs is incomplete. Debtor provided no information.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Trustee states that while Debtor has

reported non-exempt equity in the amount of $5,450.00, the Debtor has failed to propose a dividend to pay the unsecured creditors. Schedule C is blank.

The Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No. 11-33759, filed on December 9, 2016) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

21. 16-26647-E-13 DPC-1 | **MARTIN DUARTE** | **Mark Wolff** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **11-10-16 [16]**

CASE DISMISSED: 01/25/2017

Final Ruling: No appearance at the February 28, 2017 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Continued Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

22. 16-26349-E-13 RICARDO VEGA MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 1-11-17 [33]

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.

Correct 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 January 11, 2017. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 7, 2017. Dckt. 40.

The Trustee argues that the 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).

Debtor has also failed to file all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. § 1308 and §1325(a)(9). On October 12, 2016 the Internal

Revenue Service filed a Proof of Claim No. 1 stating that Debtor has not filed tax returns for 2010, 2011, 2012, 2013, and 2014. On January 24, 2017, the Franchise Tax Board filed a Proof of Claim No. 2 stating that Debtor has not filed tax returns for 2006, 2007, 2010, 2011, 2012, 2013, and 2014. Debtor's Declaration states that he was not aware of the requirement to file taxes due to business losses. It also does not indicate that Debtor has any plans to complete and file the required tax returns in the future.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in 156 months due to failure of Debtor to prove for the secured debt of $35,317.66 belonging to the Franchise Tax Board. There is also a general unsecured debt of $490.81. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's amended Schedule J indicates that Debtor has three roommates contributing rent of $600.00 each, plus utilities. Debtor has failed to file Declarations indicating the roommates' ability and willingness to contribute this amount of rental income for the life of the Plan. Debtor also amended Schedule J and listed several changes from the original form without any explanation in the Motion or Declaration. Debtor's budget difference in regard to Schedule J is a total of $5.00. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

23. 16-28049-E-13 DPC-1 | **ARMANDO RODRIGUEZ**
Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
1-25-17 [23]

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.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 25, 2017. The United States Trustee was not served with notice. By the court's calculation, 34 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to provide tax returns.

B. Debtor failed to appear at the First Meetings of Creditors.

C. Debtor failed to list prior case number on the petition.

D. Debtor did not list any creditors in Plan.

E. Debtor's Plan fails to provide for a secured debt.

The Trustee's objections are well-taken.

The Trustee argues that the 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).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No.16-24340, filed on December 21, 2016) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years.

The Trustee also notes that Debtor's Chapter 13 Plan filed on December 6, 2016 does not list any creditors in Class 1, 2, 3, 4, 5, or 6.

Bank of America, N.A. asserts a claim of $512,022.21 in this case. The Debtor's Schedule D estimates the amount of the Creditor's claim as $557,000.00 and indicates that it is secured by a first deed of trust on the Debtor's residence. The Plan does not provides for treatment of this as a specific Class claim, but (because the Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

The Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the Creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24. 16-28049-E-13 ARMANDO RODRIGUEZ
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
1-26-17 [29]

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.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on January 26, 2017. The United States Trustee was not served with notice. 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is overruled.

Bank of America, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor's Plan does not provide for repayment of the pre-petition arrearages owed.

B. Debtor's Plan fails to provide post-petition monthly mortgage payments to Creditor.

C. Debtor is not able to afford Plan payments due to shortage of disposable monthly income.

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 9034(I) requires that any entity filing an objection to confirmation of a plan serve that objection on the United States Trustee. Federal Rule of Bankruptcy

Procedure 5005(b)(1) specifies that such objection "be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending." Here, the United States Trustee was not served with Creditor's Objection.

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 a Creditor with 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. Confirmation of Debtor's Plan has been denied pursuant to the separate objection of the Chapter 13 Trustee.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF THE CREDITOR PROVIDES PROPER NOTICE TO THE UNITED STATES TRUSTEE

DISCUSSION

The objecting Creditor holds a deed of trust secured by the Debtor's residence. The Creditor has not filed a proof of claim yet, but it asserts $237,133.70 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The objecting Creditor asserts a claim of $512,022.21 in this case. The Debtor's Schedule D estimates the amount of the Creditor's claim as $557,000.00 and indicates that it is secured by a first deed of trust on the Debtor's residence. The Plan does not provide for treatment of this as a specific Class claim, but (because the Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

The Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the Creditor's matured obligation, which is secured by the Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment

in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan payment must be at least $3,952.23 for sixty months (not including the increase in Trustee's fees). The Trustee states that Debtor's Schedules I and J indicate that Debtor has a disposable monthly income of only $3,250.00. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

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 a Creditor with 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 to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

25. 16-27851-E-13 DPC-1 | **ALFREDO ALMADA** **Matthew DeCaminada** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-25-17 [19]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 25, 2017. By the court's calculation, 34 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor's Plan exceeds sixty months.

B. Debtor did not file tax returns for the last four years prior to filing this petition.

The Trustee's objections are well-taken.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in seventy-one months due to the priority claim of the Internal Revenue Service in the amount of $5,210.65 filed on December 21, 2016. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Therefore, the Objection is sustained.

Also, the 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. The Internal Revenue Service filed a priority claim indicating that Debtor has filed to file income taxes for 2013, 2014, and 2015. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

26. **16-28154-E-13** **KEVIN BRIDGES** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mark Wolff** **PLAN BY DAVID P. CUSICK**
1-25-17 [16]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 25, 2017. By the court's calculation, 34 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor did not provide any business documents.

B. Debtor cannot make the payments required under the Plan.

C. The Plan is not Debtor's best effort because Debtor did not provide disposable income.

D. Debtor's Plan did not provide any details of the lawsuit proceeds on the Statement of Financial Affairs.

E. The Plan exceeds sixty months.

The Trustee's objections are well-taken. Debtor has failed to timely provide the Trustee with business documents including:

A. Six months of profit and loss statements,

B. Six months of bank account statements, and

C. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists vehicle insurance on Schedule J in the amount of $100.0 and he admitted at the First Meeting of Creditors held on January 19, 2017 that the expense for vehicle insurance is $200.00 per month. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provision of the Bankruptcy Code provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 100 percent dividend to unsecured claims, with the payments to be funded by $500.00 a month plan payment for sixty months and an additional lump-sum payment of $60,000.00 to be paid into the Plan from a class action lawsuit in month thirty-six, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $2,000 (not including the $1,000.00 that Debtor's mother provides, which amount is not listed on Schedule I).

The Trustee argues that Debtor's Plan proposes to pay $60,000.00 from proceeds of a class action lawsuit in month thirty-six, however, Debtor has failed to provide any details of the lawsuit on the Statement of Financial Affairs. Debtor lists the lawsuit on Schedule B and values it at $500,000.00, but there is no status of the proceeding or how the value was determined.

