

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

April 5, 2016 at 2:00 P.M.

- 
1. [15-28300](#)-C-13 TERESA GLESSING OBJECTION TO CONFIRMATION OF  
PPR-1 Mary Ellen Terranella PLAN BY BANK OF AMERICA, N.A.  
3-7-16 [[29](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 7, 2016. Twenty-eight days notice is required. That requirement was met.

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

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

Creditor Bank of America, N.A. holds a first lien on the real property described as 255 Woodcrest Drive, Vacaville, California and opposes confirmation of the Plan on the basis that the Plan is not adequately funded. 11 U.S.C. §1325(a) (5) (B) (ii) requires full payment of the allowed claim of this objecting Secured Creditor. The arrearage amount provided for in Debtor's Chapter 13 Plan is insufficient to cure the pre-petition arrears owed to Secured Creditor. The Plan fails to include arrearages for Secured Creditor's claim. While Secured Creditor estimates that the arrearages are approximately \$1,683.77, the actual arrearage amount March 30, 2016 will be disclosed in a

timely filed Proof of Claim.

### **Debtor's Opposition**

After filing the Objection, Creditor filed a proof of claim (no. 5-1) indicating that the "Amount necessary to cure any default" is \$1,683.77. However, the proof of claim attachment indicates there is no principal and interest due. Further, the claimed "arrears" consist of "Projected escrow shortage" in the amount of \$1,683.77. This does not appear to be a pre-petition arrearage but a projected of how much Debtor's payment might be short in the future due to an escrow analysis for future tax and insurance payments.

### **Discussion**

Based on Poof of Claim No. 5, Creditor's claim of \$1,683.77 does not appear to be a pre-petition arrearage but a projected of how much Debtor's payment might be short in the future due to an escrow analysis for future tax and insurance payments. This is not a proper pre-petition claim and should not be considered grounds for objection to confirmation.

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

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on October 25, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 22, 2016. Fourteen days' notice is required. That requirement was met.

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. At the hearing -----.

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

---

The motion seeks permission to purchase a 2016 Kia Forte, which the total purchase price is \$26,701.20, with monthly payments of \$445. Debtor's old vehicle has died. Debtor states that Debtor is going to be able to pay for the new debt by freeing up money in her rent budget. Debtor is living at home, and her father has agreed to decrease her rent by \$450/mo.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c) (1) (B). Moreover, a copy of the agreement must be provided to the court. Id. at

4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle that is not one of the most budget make and models on the market while seeking the extraordinary relief under Chapter 13 to discharge debts.

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 15.99%. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase a luxury car when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a luxury car and attempt to borrow money at a 16% interest rate.

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.

\*\*\*\*

3. [16-20401](#)-C-13 LETICIA WATSON  
DPC-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-2-16 [[15](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 2, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor may not be able to afford the plan payments. At the first 341 meeting on 2/25/16, Debtor admitted that she had new employment that was not reflected on Schedule I.
2. The plan will complete in 65 months, more than the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors are \$1,873.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,873.00 is due before the hearing. Debtor has paid \$0.00 into the plan to date.
2. The Plan mistates the amount paid to the Trustee to date.
3. The Trustee is uncertain of the Debtors' ability to make the plan payments as the most recent Schedule I was filed in 2013.
- 4.

**Discussion**

The hearing on the motion was continued from March 15, 2016 to this

date to allow the Trustee time to review amended Schedules I and J. The Trustee stated that the opposition would be withdrawn if the Trustee approves of the amendments. As of March 30, 2016, the Trustee has not withdrawn the opposition.

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

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

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

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

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

\*\*\*\*

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 9, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

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

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

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

2348 Benita Dr., Rancho Cordova, California

The proposed purchaser of the Property is Marta Elena Fonseca and Felipe De Jesus Hernandez and the terms of the sale are:

The purchase price is \$165,000.00.

The secured loan held by Ocwen Loan Servicing, LLC will be paid off through the proposed sale of the Property (although not in full the creditor is accepting a "short sale").

According to the Residential Purchase Agreement and Joint Escrow Instructions and the Borrower's Estimated Settlement Statement (filed along with this motion as Exhibits 1 and 2 respectively) sale proceeds will be used as follows:

- 1) approximately \$9,900 for Realtors' Commissions;
- 2) approximately \$147,324.01 to pay off Ocwen Loan Servicing LLC;
- 3) approximately \$6,295.99 for taxes, title, recording charges, and utilities
- 4) approximately \$1,169 for escrow charges, and
- 5) approximately \$0 will go to Debtor.

**Trustee's Statement of Nonopposition**

The Chapter 13 Trustee has no opposition to the motion.

**Discussion**

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

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

**IT IS ORDERED** that the Scott Hechtman, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Marta Elena Fonseca and Felipe De Jesus Hernandez or nominee ("Buyer"), the Property commonly known as 2348 Benita Dr., Rancho Cordova, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$165,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Dckt. 23, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary

to effectuate the sale.

5. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The Chapter 13 Debtor will pay \$5,775.00 to Palapa Real Estate Service and \$4,125.00 to Manuel Zurita.
6. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

\*\*\*\*

6. [15-29813](#)-C-13 ROBERT/CYNTHIA TURNER  
ALF-1 Ashley Amerio

MOTION TO AVOID LIEN OF STATE  
OF CALIFORNIA, EMPLOYMENT  
DEVELOPMENT DEPARTMENT  
3-2-16 [[21](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.  
-----

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

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

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

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

A judgment was entered against the Debtor in favor of State of California, Employment Development Department for the sum of \$1,329.15. The abstract of judgment was recorded with Amador County on February 8, 2012. That lien attached to the Debtor's residential real property commonly known as 814 Vista Lane, Ione, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$395,839.00 as of the date of the petition. The unavoidable consensual liens total \$850,210.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A MINUTE ORDER**

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

**IT IS ORDERED** that the judgment lien of State of California, Employment Development Department, Sacramento County Superior Court Case No. 34-2012-90006831, recorded on February 8, 2012 with the Amador County Recorder, Document No. 2012000109500, against the real property commonly known 814 Vista Lane, Ione, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

\*\*\*\*

\*\*\*\*\*

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

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

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

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

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

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-22353) was filed on March 25, 2015 and dismissed on November 13, 2015, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor had a union position and was laid off of her project shortly after her 341 meeting in the 2015 case. Debtor sought a non-union job. The union employer objected to the non-union job. Debtor quit the non-union position but ended up having problems with the union employer resulting in an extended period of unemployment. Debtor was denied unemployment benefits.