Debtor also lists three other lawsuit on Schedule B.

A. Debtor lists a claim against Robert Kitay, who filed a Chapter 7 bankruptcy case (Case No. 13-20645), that is valued at $0.00. Debtor does not provide any details of this claim or the reasons for that valuation.

B. Debtor lists Wyotec Class Action with an unknown recovery. Debtor obtained loans in excess of $40,000.00 and had $4,000.00 additional placed in collections. Debtor did not provide any details of this action or how the valuation was determined.

C. Debtor lists a wrongful termination from Scandia claim where Debtor was fired after refusing to sign fraudulent inspection reports. Debtor has not yet retained an attorney and values this asset at $0.00.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in ninety-seven months due to insufficient funds. The total debts to be paid through the Chapter 13 Plan, not considering Trustee Compensation at 6.2% is $98,483.84. Debtor's Plan proposes $500.00 for sixty months, with a $60,000.00 lump sum payment, which totals only $90,000.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Therefore, the Objection is sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

27. **11-22562-E-13** **JOSEPH/SABRINA MADDOCKS** **CONTINUED MOTION FOR CONTEMPT**
PGM-1 **Peter Macaluso** **12-14-16 [167]**

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.

Correct 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 14, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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). The defaults of the non-responding parties and other parties in interest are entered.

The Status Conference on the Motion for Contempt is continued to 11:00 a.m. on March 9, 2017, for a scheduling conference to address specific issues as specified in the ruling below and in the order setting the Scheduling Conference.

ORDER FOR SCHEDULING CONFERENCE

As discussed below, the Motion before the court began as a "simple" motion asserting that creditor California Coastal Rural Development Corporation ("Cal Coastal") should be held in contempt for violating the discharge injunction, automatic stay, and order confirming the Chapter 13 Plan for making demand on a pre-petition abstract of judgment securing a pre-petition judgment obtained by Cal Coastal just before this bankruptcy case was filed.

This "motion" has grown in scope, adding potential claims for failure to reconvey deeds of trust under California law, filing proofs of claim for debts that no longer existed but had been replaced by the pre-petition judgment, and a declaration of the parties rights.

Cal Coastal asserts that there is an enforceable settlement agreement that may be enforced pursuant to California Code of Civil Procedure § 664.6 (which requires a written agreement signed by all parties or orally stated on the record before the court).

At a minimum, it appears that Movant may well need to amend the Motion, include only such claims as may exist for "contempt," and file such separate complaints or other motions seeking different relief (to the extent it may be sought in a contested matter). The current pleadings, proofs of claims, contentions, and arguments create a confusing gumbo of legal theories and arguments that are destined to make significant unnecessary work for the court and parties if these proceedings are not managed properly by the court.

The court will conduct a Scheduling Conference at 11:00 a.m. on March 9, 2017 (the court's normal Adversary Proceeding Law and Motion Calendar), to ascertain how the parties intend to prosecute the present Motion, amend the Motion to limit these proceedings to only those matters for which a determination of contempt may properly be adjudicated, and what other proceedings may be ordered by the court that may help these parties come to grasp with the significant issues before the court.

Telephonic appearances are permitted for the Scheduling Conference on March 9, 2017. However, at this time the court intends to order that all other proceedings will require the in-court appearances of counsel and the parties, no further telephonic appearances permitted in this Contested Matter.

DISCUSSION OF MOTION FOR CONTEMPT

Joseph Maddocks and Sabrina Maddocks ("Debtor") move for an order to show cause concerning violation of discharge under 11 U.S.C. § 1328 against California Coastal Rural Development Corporation ("Creditor"). Debtor seeks (1) declaratory and injunctive relief by the court to determine whether Debtor should be liable for the pre-petition liability arising from a demand for pre-petition claims in the amount of $59,248.14 and (2) a determination of whether Creditor is in violation of 11 U.S.C. § 1328. FN.1.

FN.1. The court notes that among the problems with the filing of this Motion is a request for declaratory and injunctive relief. Federal Rule of Bankruptcy Procedure 7001(9) states that an adversary proceeding includes "a proceeding to obtain a declaratory judgment . . . ." Here, Debtor did not file an adversary proceeding, but instead is relying on the motion practice outlined in Federal Rule of Bankruptcy Procedure 9014 and Local Bankruptcy Rule 9014-1 to seek relief. Declaratory relief is not permitted, nor is it proper, when seeking relief under such motion practice.

Debtor filed the instant bankruptcy case on January 31, 2011. Dckt. 1. Creditor filed Proofs of Claim 4-1 for $17,652.10 and 5-1 for $30,205.63 on February 16, 2011, each secured by a deed of trust. Debtor moved to value those two claims individually, which the court granted and valued them at $0.00 each. Dckts. 102 & 104.

Debtor proceeded to complete the Plan and was discharged on May 9, 2016. Dckt. 160. According to Debtor's allegations in the Motion, Debtor attempted to refinance around August 20, 2016, and had Old Republic Title Company contact Creditor about releasing an abstract of judgment. On October 19, 2016, Creditor responded that it was owed $59,248.14 by Debtor, and by October 28, 2016, Debtor's refinancing loan was cancelled, and the interest rate increased.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 10, 2017. Dckt. 176. Creditor asserts that it obtained a pre-petition judgment against Debtor in the amount of $48,241.72 and then filed an Abstract of Judgment to perfect the judgment lien against Debtor's real property. Creditor states that the judgment lien was not avoided during the course of the bankruptcy, although Creditor admits that two other of its liens against Debtor were avoided.

Creditor states that it was contacted by an escrow officer in October 2016, and a request for payoff was made. Creditor confirmed with its counsel that the judgment lien had not been avoided before making the request for payoff in the amount of $59,248.14. Creditor sent a letter to Debtor's attorney on December 9, 2016, stating that while two claims had been valued at $0.00 secured by the property, the judgment lien was valid.

Creditor states that a calculation error was made, and the amount owed to it presently should actually be $70,507.54, but Creditor originally calculated the amount owed to it based on the underlying documents instead of the amount stated in the judgment lien.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on January 17, 2017. Dckt. 183. The Trustee seeks to clarify issues raised by this Motion. The Trustee states that Creditor's Claim 4-1 was listed in Class 2 of the Plan, and Claim 5-1 was listed in Class 3 of Plan. Claim 5-1 was listed as secured in the Trustee's Final Report because it was listed in Class 3. The Trustee is not certain which claim, if either, represented the collateral to be surrendered.

The Trustee also mentions that two Motions to Value Secured Claim relating to Creditor's claims were heard and granted on May 24, 2011. *See* Dckts. 101 & 103.

JANUARY 24, 2017 HEARING

At the January 24, 2017 hearing, the court addressed with the parties their respective pleadings and some apparent inconsistencies. The hearing was continued for the parties to try and address the these issues and determine if a stipulation was possible. If this matter could not be settled, the court would then use the continued hearing as a Status and Scheduling Conference.

REVIEW OF MOTION, OPPOSITION, AND SUPPLEMENTAL PLEADINGS

APPLICABLE LAW

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to

sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506–07.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

A contempt proceeding by the United States Trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, No. SC-08-1112-MoJuKw, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *In re Lehtinen*, 564 F.3d at 1058; *see also* 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DETAILED REVIEW OF THE MOTION AND RESPONSIVE PLEADINGS

The parties have now filed respective supplemental pleadings, indicating that their reasonable minds have not been able to achieve a resolution of this dispute. Necessary for the court's consideration of scheduling in this Contested Matter, the court will review the pleadings in detail. These pleadings frame what is before the court and what the court may properly adjudicate.

The Motion to have Cal Coastal found to be in contempt was filed on December 14, 2016. The Motion[1] states the grounds with particularity (Fed. R. Bankr. P. 9013) upon which the relief is based, which grounds are summarized as follows:

A. Debtor filed this Chapter 13 case on January 31, 2011.

B. Cal Coastal filed Proof of Claim No. 4-1 on February 16, 2011.

1. The Motion fails to state that Proof of Claim No. 4-1 was:

a. In the amount of $17,652.10;
b. Is a secured claim for the entire amount; and
c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

a. Loan Agreement and Note;
b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010;

C. On May 24, 2011 the court granted a motion to value the Cal Coastal secured claim.

1. The Motion does not allege what was determined to be the value of the Cal Coastal secured claim.

D. On May 9, 2016, Debtor received a Chapter 13 discharge.

1. The Motion does not allege that the plan was completed or whether a "hardship discharge" was granted notwithstanding the failure to complete the Chapter 13 plan.

---

[1] Much of the Motion consists of legal points and authorities, and arguments thereon, rather than the actual grounds upon which the relief is based. Under L.B.R. 9004-1 and the Revised Guidelines for the Preparation of Documents requires that the motion be a separately filed document from the points and authorities.

E. That, on June 9, 2011,more than 30 days after the discharge, Cal Costal did not release the "abstract of judgment."

1. The prior grounds state nothing about an "abstract of judgment." No "abstract of judgment" is included as part of Proof of Claim No. 4-1. Proof of Claim No. 4-1 is not based on a judgment (which is necessary to have an abstract of judgment lien), but a note secured by personal and real property.

F. On or about August 20, 2016, Cal Coastal was contacted by an escrow company concerning a refinancing of real property (unidentified) of Debtor.

G. At the time of the August 20, 2016 contact, Debtor had a ninety day loan interest rate lock, with a 3.988% annual interest rate.

H. A Cal Coastal representative responded to the escrow company that $59,248.14 was owed by Debtor and that what it would cost to "release our deeds and judgments against" Debtor.

I. On October 28, 2016, the loan lock expired, and the interest rate increased to 4.37%. The Debtor could not obtain the loan because Cal Coastal refused to "release the [abstract of judgment]."

J. On November 29, 2016, representatives of Cal Coastal were contacted by Debtor's counsel and requested to address this matter. Resolution was not possible.

K. The orders violated by Cal Coastal are stated to be:

1. Automatic Stay;
2. Confirmation Order of Chapter 13 Plan; and
3. Discharge.

L. Cal Coastal's claim of $59,248.14 was discharged in this bankruptcy case.

As the court addressed with the Parties at the January 24, 2017 hearing, the allegations of there being an abstract of judgment, for which there must be a judgment, is inconsistent with what is stated in Proof of Claim No. 4-1—an obligation based on a note, secured by real and personal property. The existence of a note as the evidence of the obligation and there being a judgment issued based on the obligation are mutually inconsistent. *See* Cal. C.C.P. § 726; *Tomaselli v. Transamerica Ins. Co*, 25 Cal. App. 4th 1766, 1770 (1994).

In the Reply, Dckt. 186, to the Opposition filed by Cal Coastal, Debtor adds the following information to Debtor's arguments:

A. There are two notes which evidenced the obligation to Cal Coastal—a $15,000 note and a $30,000 note, each secured by a separate deed of trust.

B. Evidence of a judgment and abstract of judgment have not been included in the evidence presented in opposition to the Motion.

C. There are actually two separate proofs of claim which have been filed in this bankruptcy case.

D. No proof of claim has been filed for the judgment upon which the abstract of judgment was issued.

E. Debtor's ability to obtain the refinance at 3.68% due to the two deeds of trust.

1. This contention is directly in conflict with the grounds as stated in the Motion.

F. The Abstract of Judgment was issued for a judgment in the amount of $48,241.72, California Superior Court, for the County of Monterey Case No. M108313.

G. The Abstract of Judgment is applicable to the "one-judgment rule."

1. The pleadings are unclear as to what the "one-judgment rule" is and how, if the reference is to the "One Action Rule," how that applies to a judgment and the judgment lien issued pursuant thereto.

H. Cal Coastal has released the two deeds of trust and released the abstract of judgment on February 15, 2017.

I. Debtor asserts that Cal Coastal violated California Civil Code § 2941.

J. Debtor asserts that Cal Coastal filed two proofs of claim based on obligations which had been replaced by the judgment, but did not file a proof of claim for the obligation owed on the judgment.

Review of Opposition of Cal Coastal

Cal Coastal filed its Opposition on January 10, 2017. Dckt. 176. The court summarizes the Opposition as follows:

A. Cal Coastal obtained a judgment against Debtor in the amount of $48,241.72, then an abstract of such judgment, which was recorded to perfect the judgment lien against real property of Debtor.

B. The judgment lien obtained by Cal Coast was not "stripped" in this bankruptcy case.

C. The Chapter 13 Trustee's Final Report states that Cal Coastal was allowed a secured claim in the amount of $30,205.63.

D. There is no basis for Debtor contending that the discharge in this Chapter 13 case "extinguished" Cal Coastal's abstract of judgment and judgment lien created by the recording of that abstract of judgment.

E. Specific Facts asserted by Cal Coastal include:

1. Debtor owed Cal Coastal $46,112.14 pursuant to several loan agreements.

2. On January 10, 2100, judgment was entered for Cal Coastal and against Debtor on those obligations in the amount of $48,241.72, in California Superior Court, Monterey County Case No. M108313 ("Cal Coastal Judgment").