Nationstar Mortgage filed a notice of foreclosure sale on March 18, 2016. Debtor requests extension of the stay to prevent foreclosure.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that as of the week that Debtor filed the instant chapter 13 case, she was promised employment as a full time electrician. See Decl. of Leonor Amada. Dkt. 9. This indicates she will be able to make the plan payments for the instant case and move efficiently towards confirmation and execution of a Chapter 13 plan.

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

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

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

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

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

\*\*\*\*

8. [16-21523](#)-C-13 JOHN/RATIKORN CHANDO  
MRL-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
3-21-16 [[12](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of The Bank of New York Mellon, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3412 Kevin Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$225,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$247,182.00. The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$147,978.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the

amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 3412 Kevin Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$225,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*

9. [15-28231](#)-C-13 KATHY MUNO  
DPC-1 Stephen Murphy

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-10-15 [[33](#)]

**Also #10**

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. The plan fails the liquidation analysis. § 1325(a)(4). Debtor lists an interest in life insurance proceeds and exempts the assets. The Trustee contests the exemption, which will be heard on the same date as this hearing. If the exemption is disallowed, the plan may fail liquidation.
2. Debtor may have a pension plan from her employment, but not is listed.

**Debtor's Opposition**

Debtor mistakenly forgot to list her pension plan. Debtor has amended her schedules to include the pension income and also to claim an exemption in the full amount of the proceeds.

### **Trustee's Reply**

Debtor asserts that her exemption in life insurance proceeds is proper as Debtor is a dependent of her husband. However, Debtor's schedules reflect substantial income thereby nullifying the assertion of dependency.

In amending her schedules to reflect her pension plan, Debtor removed an interest in Mass Mutual Retirement Saving valued at \$80,000. Debtor offers no explanation as to why this account has been deleted.

### **Previously**

At the January 12, 2016 hearing, the court's continued the hearing to 2:00 p.m. on April 5, 2016, to be scheduled for further proceedings in conjunction with the evidentiary hearing on the Trustee's Objection to Claim of Exemption.

### **Discussion**

The Debtor has filed an amended plan on March 18, 2016. Therefore the Objection is 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is overruled as moot.

\*\*\*\*

\*\*\*\*

**Tentative Ruling:** The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

The Trustee objects to the Debtor's use of the California exemptions to exempt an interest in life insurance proceeds from her husband's death in the amount of \$167,000. California Code of Civil Procedure §703.140, subd. (b)(11)(C).

Under the exemption, the debtor must be a dependent of the deceased and the funds must be reasonable and necessary for the support of the debtor to be eligible to claim the exemption.

The Trustee believes that evidence demonstrates that the life insurance proceeds are not necessary for the support of the debtor.

Schedule I reflects that Debtor has been employed by Raley's for 30 years. Schedule B reflects over \$100,000 in savings and retirement income. Schedule J reflects \$3,886.69 in monthly expenses.

Further, Debtor admitted that she does not intend to use the life insurance proceeds for her current living expenses, but plans to save the money for her future retirement.

### **Debtor's Opposition**

Debtor's household income prior to her husband's death was \$12,702.84 per month (decedent's wages \$8,949.74 + Debtor's wages \$3,753.10). Debtor was dependent on her deceased spouse for half or more of her support. Hence, Debtor was a dependent of her deceased spouse.

Upon retirement, Debtor's UFCW-Northern California Employers Joint Pension Plan (hereinafter referred to as the "Raley's Pension") will be valued at \$1,451.79 per month. The benefit Debtor would receive upon retirement is less than the amount she earns from employment, so retiring would result in a net loss that would leave her with a substantial budget deficiency.

Debtor is not retired. She is fifty-seven years old and in good health. She has no plans to retire in the foreseeable future because her retirement savings will be insufficient to support her after retirement.

### **Trustee's Reply**

Trustee also objects to the claim of exemption under California Code of Civil Procedure § § 703.140, subd. (b)(1) and (b)(5). Debtor has now claimed 100% of fair market value, up to any applicable statutory limit on 2757 Hillview Dr., Fairfield, CA under § 703.140, subd. (b)(1); that statute allows up to \$24,060. Where Debtor has not specified the amount claimed, Trustee objects to the other claims of exemption under § 703.140, subd. (b)(5) for any amount above \$1,280; that statute allows \$1,280 plus any unused amount of § 703.140, subd. (b)(1). The Debtor has claimed a total of \$6,088 of exemptions under subdivision(b)(5).

It does not appear that the life insurance proceeds are currently reasonable and necessary. Debtor's monthly income is over \$3,000 and the monthly plan payment is \$990. Debtor will have an additional \$990 in disposable income in 5 years upon conclusion of the bankruptcy to assist in her future support.

It does not appear that the life insurance proceeds are reasonable and necessary for Debtor's future support. Debtor is likely to receive \$1,660 pension from her spouse, at least \$1,479 from her current employer (which continues to grow in value), and roughly \$1,335 in Social Security Income. Further, the Debtor may have \$80,000 from Mass Mutual Retirement Savings.

### **Previously**

The objection to claimed exemptions was continued for an evidentiary scheduling conference at 2:00 p.m. on April 5, 2016. This was set for an evidentiary scheduling conference to allow the parties the opportunity to complete discovery.

### **Debtor's Supplemental Memorandum of Points and Declaration**

Debtor's declaration states that Debtor own san interest in a timeshare

located at the Tahoe Beach and Ski Club Resort, 3601 Lake Tahoe Blvd, South Lake Tahoe, CA 96150 (the "Timeshare"). Debtor has not paid any fees or expenses related to the Timeshare for several years. Rather, Debtor's niece pays the related expenses in exchange for exclusive use of the Timeshare.