3. The abstract of judgment for the Cal Coastal Judgment was recorded on January 20, 2011. (This was only 11 days before the January 31, 2011 filing of this bankruptcy case by Debtor.)

4. Other liens that Cal Coastal had against Debtor's property had not been "stripped."

F. Cal Coastal, based on the abstract of judgment not having been stripped, made demand for payment of $59,248.14 (the amount Cal Coastal computed being owed on the judgment) for the release of its abstract of judgment.

G. Cal Coastal asserts that Debtor or its representatives never communicated with it about the demand made on the judgment lien.

H. Cal Coastal's version of the call from Debtor's counsel is a version that indicates that it was contentious.

Cal Coastal has provided its supplemental pleadings, filed on February 23, 2017 in the form of a Status Conference Statement, which provides the additional information as summarized by the court:

A. Cal Coastal states that is has accepted the settlement offer tendered by Debtor's counsel on February 8, 2017, that acceptance having been transmitted in writing.

1. It is further stated that on February 13, 2017, Cal Coastal's attorney submitted a written settlement agreement, and on February 14, 2017, transmitted modified attachments to the agreement as requested by Debtor's counsel.

B. An executed settlement agreement has not been returned by Debtor.

C. Cal Coastal intends to first seek to enforce the settlement agreement pursuant to California Code of Civil Procedure § 664.6.

1. Cal C.C.P. § 664.6. Judgment pursuant to terms of settlement

a. If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. In the supplemental pleadings, the court is not directed to either: (1) a writing signed by the parties or (2) a settlement stated orally by the parties before the court.

D. Cal Coastal states that Debtor failed to list Cal Coastal as having a secured claim based on the judgment in the original "Petition."

1. To be precise, the court is unsure as to what is meant by stating that Debtor failed to list the secured debt on the "Petition." Secured claims (debts) are listed on Schedule D filed by a debtor, and while informational, are not "deemed allowed" in a Chapter 13 case as they are in a Chapter 11 case. The burden on correctly and accurately stating claims, including secured claims, fall on the creditor.

E. Cal Coastal's judgment lien has not been "stripped" and therefore it remains valid, notwithstanding Debtor obtaining a discharge.

F. The supplemental pleading continues in a discussion of the settlement communications which occurred since the last hearing.

Review of Claims Register

While Debtor makes reference to only Proof of Claim 4-1, Cal Coastal filed two proofs of claim on February 16, 2011. This was one month after Cal Coastal obtained the judgment for $48,241.72, in California Superior Court, Monterey County Case No. M108313. The two Cal Coastal proofs of claim are summarized as follows:

A. Cal Coastal filed Proof of Claim No. 4-1 on February 16, 2011.

1. The Motion fails to state that Proof of Claim No. 4-1 was:

a. In the amount of $17,652.10;

b. Is a secured claim for the entire amount; and
c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

a. Loan Agreement and Note;
b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010.

B. Cal Coastal filed Proof of Claim No. 5-1 on February 16, 2011.

1. The Claim is:

a. In the amount of $30,305.63;
b. Is a secured claim for the entire amount; and
c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

a. Loan Agreement and Note;
b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010.

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

The Motion to have California Coastal Rural Development Corporation having been set for a Status Conference on February 28, 2017, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court shall conduct a Scheduling Conference at 11:00 a.m. on March 9, 2017 (the court's normal Adversary Proceeding Law and Motion Calendar), to ascertain how the parties intend to prosecute the present motion, amend the motion to limit these proceedings to only those matters for which a determination of contempt may properly be adjudicated, and what other proceedings may be ordered by the court that may help these parties come to grasp with the significant issues before the court.

Telephonic appearances are permitted for the Scheduling Conference on March 9, 2017. However, at this time the court intends to order that all other proceedings will require the in court appearances of counsel and the parties, no further telephonic appearances permitted in this Contested Matter.

28. **16-28365-E-13** **BARBARA GIAMMARCO** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Lucas Garcia** **PLAN BY DAVID P. CUSICK**
2-1-17 [15]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 1, 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). 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. At the hearing **----------.**

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on xxxxxxxxxxxxxxx, 2017.

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

A. Barbara Giammarco ("Debtor") is delinquent in plan payments.

B. Debtor might not be able to afford Plan payments based on Debtor's income.

DEBTOR'S REPLY

Debtor filed a Reply on February 14, 2017. Dckt. 19. Debtor states that she made plan payments late due to not realizing that the payments began in January and not in February. However, the case is current as of the date of this reply. Debtor has also supplied the declaration of Debtor's son, stating support of the Plan by working overtime and whatever other means necessary.

TRUSTEE'S RESPONSE

The Trustee filed a Response on February 21, 2017. Dckt. 22. The Trustee asserts that Debtor remains delinquent in plan payments because the Plan calls for $2,100.00 each month, and Debtor only paid $1,321.77. Debtor is $778.23 delinquent. The Trustee states that the declaration of Debtor's son provided said that $200.00 per month will be supplemented to Debtor for any incidental expenses. The Trustee points out that it is not clear if the net income listed on Schedule J is accurate, in the amount of $2,198.62.

DISCUSSION

The Trustee's objections are well-taken.

The Trustee asserts that Debtor is $778.23 delinquent in plan payments, which represents less than one month of the $2,100.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan relies heavily on the income from Debtor's son listed on Schedule I in the gross amount fo $3,685.36. Based on the most recent pay advice dated December 30, 2016, Debtor's son makes $15.25 per hour. The Trustee asserts that it does not appear that Debtor's son earns $3,685.36 listed on Schedule I, as that would require over 240 hours of regular work per month. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

This case appears to suffer from a lack of credible, internally consistent financial information provided by Debtor. Beginning with Schedule I, Debtor states under penalty of perjury that she has monthly income of:

A.	Wages	$3,685.36
B.	Social Security	$1,568.00
C.	Pension/Retirement	$1,011.86

Schedule I, Dckt. 1 at 24–25. By Debtor's statement under penalty of perjury, she has $6,265.22 in monthly gross income. From this, she has only ($941.00) in withholding. Schedule I then includes the following statement:

> "Debtor lives with her son and disabled grandson. Her income is dedicated only to the Chapter 13 plan payment and debtors son is paying for the general living expenses for the household.
>
> Debtors sons pay stubs are included on Schedule I and total expenses for the household is disclosed on Schedule J."

It is unclear if Debtor is incorrectly stating under penalty of perjury that her son's income is hers, or that the son's income is in addition to the Debtor's $6,265.22 monthly income.

Then, on Schedule J, Debtor lists her son and grandson as dependents. But now the court is told that the son is subsidizing the Debtor.

Merely sustaining the Objection will leave the court with a confusing record. Debtor needs to go back and correct her prior statements under penalty of perjury. Further, if the son's financial information is to be used to support the Plan, then that information needs to be clearly and accurate provided by him under penalty of perjury.