Debtor's supplemental P&A states that at the time of the bankruptcy filing, Debtor received \$172,000.00 in life insurance proceeds from her deceased spouse. She was also informed that she would receive a monthly retirement benefit from her late husband's employment with the County of Contra Costa. Her Chapter 13 Plan filed on October 22, 2016, contemplated net income of \$1,660.00 from the Contra Costa County retirement benefit, which was calculated as follows: gross benefit \$2,075.00 - 20% tax withholdings = \$1,660.00 net. On March 10, 2016, Debtor was informed that the retirement benefit from Contra Costa County would be completely tax free. Based on this new information, Debtor amended her Chapter 13 Plan to account for the additional income.

Debtor's First Amended Chapter 13 Plan filed on March 18, 2016, provides for Debtor to make payments of \$990.00 per month for 4 months, then \$1,406.00 per month for 19 months, and then \$1,206.00 per month for 37 months, so as to pay 25.95% to allowed unsecured claims.

Debtor's plan payments will be funded from wages and her deceased husband's tax-free retirement benefit. The confirmation hearing on Debtor's First Amended Chapter 13 Plan is scheduled to be heard on May 3, 2016, at 2:00 p.m.

Debtor was dependent on her deceased spouse at the time of his death, and the life insurance proceeds to which she is entitled are reasonably necessary for her care and support. Debtor is a fiftyseven year-old widow. She obtained a high school diploma, and is employed as a clerk at Raley's supermarket. Debtor has Type I Diabetes, lives alone, and, other than fixed pension and retirement payments, has only \$41,700.00 in retirement savings. Debtor's current income from retirement and wages is \$5,292.60. Her projected income after retirement is \$4,851.70 per month, consisting of \$1,324.00 from social security, \$1,451.79 from her Raley's retirement plan, and \$2,075.91 from her late husband's retirement benefit.

Debtor has been living on a very tight budget since her husband's death in order to pay creditors the maximum dividend from her current income. Debtor's budget allocates just \$300 per month for groceries and housekeeping supplies, \$100 per month for household maintenance, repairs, and upkeep, \$300 per month for transportation expenses, and \$100 per month for recreation and entertainment. This budget is extremely restrictive given the following facts: (a) Debtor has dietary restrictions resulting from Type I Diabetes; (b) Debtor currently performs pool and lawn maintenance herself, and she has been repairing instead of replacing her fencing, however, as Debtor ages, she expects to need more assistance maintaining her property, and the fences will eventually need to be replaced; and (c) Debtor has ongoing out-of-pocket medical expenses related to her Type I Diabetes, including insulin, insulin pumps and supplies, regular blood tests, and ongoing doctor visits.

Debtor's life expectancy is 84 years. The principal and interest portion of Debtor's home mortgage payment Debtor's life expectancy is 84 years. The principal and interest portion of Debtor's home mortgage payment is her only fixed monthly expense. All other household expenses are subject to inflation. After adjusting for inflation, but without accounting for end

of life care, Debtor's expenses would exceed her income by approximately \$180,308.52 in 27 years (see Exhibit "A"). The average person requires 2.5 years of assisted living for end of life care. The projected cost of Debtor's 2.5 years of assisted living is \$275,518.40 (see Exhibit "B"). Her income earned during that period is anticipated to be \$145,551.00. Hence, in addition to Debtor's deficiency of \$180,308.52, she will also need an additional \$129,967.40 for end of life care.

Based on the forgoing, Debtor will need at least \$310,275.92 in addition to her social security and fixed monthly retirement benefits. Hence, the \$172,000.00 of life insurance proceeds from Debtor's deceased spouse is reasonably necessary for Debtor's care and support.

In *Tooker*, 174 B.R. 33, the court held that a 62-year-old widow, with net monthly income of \$2,282.50, no dependents, liquid assets of \$19,186 retained through bankruptcy, and \$21,954 in uncontested exempt assets, was entitled to retain life insurance proceeds of \$175,850.78 under the eleven-prong test applied above. The court found that the debtor had a life expectancy of 14.78 years, and her expenses would exceed her income by approximately \$150,000 in that time. In the present case, Debtor is a 57-year-old widow with anticipated net monthly income after retirement of \$4,851.70, no dependents, liquid-assets of \$1,400.00 retained through bankruptcy, and \$53,288 in uncontested exempt equity in assets. Her life expectancy is 84 years. In 27 years, projections indicate that Debtor's expenses would exceed her income by approximately \$310,275.92. Hence, \$172,000.00 of life insurance proceeds from Debtor's deceased spouse of whom she was a dependent is reasonably necessary.

#### **Discussion**

At the evidentiary hearing, the court will render its decision.

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

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

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

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

\*\*\*\*

11. [13-26238](#)-C-13 ROY/LENAY BROOKS  
PGM-1 Peter Macaluso

MOTION TO BORROW  
3-8-16 [[50](#)]

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 8, 2016. Twenty-eight days' notice is required.

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

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

The motion seeks nunc pro tunc permission to purchase a 2011 Hyundai Sonata, which the total purchase price is \$20,286.88 with monthly payments of \$381.34. Debtor continues to pay 100% to general unsecured creditors.

The Chapter 13 Trustee filed a statement of nonopposition.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted and Roy Lyn Brooks, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 53.

\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2016. Forty-two days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 16, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

13. [16-20347](#)-C-13 ROBERT CAMPBELL  
Ronald Holland

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
2-11-16 [[17](#)]

Also #14

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 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, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. Twenty-eight days notice is required. That requirement was met.

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

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

Creditor U.S. Bank, N.A. opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By altering Creditor's contractual interest rate, the Plan violates 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

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

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

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

The Objection to the Chapter 13 Plan filed  
by U.S. Bank, N.A. having been presented to the  
court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause

appearing,

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

\*\*\*\*

14. [16-20347](#)-C-13 ROBERT CAMPBELL  
DPC-1 Ronald Holland

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-9-16 [[22](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2016. Fourteen days' notice is required. That requirement was met.