The court continues the hearing to allow Debtor correct the Schedules and file supplemental pleadings to address the concerns raised by the Trustee.

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 hearing on the Objection to Confirmation of the Plan is continued to **3:00 p.m. on xxxxxx, 2017**.
>
> On or before **xxxxxxxx, 2017**, Debtor shall filed amended Schedules as Debtor deems appropriate for them to provide accurate information as to her income and expenses, and supplemental pleadings in opposition to the Objection to Confirmation. The Trustee shall file Replies, if any, on or before **xxxxxxxxxxxx, 2017**.

29. **14-32167-E-13** **SHELDON MCRAY** **MOTION TO APPROVE LOAN MODIFICATION**
MKC-4 **Marty Courson** **2-13-17 [76]**

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.

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 February 13, 2017. 14 days' notice is required.

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

The Motion to Approve Loan Modification filed by Sheldon Wyatt McRay ("Debtor") seeks court approval for Debtor to enter into a loan modification with Seterus, Inc., the servicer for Federal National Mortgage Association ("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 $2,753.64 a month to $2,289.03 a month. The modification will recapitalize the pre-petition arrears.

TRUSTEE'S RESPONSE

Trustee responds that this trial loan modification between Debtor and Creditor began prior to obtaining court approval. As a result, the Trustee has been making payments of $2,753.64 and therefore has paid the creditor more than the amount due. Trustee does not oppose the Motion provided the creditor does not return the funds to the Debtor. If a surplus exists, Trustee requests that the funds be returned to the Trustee for distribution to unsecured creditors.

DEBTOR'S REPLY

Debtor asserts that the issue of return of surplus funds should be taken up in the Motion to Modify Plan that is set for hearing at 3:00 p.m. on April 4, 2017.

DISCUSSION

The court finds cause to grant the Motion to allow Debtor to continue making loan modification payments to Creditor. The issue of the return of surplus funds will be taken up at the Motion to Modify Plan at 3:00 p.m. on April 4, 2017.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

In granting the Motion, neither Debtor nor Seterus, Inc. should be lulled into a false sense of security that arranging for Seterus, Inc. to receive excess payments and hide from the court the trial loan modification are very serious acts of misconduct. In some circumstances, they can be viewed as committing a fraud on the court. And such fraud would have been committed with the assistance of counsel.

Further, though this Motion is granted, the conduct of Debtor, especially if the surplus payments have not been accounted for with the Trustee prior to confirmation, may well be evidence of bad faith in the filing and prosecution of this case. Such bad faith may well doom this case and the credibility of Debtor in future cases if this case were to be dismissed.

It appears that Debtor and Debtor's counsel may well consider the almost $10,000 in excess payments they engineered (it could well be that this was a preconceived plan to benefit the Debtor) to be diverted to Seterus, Inc. a mere inconvenience to be dismissed. In a dismissive sounding tone, Debtor's reply, penned by his counsel, states,

> "To the extent that any true-up is necessary to prevent any prejudice to creditors, such action can be resolved in that motion or such other and future motions as necessary."

Reply, Dckt. 90. Debtor's plan can only generate a 0.00% dividend for creditors holding general unsecured claims, while managing to overpay Seterus, Inc. $10,000.00 on a secured claim for real property Debtor is trying to keep, both for himself and from his creditors. This is very serious, and how seriously Debtor responds and acts to recover the monies for the Trustee may well determine his financial destiny.

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 Sheldon Wyatt McRay, 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 court authorizes Sheldon Wyatt McRay ("Debtor") to amend the terms of the loan with Seterus Inc., which is secured by the real property commonly known as 325 Woodson Way, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt.79.

30. 12-31671-E-13 CHRISTIAN NEWMAN
PGM-8 Peter Macaluso
OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 1-26-17 [249]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2017. 28 days' notice is required. This requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Objection is continued to 3:00 p.m. on March 21, 2017.

Christian Newman ("Debtor") objects to the Notice of Mortgage Payment Change filed by US Bank. The Notice of Mortgage Payment filed on December 13, 2016, increased the escrow payment on the property after an Escrow Analysis from $481.49 to $651.87. Debtor asserts that no basis exists to support either of these alleged increases. Debtor asserts that the projected disbursements total $5,894.02, at $491.17 per month, while the present escrow amount is $481.49 per month; thus a shortage of just $9.68 per month exists for a total increase in escrow payment of $19.36, not $170.38. Debtor additionally requests attorneys' fees in the amount of $1,575.00.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, responds that the Notice may be in error based on the inclusion of $2,442.98 to be repaid through the bankruptcy in the escrow shortage amount. The creditor filed a notice on April 12, 2016, that is not consistent with the current Notice.

CREDITOR'S RESPONSE

Creditor, US Bank, N.A., filed a response requesting a continuance to allow the creditor to complete its research regarding the Notice of Mortgage Payment Change.

DISCUSSION

The court notes that the parties disagree on the specific calculations, but the court is confident that by continuing this motion, the parties will come to an agreement over the correct amount of payments to be made.

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 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 Notice of Mortgage Payment is continued to 3:00 p.m. March 21, 2017.

31. 16-28072-E-13 DPC-1 — MICHAEL/JURHEE POLLARD — Michael Croddy — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 1-25-17 [19]

Final Ruling: No appearance at the February 28, 2017 hearing is required.

Local Rule 9014-1(f)(2) 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 January 25, 2017. By the court's calculation, 34 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). 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled.

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

A. Debtor's Plan relies on a Motion to Value a Secured Claim that is set for hearing on February 14, 2017.

A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Capital One ADF ("Creditor"). Debtor has failed to file a Motion to Value the Secured Claim of Capital One ADF, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

TRUSTEE'S NON-OPPOSITION

The Trustee filed a Non-Opposition on January 30, 2017. Dckt. 23. The Trustee states that the Creditor is included in Section 2.09 of the proposed plan. The Creditor filed a claim in the total amount of $17,028.58 claiming $8,320.00 as secured and $8,708.58 as unsecured.

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, and Debtor's Chapter 13 Plan filed on December 7, 2016, is confirmed. Debtor's Counsel 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.

32. 17-20373-E-13 PLG-2 | **FLOYDETTE JAMES** **Steven Alpert** | **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 2-13-17 [24]**

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.

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 February 13, 2017. 14 days' notice is required. That requirement was met.

The Motion to Value Secured Claim 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. 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 Value Secured Claim of Wells Fargo Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Floydette James ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1752 Beale Circle, Suisun, California ("Property"). Debtor seeks to value the Property at a fair market value of $305,000.00 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).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 16, 2017. Dckt. 29. The Trustee opposes this motion regarding Debtor's second deed of trust on Property. The Trustee does not fully believe Debtor when it stated that the property remains the same value for the last two years. Debtor has two prior cases (Case No. 16-25086, 15-28596) where Debtor's declaration states that its property is worth "around $305,000.00." The Trustee states that when Debtor was represented by a different attorney in earlier cases, the Property was higher than the present value: $359,800.00 in Case No. 14-31229 and $265,900.00 in Case No. 13-32247.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $411,184.65. Creditor's second deed of trust secures a claim with a balance of approximately $36,261.86. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made

on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Floydette James ("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 Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 1752 Beale Circle, Suisun, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $305,000.00 and is encumbered by a senior lien securing a claim in the amount of $411,184.65, which exceeds the value of the Property that is subject to Creditor's lien.

33. 14-30877-E-13 PGM-5 | **TROY HARDIN** / **Peter Macaluso** | **CONTINUED MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY 1-12-17 [115]**

Final Ruling: No appearance at the February 28, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 January 12, 2017. 28 days' notice is required.

The Motion for Allowance of Professional Fees 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 Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Troy Hardin, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period October 6, 2015, through January 10, 2016. Applicant requests fees in the amount of $5,430.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on January 23, 2017. Dckt. 120.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including multiple Motions to Dismiss, Oppositions to Motion to Dismiss, Motions to Modify plan, Oppositions to Modify, amending Proof of Claim, and subsequent correspondence and meetings with Client. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

"No-Look" Fees

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Confirmed Amended Plan expressly provides in Section 2.06 that Applicant will file and serve a motion for attorneys' fees in accordance with 11 U.S.C. §§ 329 & 330 and Federal Rules of Bankruptcy Procedure 2002, 2016, and 2017.

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES REQUESTED

Applicant has provided a task billing analysis to assist the court in the review of the fees requested. Dckt. 132, filed on February 24, 2017.

The relevant categories appear to be as follows:

Review of Claims: Applicant spent 0.75 hours in this category, billing $225.00.

Motion to Dismiss (DPC-2): Applicant spent 2.95 hours in this category, billing $885.00.

Motion to Modify Plan (PGM-1): Applicant spent 3.10 hours in this category, billing $930.00.

Motion to Dismiss (DPC-3): Applicant spent 1.35 hours in this category, billing $405.00.

Motion to Modify Plan (PGM-2): Applicant spent 2.35 hours in this category, billing $705.00.

Motion to Dismiss (DPC-4): Applicant spent 2.80 hours in this category, billing $804.00.

Motion to Modify Plan (PGM-3): Applicant spent 3.05 hours in this category, billing $915.00.

Mortgage Assistance and Communication: Applicant spent 1.75 hours, billing $525.00.

The gross fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso, attorney	18.10	$300.00	$5,430.00
Total Fees for Period of Application			$5,430.00

In considering these fees, the court notes that the current counsel is not the original counsel for Debtor in this case. While a change of counsel does not justify double payment of fees, the court does not see an order in this case allowing fees for the original attorney. (Order confirming plan does not allow fees. Order, Dckt. 30.)

While it took several attempts to get a modified plan confirmed, some of the failed attempts may relate to a new attorney having to "educate" the client on what is necessary, which "education" has to happen on the fly. Additionally, it appears that counsel has appropriately reused work from one motion to the subsequent ones in that what he is seeking to bill for plan confirmation appears to total reasonable fees in connection with one attempt to modify a plan. Applicant has also successfully worked with and obtained court approval for the Debtor to enter into a financially advantageous loan modification.

The court determines that the fees requested by Applicant, Peter Macaluso, in the amount of $5,430.00 are reasonable, and constitute substantial and unanticipated legal services in this case for services as counsel for the Debtor.

The court allows Peter Macaluso, as counsel for the Debtor, $5,430.00 in attorneys' fees in this case, which shall be paid by the Chapter 13 Trustee as provided in the Chapter 13 Plan confirmed in this case.

The court notes that no supplemental briefing has been filed with accounting.

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 Allowance of Professional Fees filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Allowance of Professional Fees is granted and Peter Macaluso, as counsel for the Debtor, is allowed $5,430.00 in additional attorneys' fees in this case, which shall be paid by the Chapter 13 Trustee as provided in the Chapter 13 Plan confirmed in this case.

34. 16-27277-E-13 SDH-2 | **KENNETH/SANDRA WILSON** | **MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.**
Seth Hanson | **1-18-17 [29]**

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.

Correct 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 January 18, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Value 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,236.00.

The Motion filed by Kenneth Wilson and Sandra Wilson ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Mazda 6, VIN ending in 6577 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,236.00 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on February 13, 2017. Dckt. 40. The Trustee states that Creditor has filed a Claim No. 4 claiming $16,903.16 as secured for the Vehicle. Creditor is not provided for in the Plan confirmed on January 17, 2017. The Trustee also states that Debtor has set for hearing on March 21, 2017, a modified plan that includes the creditor in Section 2.08 Class 2, but does not specify the value of the creditor's interest in the collateral.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 23, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,903.16. Therefore, the 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 $11,236.00, the value of the collateral. *See* 11 U.S.C. § 506(a). 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 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 Secured Claim filed by Kenneth Wilson and Sandra Wilson ("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 JPMorgan Chase Bank, N.A. ("Creditor") secured by an asset described as 2014 Mazda 6, VIN ending in 6577 ("Vehicle") is determined to be a secured claim in the amount of $11,236.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,236.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

35. 16-28382-E-13 DPC-1 | **MARGARET DRAKE** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-1-17 [13]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 1, 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). 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is over median income and failed to provide disposable income.

B. Debtor unfairly discriminates against the general unsecured claims.

C. Debtor fails to be able to afford plan payments.

The Trustee's objections are well-taken.

Debtor is over the median income and proposes plan payments of $1,469.00 for twenty-four months and $1,599.00 for thirty-six months.

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 34 percent dividend to unsecured claims, which total $116,697.00, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $16,760.86 plus various commission pay of $15,108.64. Thus, the court may not approve the Plan.

While general unsecured claims are to be paid no less than 34% in the Plan, Debtor on Schedule J lists $980.00 per month to be paid to "Husband's Credit Cards," which would be $58,800.00 over the course of the Plan. *See* 11 U.S.C. § 1322(b)(1)

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) for the following reasons:

Claim and Creditor Issues: Based on the treatment of three types of creditors, Debtor may not be able to make Plan payments, or Debtor may not be able to afford more payments to creditors under the Plan.

A. Community Claims: The Plan may not accurately estimate the amount of general unsecured claims based on community claims. Schedule J is proposing to pay these claims directly and is not part of the Plan.