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

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

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

1. It is not clear that Debtor can afford the plan payments. Debtor's plan calls for payments of \$6,300 for sixmonths and \$11,113 for 54 months.

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

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

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

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

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

\*\*\*\*

15. [11-42349](#)-C-13 SCOTT/ELIZABETH  
DPC-2 NETHERCOTT  
Eric Schwab

CONTINUED MOTION TO CONVERT  
CASE TO CHAPTER 7  
1-8-16 [[68](#)]

Thru #17

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. 28 days' notice is required.

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

**The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

This Motion to Dismiss the Chapter 13 bankruptcy case of Scott and Elizabeth Nethercott ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The joint debtor Scott Nethercott passed away on November 19, 2014.
2. The Debtor improperly exempted 100% of the value of post-petition settlement funds (\$193,191.00), while proposing a 0% dividend to creditors.
3. The Trustee's objection to exemption was sustained. Dkt. 61.

4. The Debtor failed to file a motion for omnibus relief under Local Rule 1016-1(b).

### **DEBTORS' OPPOSITION**

In Opposition to the Motion, Debtor asserts the settlement funds pertain to a personal injury lawsuit related to the death of joint debtor.

Debtor's personal injury counsel has held \$13,000.00 of the net settlement funds in reserve to be turned over to the Chapter 13 Trustee to make one final distribution to creditors to pass liquidation in the Chapter 13 Plan. The actual amount necessary to pass liquidation is \$7,800.00 plus administrative expenses.

Elizabeth Nethercott has received and utilized net Settlement funds for the support of herself, her dependents and her household.

### **LEGAL STANDARD**

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7<sup>th</sup> Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9<sup>th</sup> Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9<sup>th</sup> Cir. 1999).

### **DISCUSSION**

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The court has held that the \$193,191.00 in post-petition settlement funds was not entitled to exempt status. Dkt. 61. Nevertheless, the Debtor has refused to turnover the funds to the estate for disbursement to creditors. Debtor's failure to turnover the property to estate by increasing monthly plan payments is cause to convert the case.

The motion is granted, and the case is converted to a case under Chapter 7.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is converted to a case under Chapter 7 of Title 11, United States Code.

\*\*\*\*

16. [11-42349](#)-C-13 SCOTT/ELIZABETH  
EJS-4 NETHERCOTT  
Eric Schwab

MOTION FOR SUGGESTION OF DEATH,  
MOTION FOR SUBSTITUTION AS THE  
REPRESENTATIVE FOR OR SUCCESSOR  
TO THE DECEASED DEBTOR AND  
MOTION FOR CONTINUED  
ADMINISTRATION OF THE CASE  
3-16-16 [[81](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 16, 2016. 14 days' notice is required. This requirement was met.

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

**The Motion to Substitute is granted.**

Joint Debtor, Elizabeth Nethercott, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Scott Nethercott. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on September 15, 2011. On July 13, 2013, the Debtor's Chapter 13 Plan was confirmed. Dckt. 51. On November 14, 2014, Debtor Scott Allen Nethercott passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to

perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on March 16, 2016. Dckt. 81. Joint Debtor is the surviving spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16<sup>TH</sup> EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period,

paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

*See also, Hawkins v. Eads, supra.* While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Elizabeth Nethercott has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 81. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Elizabeth Nethercott, as the surviving spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Scott Allen Nethercott. The court grants the Motion to Substitute Party.

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

**IT IS ORDERED** that the Motion is granted and Elizabeth Marie Nethercott is substituted as the successor-in-interest to Scott Allen Nethercott and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

17. [11-42349](#)-C-13 SCOTT/ELIZABETH  
EJS-5 NETHERCOTT  
Eric Schwab

MOTION TO APPROVE EXEMPTION OF  
PERSONAL INJURY CLAIM  
3-16-16 [[88](#)]

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2016. 14 days' notice is required. This requirement was met.

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. At the hearing -----.

**The Motion to Approve Exemption is granted.**

The Motion to Approve Exemption of Personal Injury Claim filed by Elizabeth Nethercott ("Debtor") seeks court approval for Debtor to claim an exemption in personal injury settlement proceeds under California Code of Civil Procedure 704.140(b). Debtors initiated this chapter 13 bankruptcy on September 15, 2011.

Debtor provides that in October 2010, Debtor Scott Nethercott underwent treatment at Kaiser Permanente to remove a basal cell carcinoma from his neck. In June 2012, Debtors discovered that he had developed recurrent squamous cell cancer of the skin which, by August 2014, was determined to be incurable and life threatening. In November 2014, Debtor Scott Nethercott passed away. Some months prior to passing away, Debtor Scott Nethercott initiated a personal injury claim against Kaiser Permanente and was offered a gross settlement of \$275,000 in exchange for a release of claims against Kaiser. This settlement was accepted in August 2014. Net settlement funds in

the amount of \$193,191.00 were received by Debtor Scott Nethercott's family posthumously.

Debtor amended schedules B and C in November 2014, and a correction to the claim of exemption on schedule C citing CCCP 704.140(b) was filed and served on March 4, 2016. Debtor's personal injury counsel has held \$13,000 of the net settlement funds in reserved to be turned over to chapter 13 Trustee to make one final distribution to creditors to pass liquidation in the chapter 13 plan (the actual amount necessary to passing liquidation analysis being \$7,800 plus administrative expenses).

This court has granted Debtor Elizabeth Nethercott's Motion to Substitute and is permitted to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

#### **CHAPTER 13 TRUSTEE**

Chapter 13 trustee does not oppose the court's approval of this claim of exemption so long as \$13,000 is paid into the plan for distribution to creditors. Debtor is a 51 year old widow and supports 3 grandchildren while earning a gross monthly income of \$3,967, Dckt. 86. On March 4, 2016, Debtor filed amended schedules B and C which changed the description of the post-petition net settlement to "non-periodic net settlement payment from medical malpractice action, Nethercott v. Kaiser. The value of the asset was \$193,191. Schedule C changed the exemption of the settlement from CCCP 704.140 to CCCP 704.140(b) and changed the exemption amount from 100% to the actual value of the asset \$193,191.