B. Timeshares Class 2A: Debtor lists three Disney Vacation Clubs to be paid, totaling $466.47 per month. Proof of Claims have been filed, reflecting a fractional interest in Disney Vacation Club property. Debtor does not have sufficient expenses budgeted for use of these timeshares because Debtor has a household of five, $464.00 for transportation, and $141.86 for entertainment.

C. Rental Property Claims: The Plan proposes to retain three rental properties that Debtor proposes to pay directly. Two of the properties appear to have negative cash flow totaling $936.00 per month per Schedule I and J to the detriment of unsecured creditors. The Trustee is not certain if any arrears exists, and the rental income was not proper per Schedule I. Debtor also did not provide a separate statement showing gross receipts and reasonable and necessary business expenses.

Higher Income: Debtor's income actual income appears higher than scheduled.

D. Schedule J lists Debtor's gross wages as $12,081.33 with an estimated net bonus of $300.00. Debtor's pay statement dated for the month of November 2016 also reported various commission pay totaling $15,108.64. The commission pay was not included

on Schedule I. Also, the Debtor has not provided the Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

The Trustee states that Debtor also has different expenses than what is scheduled, and may be higher:

A. Schedule I lists a payment of $1,066.00 for Debtor's husband's ("Husband") Chevy Suburban. The payment per month due is $1,024.66 with a difference of $41.34.

B. Schedule I lists also lists a payment of $535.00 for Husband's Passat. The monthly payment is $581.38, so Debtor is delinquent $46.38.

C. Schedule I lists an expense of $980.00 for Husband's credit cards. With a sixty month plan, $58,800.00 will be paid to these unsecured claims. The payment Husband makes is $880.00 per month, although no payment was listed to "AMEX" with a current debt balance of $10,132.00.

D. The Trustee was also informed of Husband's loans with an aggregate balance of approximately $32,165.00 at $1,349.00 per month. Schedule I does not list any expense as to the loans owed to Prosper, Rise and OneMain, and Debtor provided statements for these loans.

Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

36. **14-22187-E-13** **NEDA HALL** **MOTION TO INCUR DEBT**
MJD-1 **Matthew DeCaminada** **2-14-17 [22]**

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.

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 February 14, 2017. 14 days' notice is required.

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

The Motion seeks permission to purchase real property for use as a primary residence commonly known as 7231 Cinnamon Circle, Citrus Heights, California, which the total purchase price is $182,500.00, with monthly payments of $1,811.74 with a down payment of $6,400 that will be taken out of equity in the property as a gift from the debtor's parents (sellers).

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

TRUSTEE'S RESPONSE

Trustee opposes the motion on the basis that:

A. Debtor is currently renting at $980 per month and has not explained why she must purchase rather than to continue renting from her parents or how she can afford to purchase the property.

B. Debtor indicates that she will be able to make payments based upon additional income, however the debtor has not reported any changes to her income and/or expenses to the court or the Chapter 13 Trustee.

C. Debtor indicates that the payment per month will be $1,477. However, later in the motion Debtor indicates that the payment amount will be $1,811.74.

D. Debtor's plan proposes to pay $276 per month with unsecured guaranteed a 0% dividend. Trustee is concerned that this motion may not be in the best interest of the estate as a whole. Debtor may have more disposable income than she has reported and is proposing none to unsecured claims.

REASONABLENESS

The Debtor does not address the reasonableness of incurring debt to purchase a house rather than continue to rent while seeking the extraordinary relief under Chapter 13 to discharge debts.

BEST INTEREST OF DEBTOR

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial increase in payments for living expenses, from $980 to approximately $1,800. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase real property when paying holders of unsecured claims nothing.

INACCURACIES

The court does not have enough information to grant the Motion because there are a number of discrepancies and inaccuracies both in the Motion to Incur Debt as well as the schedules and filings of the Debtor.

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

IT IS ORDERED that the Motion is denied.

37. 16-23888-E-13 ALFREDO RODRIGUEZ MOTION TO CONFIRM PLAN
PLL-2 Peter Lago 1-3-17 [49]

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.

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 January 3, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on January 31, 2017. Dckt. 57.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). This is the third plan filed by Debtor to date. The prior two plans were denied because property taxes and property insurance expense were not provided for in Schedule J. The mortgage has filed a Claim No. 1 showing no escrow. If Debtor does not show this expense, with the current Schedule I and J, it cannot afford to make the plan payments and pay this expense. Debtor's spouse may also have not disclosed a side income (from a babysitting job) on Schedule I. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

The Trustee argues that Debtor also failed to schedule its whole life insurance policy, which costs $289.00 per month. Failure to schedule this policy results in it remaining property of the bankruptcy estate and may cause the Trustee to seek conversion of this matter to a Chapter 7 in the event Debtor defaults.

Lastly, the Trustee asserts that the Plan and Motion may not apply with applicable law under 11 U.S.C. § 1325(a)(6) because Section 2.07 fails to provide a monthly dividend to pay the attorney fees of $3,325.00 listed in Section 2.06.

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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

38. 16-21089-E-13 STEPHEN MAR MOTION TO CONFIRM PLAN
PLC-3 Peter Cianchetta 1-11-17 [75]

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.

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, parties requesting special notice, and Office of the United States Trustee on January 11, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 7, 2017. Dckt. 80.

The Trustee states that Stephan Mar's ("Debtor") Plan terms are unclear. The additional provisions of Debtor's Amended Plan calls for payments of $182.83 for eleven months, a lump sum payment of $2,760.23, and another lump sum payment of $6,200.00.

The Trustee asserts that the Plan does not indicate when the lump sums will be paid into the Plan, and the additional provisions could be interpreted as a thirteen month plan, in which case, the first lump sum payment would be due February 25, 2017, and the second lump sum payment would be due March 25, 2017. Debtor has not paid the lump sums to date.

The Trustee notes that Debtor's Declaration states that it plans to fund the plan with settlement proceeds from an adversary proceeding in the amount of $6,800.00. The Trustee believes the plan will complete on time. Debtor's Declaration also stated that the Plan was amended to reduce the length to twelve months. The Trustee requests that Debtor clarify the amount of lump sums, the month in which they will be paid in, and the total length of the plan.

DEBTOR'S REPLY

Debtor filed a Reply on February 16, 2017. Dckt. 83. Debtor promises that both payments mentioned in the Trustee's Opposition will be paid no later than March 25, 2017, the Plan length shall be thirteen months, and Debtor will put those changes into the Order Confirming Plan. Unfortunately for Debtor, a promise of action is not evidence of such.

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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

39. 16-25089-E-13 MARK/JENNIFER GALISATUS MOTION TO CONFIRM PLAN
DMD-6 Daniel Davis 1-4-17 [58]

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.

Correct 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 4, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 7, 2017. Dckt. 68.

The Trustee asserts that Debtor is $650.00 delinquent in plan payments, which represents a portion of one month of the $3,252.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee also notes that Debtor's Declaration in Support of the Motion to Confirm states that the proposed plan payment is $3,090.00. The amended plan indicates the payment is $3,252.00, and the debtor is delinquent. Therefore, the Trustee is not certain Debtor is aware of the amount of the plan payment.

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 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

40. **16-28091-E-13 PPR-1** | **DAVID PARKER AND BEATRICE LEIBL PARKER** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE SERVICES, LLC** **12-23-16 [16]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 28, 2017 hearing is required.

The Creditor having filed a Withdrawal of Motion, 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.**

41. 16-28495-E-13 ULC-1 | **ANN ADAMS** **Ronald Holland** | **MOTION TO VALUE COLLATERAL OF GREENBACK ESTATES UNIT NOS. 1 AND 2 HOMEOWNERS ASSOCIATION 1-24-17 [14]**

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.

Correct 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 January 24, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value 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). The defaults of the non-responding parties and other parties in interest are entered.

The court shall issue an order setting the Motion to Value Secured Claim of Greenback Estates Unit Nos. 1 and 2 Homeowners Association for an evidentiary hearing at x.m. on xxxxxxxxx, 2017.

The Motion to Value filed by Ann Adams ("Debtor") to value the secured claim of Greenback Estates Unit Nos. 1 and 2 Homeowners Association ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6282 Cavan #1, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $109,250.00 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).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on February 13, 2017. Dckt. 28. The Trustee asserts that Debtor has filed a Chapter 13 plan on December 29, 2016, and has listed said Creditor as Class 2 secured non-purchase money security for the Property. The Trustee also notes that Creditor filed a Proof of Claim No. 1 on January 13, 2017, for a secured amount of $11,191.19.

REVIEW OF PROOF OF CLAIM NO. 1

Creditor states in Proof of Claim No. 1 having a claim in the amount of $11,191.19 as of the commencement of this bankruptcy case. The interest rate on the obligation is stated to be 12% per annum. The claim is stated to be secured by real property. One of the attachments to Proof of Claim No. 1 is a Notice of Lien Assessment, bearing Sacramento County Recorder's Office information that the Notice was recorded on December 30, 2011.

CREDITOR'S OBJECTION

Creditor filed an Objection on February 14, 2017. Dckt. 31. Creditor states that Debtor is obligated under the terms of Covenants, Conditions and Restrictions ("CC&R's") to pay monthly dues to Creditor in order to cover Debtor's pro-rata share for maintaining, securing, and insuring the common areas of Property. Creditor filed separately these provisions. Moreover, on December 30, 2011, Creditor recorded a Notice of Lien Assessment.

Creditor asserts that Debtor is attempting to strip Creditor's lien and avoid paying without a credible and justifiable basis. Creditor believes the value of the Property at the time Debtor filed the petition was $140,000.00, based on a recent sale of a nearby unit of the same size.

Creditor also objects to Debtor attempting to treat it as an unsecured claim. Pursuant to Debtor's motion, the balance of the First Deed of Trust is $110,000.00 ($108,750.00 on Debtor's Schedule D). If the fair market value is to be $140,000.00, then there is enough equity in the property for Creditor to be secured.

Creditor also asserts that Debtor is attempting to strip Creditor's lien and avoid paying without a credible and justifiable basis, as there is a non-filing Co-Debtor. Creditor contends that the non-filing Co-Debtor is not the spouse of Debtor, and therefore, the Property is not community property that might otherwise be avoidable.

Creditor is also the holder of a lien in which both the Debtor and the non-filing Co-Debtor maintain a legal and equitable interest in the Property. Under 11 U.S.C. § 506, Creditor claims that Debtor is not permitted to avoid a lien when there exists a third party co-owner or co-obligor.

Additionally, Creditor is entitled to payment of its reasonable attorneys' fees and costs pursuant to CC&R's.

Lastly, Creditor believes it will be prejudiced by its position thereunder and will continue to suffer substantial and mounting losses.

DISCUSSION

The Seterus, Inc. first deed of trust secures a claim with a balance of approximately $108,750.00. Creditor's lien secures a claim with a balance of approximately $11,014.00 (which is in conflict with the Proof of Claim value of $11,191.19).

Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized if Debtor's valuation of Property for $109,250.00 is used. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. If Creditor's Property valuation of $140,000.00 is used, then payments in the secured amount of the claim ($11,014.00 or $11,191.19) will be made. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

But Creditor asserts conflicting information to what Debtor states on his Schedule A. Debtor states that he owns the property, 100%, with no other person having an interest in it. Dckt. 1 at 11. Creditor asserts that someone else has an interest in this property and that it is not "community property."

On the Notice of Lien Assessment, attachment to Proof of Claim No. 1, identifies the "Record Owner(s) or Reputed Owner(s)" to be Debtor and "Greg S. Probst." No deed showing ownership of the property by Greg S. Probst is provided with the Proof of Claim or Opposition.

As to value of the property, Creditor offers no credible evidence of either: (1) the owner of the property or (2) an expert witness who can express an opinion as to the value of the property. The only witness expressing an opinion is the current president of the Homeowners Association and an owner of another unit in the same development. There is no showing how being president or owning another unit qualifies the president to give credible testimony to be relied on by this court. FRE 701, 701, 703.

Creditor has requested that the court set an evidentiary hearing on the Motion. No request has been made to conduct discovery.

The court sets the following schedule for an evidentiary hearing on the Motion to Value:

A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

B. On or before **March 10, 2017**, the Parties shall each file with the court and serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).

C. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **March 24, 2017**.

D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **April 7, 2017**.

E. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **April 17, 2017**.

F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **April 24, 2017**.

G. The Evidentiary Hearing shall be conducted at **-------.m. on ----------, 2017**.

42. **13-34597-E-13** **VAN PHAM** **MOTION TO MODIFY PLAN**
CA-6 **Michael Croddy** **1-17-17 [93]**

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.

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, parties requesting special notice, and Office of the United States Trustee on January 17, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 13, 2017. Dckt. 101.

The Trustee asserts that Debtor incorrectly states the total paid in on or before month thirty-seven as $17,512.41. The correct amount is $17,680.41.

The Trustee also points out that Debtor's motion incorrectly refers to the Third Modified Chapter 13 Plan as being filed on November 29, 2016. The Plan was actually filed on January 17, 2017.

The Debtor proposes a 9.0% dividend to unsecured creditors in Section 2.15 of the Plan. The Trustee has actually disbursed 14.96% to unsecured creditors currently.

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 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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.