This post-petition claim an exemption in personal injury settlement proceeds under California Code of Civil Procedure 704.140(b). There being no objection from the Trustee or other parties in interest, so long as \$13,000 is paid into the plan for distribution, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Exemption of Personal Injury Claim filed by Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Debtor Elizabeth Nethercott to claim an exemption in personal injury settlement proceeds under California Code of Civil Procedure 704.140(b), and the Debtor's counsel shall turn over to Chapter 13 Trustee net settlement funds held in reserve in the amount of \$13,000 for one final distribution to Chapter 13 creditors.

\*\*\*\*\*

18. [14-21853](#)-C-13 GARY LAGREE  
PGM-1 Peter Macaluso

MOTION BY PETER G. MACALUSO TO  
WITHDRAW AS ATTORNEY  
3-3-16 [[80](#)]

**Tentative Ruling:** The Motion to Withdraw as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 1007(b)(2). 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).

-----  
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 Debtors, Chapter 13 Trustee, all parties to the adversary proceedings, and Office of the United States Trustee on March 3, 2016. 28 days' notice is required. This requirement was met.

**The court's decision is to grant the Motion to Withdraw as Attorney.**

Peter G. Macaluso, attorney of record for Debtor Gary Peter LaGree, filed a Motion to Withdraw as Attorney in this Chapter 13 bankruptcy. Movant states the following reasons for the motion: Debtor filed this chapter 13 bankruptcy on February 26, 2014 with C. Anthony Hughes as counsel of record. Debtor prosecuted a Motion to Avoid Lien of Vicki Lee, granted 04/07/14, CAH-1. The chapter 13 plan was approved 05/27/14, Dckt. , as a 10% plan. Debtor's application to sell was opposed and denied on 04/14/15, CAH-2. On July 29, 2015, the court granted Trustee's Motion for Examination and for Production of Documents, DPC-1. On August 6, 2015, Peter Macaluso substituted in as attorney of record.

Upon receipt of the case file, Mr. Macaluso reviewed the case, the production of documents, and prepared the Trustee's deposition. Mr. Macaluso attended the Debtor's deposition and prepared the amendments as requested by Trustee with the understanding that the "tracing" of the present real property in Solvenia did arise from the pension account that had been defrauded. On January 27, 2016, Trustee filed a Motion to Convert, DPC-2, which Debtor opposed on February 3, 2016. On February 23, 2016, Debtor was allowed to file a new plan by March 25, 2016.

On February 24, 2016, Mr. Macaluso received certified mail entitled "YOU ARE FIRED/TERMINATED (IMMEDIATELY- 23 FEBRUARY, 2016) UPON RECEIPT OF THIS LETTER." Exhibit 1, Dckt. 82. Debtor requests that his case file be returned to Gary Peter Lagree, 705 East Bidwell Street, Ste. 2-302, Folsom, CA 95630. Based on the fees of the case, C. Anthony Hughes has received \$4,000, \$2,500 of which were through the plan. No fees have been paid to counsel, Peter G. Macaluso, thus far. Mr. Macaluso believes it is in the best interest of parties to allow counsel to withdraw as requested by Debtor. Mr. Macaluso further prays that Debtor be given a 30 day extension

to file, set, and serve a motion to modify after obtaining substitute counsel of Debtor's choice.

**RELEVANT LEGAL AUTHORITY**

District Court Rule 182(d) governs the withdrawal of counsel. Local Bankr. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. Cal. L.R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. 2010). FN.1.

-----  
FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.  
-----

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 21 Cal. App. 4th 904 (Cal. App. 1st Dist. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 915.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e).

The termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdrawal from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. Cal. R. Prof'l. Conduct 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person, (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act, and (3) has a mental or physical condition which makes Counsel's continued employment unreasonably difficult. Cal. R. Prof'l. Conduct 3-700(B).

Permissive Withdrawal is limited to when to situations where:

- (1) Client:

- (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
  - (b) seeks to pursue an illegal course of conduct, or
  - (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
  - (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
  - (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
  - (f) breaches an agreement or obligation to the member as to expenses or fees.
- (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or
  - (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or
  - (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or
  - (5) The client knowingly and freely assents to termination of the employment; or
  - (6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Cal. R. Prof'l. Conduct 3-700(C).

## **DISCUSSION**

Movant filed and noticed a motion to the Debtor. Movant provided the following address for the Debtor: Gary Peter Lagree, 705 East Bidwell Street, Ste. 2-302, Folsom, CA 95630.

Movant provides the reason for his Motion to Withdraw as Attorney such as the client knowingly and freely assenting to termination of the employment. Exhibit 1, Dckt. 82.

Movant does not discuss any prejudice his withdrawal as a counsel will or will not cause to the other litigants or harm it might or might not have on administration justice. However, neither the Trustee, Debtor or any other relevant party has filed an opposition to this Local Bankruptcy Rule 9014-1(f)(1) motion. This is sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Debtor's Counsel 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 Withdraw as Attorney is granted.

**IT IS FURTHER ORDERED** that Debtor is granted a 30-day extension to file, set, and serve a motion to modify after obtaining substitute counsel of Debtor's choice

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' original schedule J budgeted \$75.00 per month for homeowner's insurance and \$464 per month for property taxes, even though Debtor indicated taxes were included in the mortgage payment. Debtors' supplemental schedules J no longer include taxes and insurance. The mortgage payment under Debtors' confirmed plan is \$3,798 and trustee has disbursed a total of \$132,930 to date, with a principal balance currently due of \$7,596 representing 2 payments. Nationstar filed a secured claim on February 27, 2013 for \$575,208.39 with \$55,423.08 in arrears. The arrears included an escrow shortage or deficiency of \$21,438.94, and Debtors mortgage payment including escrow effective February 1, 2013 was \$4,282.63. The note attached to the claim indicated Debtor's original loan was for \$567,000 with fixed interest rate of 6.99% and monthly principal

and interest of \$3,768.46. Debtors' declaration states "The monthly property taxes and insurance re being paid by the mortgage company as part of the payment paid by the trustee." However, where the creditor's proof of claim included an escrow deficiency in the mortgage arrears and projected continuing escrow payments, and where the creditor's proof of claim indicated Debtor's monthly mortgage payment is \$4,282.63 including escrow, and where the payment under the confirmed plan is only \$3,798, Trustee is uncertain if the mortgage payment to be paid under the confirmed plan is in an amount sufficient to cover the mortgage and escrow.

2. Debtor's supplemental J budgets \$100 per month for a retirement fund loan repayment. Debtors' prior schedule J did not include this expense. Trustee is unable to locate within the court docket that Debtors received court authorization to borrow funds from a retirement account. The only explanation offered by Debtors is "We obtained a retirement loan in 2013 and began paying it back about six months later." Debtors do not indicate why the funds were borrowed or in what amount, when payments will be complete, or why they did not seek court permission to borrow the funds. Debtors may have borrowed the funds to cure a payment delinquency, but Debtors do not state this. Trustee has filed 6 notices of default and two motions to dismiss based on delinquency throughout the life of the plan.
3. Trustee requested Debtors' 2013 and 2014 tax returns on November 25, 2015, which were received December 11, 2015. A review of the tax returns and Debtors' supplemental schedule I reflects Debtors may be over-withholding. There was an increase in tax liability from \$12,580 on an annual gross income of \$150,913 in 2014 tax returns, to \$23,112 on an annual gross income of \$150,779.64. Trustee is perplexed by inconsistent statements of Debtors and numbers presented to Trustee that do not line up, and Trustee requests Debtors provide 6 months of paystubs and a copy of their 2015 tax returns.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's opposition, providing the following:

1. Debtors' plan as proposed includes the property taxes and insurance.
2. Debtors have scheduled an appointment to draft and thereafter submit a declaration as to when the payments on the retirement loan will be completed, and why they did not seek court permission to borrow the funds.
3. The over-withholding concern can be resolved by surrounding refunds. Debtors will be filing their 2015 tax returns and are agreeable to turning over any funds to Trustee.
4. Debtors agree to the income effective August rather than September.

Debtors request that the motion be continued to permit Debtors to explain the retirement loan before the plan be confirmed.

Chapter 13 Trustee has raised valid concerns. Debtors respond, providing sparse explanations to Trustee's detailed and extensive concerns. For example, Trustee raises a question as to whether the mortgage payments proposed of \$3,798 per month includes escrow payments, and urges Debtors to

explain how this is the case where creditor's proof of claim indicated Debtor's monthly mortgage payment is \$4,282.63 including escrow. Debtors merely stated that "Debtors' plan as proposed includes the property taxes and insurance." Debtors attempt to resolved Trustee's concern that Debtors appear to be over-withholding, and do not address Trustee's request that Debtors provide 6 months of paystubs and a copy of their 2015 tax return, and instead state that they will turn over any refunds they receive. However, while this may be the correct solution, Trustee still requires further information in order to determine that this is in fact the correct remedy. Finally, Debtors state that they will "schedule an appointment" (meaning that they have yet to actually schedule such date) to draft a declaration to the court regarding the retirement loan that the court has no knowledge of, however has set no date certain, and then urges the court to continue this motion to the same uncertain date in order to address this one concern. The court is not satisfied that Chapter 13 Trustee's concerns have been resolved, and having no guarantee of a date by which Debtors intend to do so, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. By the court's calculation, xx days' notice was provided. 42 days' notice is required.

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

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

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the following basis:

1. While Debtors do not explain in the motion the reason for an amended plan, the original plan was denied confirmation on December 20, 2015, Dckt. 28. Trustee makes much the same objections here as he made previously, Dckt. 28.
  - a. Debtor Thomas Boyes did not appear at the first meeting of creditors on November 19, 2015. Debtor Becky Boyes appeared, stating her power of attorney for Mr. Boyes, however Trustee believes Becky Boyes cannot testify as to Thomas Boyes' personal knowledge. The meeting was continued to January 7, 2016, and has since been continued to March 3, 2016.
  - b. Debtors' plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$31,318.36 and Debtor proposes to pay unsecured creditors 0%. Furthermore, Debtor's first amended plan filed January

19, 2016 reduces the percentage to unsecured creditors from 1% to 0%. Debtor has not resolved the liquidation analysis. While Debtors had previously responded that the plan would provide 100% to unsecured, the prior plan did not guarantee it, this plan has a reduced minimum percentage to unsecured, and Trustee does not agree with the calculations.

- c. Trustee previously objected on the basis that Debtors' plan relies on a motion to value the collateral of Wheels Financial Group listed in Class 2B. In this plan, Debtors do not propose to value the collateral of this creditor possibly based on the ruling denying the prior motion. Trustee objects to this treatment as unfairly discriminating against the general unsecured in favor of the unsecured claim of Wheels Financial Group. Wheels Financial Group has filed a claim with a secured and an unsecured part. Presumably this claim is correct because the claim is not a "purchase money security interest," and thus the prohibition in the hanging paragraph of 11 U.S.C. § 1325(a)(5) does not apply. Creditor was correct when they filed their claim

#### **DEBTOR'S REPLY**

Debtors respond to Trustee's basis for opposition by providing the following:

1. Debtors are amending the plan to deal with the Wheels Financial debt that was originally objected to as not subject to 11 U.S.C. § 506.
2. Debtors missed the continued March 3, 2016 meeting due to calendaring errors, however intend to appear at the continued date on March 31, 2016. Debtor states they are up to date with payments and understand their need to appear at the continued meeting.
3. Debtors state that although their budget is lean, it provides 100% to unsecured creditors and that the plan text states 0% is a mistake. Debtors' plan payment is \$3,400 per month for 60 months. Because this plan is a 100% payment to unsecured creditors, the liquidation text only results in the same outcome of 100%, the Debtors are not required to pay more than 100% to the general unsecured creditors.
4. Debtors' previous attempts to value the collateral of Wheels Financial Group was denied, and a motion to value would result in a claim that is partially secured and partially unsecured. The unsecured portion would then attach to class 7 and still be paid 100%. Therefore it is an unnecessary exercise to divide the claim when either treatment will still result in 100% payment of the debt.

#### **MARCH 15, 2016 HEARING**

The court noted that the continued meeting of creditors was continued to March 31, 2016, stating that if the Debtors again fail to appear at the next continued meeting of creditors, the court will dismiss the case.

#### **CHAPTER 13 TRUSTEE'S STATUS REPORT**

On April 1, 2016, Chapter 13 Trustee provided the court with a status report of his opposition to this motion. Chapter 13 Trustee states that Debtor

appears at the 341 meeting, and according to trustee's calculations, the plan will complete within the proposed 60 months if section 2.15 is changed from 0% to 100% as stated in Debtor's reply.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted, and the Plan filed January 19, 2016 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language: "IT IS FURTHER ORDERED section 2.15 of the plan shall reflect that Class 7 Claims will receive no less than a 100% dividend." Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

21. [16-20563](#)-C-13 SHEILA FOSTER  
Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF  
PLAN BY D&B WESTERN PROPERTIES  
2-25-16 [[13](#)]

Thru #23

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.

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

Local Rule 9014-1(f)(1) Motion-Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2016. Twenty-Eight days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) 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.

**The court's decision is to continue the Objection to May 3, 2016 at 2:00 p.m.**

Creditor, D & B Western Properties, is a Class 2 secured creditor. Creditor opposes confirmation of the Plan on the basis that the plan attempts to modify the rights of Creditor whose claim is secured only by a security interest in real property that is Debtor's principal residence, located at 621 Daniels Ave., Vallejo, California. Over 4 months prior to filing this case, Creditor recorded an abstract of judgment in Solano County, California, where the residence is located. The plan lists an incorrect amount claimed by Creditor is \$0, and Creditor has filed a secured proof of claim indicated that the total amount of the claim is \$32,257.24 as of the filing of case.

The plan incorrectly states that the total liens and encumbrances secured by the collateral, Debtor's principal residence, exceed the value of the collateral, thereby allowing the Creditor's claim to be reduced to 0. Debtor has not filed, set, or served any motion to value the collateral of Creditor, and is thus attempting to reduced Creditor's secured claim in a way that must result in denial of confirmation.

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

Debtor responds to Creditor's basis for objection, providing that Debtor has filed a motion to avoid the judgment lien of Creditors, and the hearing is scheduled for May 3, 2016 at 2:00 p.m.

The court will continue the instant objection to take place concurrently with the Debtor's Motion to Avoid Lien of Creditor.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to May 3, 2016 at 2:00 p.m.

\*\*\*\*

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.

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

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 March 9, 2016. Fourteen days' notice is required. This requirement was met.

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

**The court's decision is to continue the Objection to May 3, 2016 at 2:00 p.m.**

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

1. Debtor admitted at the 341 meeting on March 3, 2016 that she has not filed her tax returns during the 4 years preceding the filing of the petition. The first meeting was continued to March 31, 2016 to allow Debtor time to file said taxes.
2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of American Honda Finance set for hearing on March 22, 2016.
3. Debtor has failed to provide the Trustee with his/her Employer Payment Advices received 60 days prior to the filing.

Chapter 13 Trustee asks the court to continue this objection to April 12, 2016 at 2:00 which is after the meeting of creditors set for March 31, 2016.

#### **CHAPTER 13 STATUS REPORT**

On April 1, 2016, Chapter 13 Trustee filed a status report. Chapter 13 Trustee reports that Debtor admitted at the continued meeting of creditors on March 31, 2016 that she had not yet filed the missing tax returns, though they are complete and would be sent in on April 1, 2016. Trustee has not received any paystubs from Debtor, and the Motion to Value was granted.

#### **DISCUSSION**

The court notes that on March 22, 2016, the court granted Debtor's motion to value the collateral of American Honda Finance, Dckt. 41. The court further notes that Debtors have a pending Motion to Avoid Lien of D & B Western Properties, set for hearing on May 3, 2016. Creditor D & B Western Properties' Objection to Confirmation was continued to said date (May 3, 2016), and the court will continue Trustee's instant Objection to Confirmation to the same date for all to take place concurrently. If Debtor has not filed taxes by said date or provided pay advices to Trustee, the court will sustain the Trustee's objection and the plan will not be confirmed.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to May 3, 2016 at 2:00 p.m.

\*\*\*\*

23. [16-20563](#)-C-13 SHEILA FOSTER  
MET-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF  
PLAN BY GEOFFREY H. SAFT,  
BRENDA S. VOELKER AND MEDALLION  
SILVER, LLC  
3-8-16 [[18](#)]

\*\*\*\*

**Final Ruling:** No appearance at the April 5, 2016 hearing is required.

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

Local Rule 9014-1(f)(1) Motion-Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2016. Twenty-Eight days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) 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.

**The court's decision is to continue the Objection to May 3, 2016 at 2:00 p.m.**

Creditor, Geoffrey H. Saft, Brenda S. Voelker, and Medallion Silver LLC, object to the plan on the basis that the subject real property commonly known as 621 Daniels Ave. Vallejo, California, was foreclosed prior to the filing of this bankruptcy case, so Medallion is not subject to the plan.

Debtor filed a previous bankruptcy case, Case No. 15-27814, filed one day before the scheduled foreclosure sale of the real property. Medallion obtained relief from the automatic stay in the prior case on January 8, 2016. Civil Minute Order granting, Exhibit A, Dckt. 20. That case was dismissed on January 28, 2016, Case No. 15-27814, Dckt. 70.

On January 25, 2016, a sale was held and trustee's Deed was recorded on January 29, 2016. Acrew Management LLC was the successful bidder at the foreclosure sale, but not the foreclosing beneficiary. The plan provides for Debtor to pay Medallion \$930 per month on a claim of \$55,789. Medallion is not asserting a claim on the current case due to foreclosure sale. Medallion obtained interest in the real property, extinguishing Debtor's interest in said real property.

The court notes that the affected real property is the subject of dispute between Debtor and Creditor D & B Wester Properties. The court, having continued all other objections to take place on the same date to resolve rights as to said property, will continue the instant objection to similarly take place on the same date.

The court will continue the instant objection to take place concurrently with the Debtor's Motion to Avoid Lien of Creditor.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to May 3, 2016 at 2:00 p.m.

\*\*\*\*

24. [15-29965](#)-C-13 DORIAN PARKER  
WW-1 Mark Wolff

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.

3-22-16 [[36](#)]

Also #25

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Bank of America, N.A., "Creditor," is denied.**

The Motion filed by Dorian Parker ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Range Rover ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a debt owed to Creditor with a balance of approximately \$25,800. However, the hanging paragraph of 11 U.S.C. § 1325(a) requires that in order to value a claim secured by an automobile, the purchase money security interest must have been acquired more than 910 days prior to filing of the petition. Here, nowhere in Debtor's motion or declaration does Debtor provide on what date the loan was incurred. Thus, the court being unable to determine that Debtor has complied with the requirements of 11 U.S.C. § 1325(a) hanging paragraph, the valuation motion pursuant to

Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) 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 for Valuation of Collateral filed by Dorian Deon Parker ("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 Bank of America, N.A. ("Creditor") is denied.

**ALTERNATE RULING** If Debtor's counsel is able to provide evidence to the court that the automobile loan was incurred more than 910 days prior to the filing of the bankruptcy petition prior to or on the date of hearing, the court will issue the following alternate ruling.

The Motion filed by Dorian Parker ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Range Rover ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

At the hearing on April 5, 2016, Debtor's counsel provided that the lien on the Vehicle's title secures a purchase-money loan incurred in [DATE], which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,800. 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 \$12,500. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Dorian Deon Parker ("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 Bank of America, N.A. ("Creditor") secured by an asset described as 2005 Range Rover ("Vehicle") is determined to be a secured claim in the amount of \$12,500, 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 \$12,500 and is encumbered by liens securing claims which exceed the value of the asset.

\*\*\*\*

\*\*\*\*

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

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

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

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

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

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

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

**CREDITOR OPPOSITION**

The Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmb, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., ("Creditor") opposes Debtor's motion on the basis that:

1. Creditor's claim is secured by a priority first deed of trust recorded against real property commonly known as 2652 Roxby Way, Roseville, California. At the time of filing the petition, arrearages were owed in the amount of \$35,725.34. Debtor's plan does not provide for the full amount of arrears owed, only for \$24,000.
2. Debtor does not show how Debtor expect to make all payments under the plan or comply with the plan. Debtor is to make monthly payments of \$3,875, however Debtor has a net monthly income of \$3,875.13. This amount will be insufficient to pay for the plan once the full amount of arrears owed on Creditor's claim is accounted for.

**CHAPTER 13 TRUSTEE OPPOSITION**

Chapter 13 Trustee opposes confirmation on the basis that:

1. Debtor cannot afford to make plan payments, 11 U.S.C. § 1325(a)(6).
  - a. Debtor's plan changes treatment of IRS claim from a class 2 creditor to a class 4 creditor with a monthly contract installment of \$75.00. Debtor's motion to confirm states debtor will continue paying the IRS \$75.00 per month directly pursuant to the prepetition agreement with the IRS. No verification of any prepetition agreement has been provided to Trustee. It is not clear if the IRS has agreed to receive \$75.00 per month.
  - b. Debtor's plan relies on a motion to value collateral, which to date has not been filed.
2. Debtor's plan specifically states \$2,000 in attorney's fees were paid and an additional \$3,000 shall be paid through the plan. Disclosure of attorney compensation also shows that \$5,000 in attorney fees have been charged in this case. However, only \$4,000 is allowed through routine procedure if this is a non-business case.
3. Debtor failed to use the correct median family income on lines 16c and 20c. The median family income figures were updated effective for cases filed on or after November 1, 2015.
4. Debtor failed to provide proof of his social security number at the first meeting of creditors held on February 4, 2016.

#### **MARCH 15, 2015 HEARING**

At the hearing on March 15, 2015, the court continued the instant motion to take place concurrently with the pending motion to value the collateral of Bank of America, N.A.

#### **DISCUSSION**

The court notes that the pending motion to value of Bank of America, N.A., was denied by the court for Debtor's failure to confirm that the purchase money security interest was incurred by Debtor greater than 910 days prior to filing the bankruptcy petition, 11 U.S.C. § 1325(a). However, even if the court had granted such motion to value, Creditor and Trustee's basis for opposition remain unresolved. Included amongst the basis for opposition is Debtor's failure to fully account for the arrearages owed to Creditor the Bank of New York Mellon Fka The Bank of New York as Trustee for the Certificateholders of Cwmbs, Inc., Chl Mortgage Pass-Through Trust 2007-J2 Mortgage Pass-Through Certificates Series 2007-J2, as serviced by Residential Credit Solutions, Inc., to whom arrearages are owed in the amount of where Debtor's plan accounts for only for \$24,000. Further, Debtor has not shown that he may tender to the IRS \$75.00 in satisfaction of monthly payments towards the IRS claim. Taking the above into account, the court is not satisfied that Debtor can afford plan payments as proposed, 11 U.S.C. § 1325(a)(6). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*

Also #27

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2016. Fourteen days' notice is required. This requirement was met.

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

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

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

Subsequent to the Chapter 13 Trustee filing this objection to confirmation, Debtor filed a motion to value the collateral of Ditech, Dckt. 24, set for the same date of hearing as this objection. The court has granted such motion to value, resolving Trustee's only basis for opposition.

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

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

holding that:

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

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 1, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. Fourteen days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Ditech, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1140 Lauchert Place, Galt, California. The Debtor seeks to value the property at a fair market value of \$355,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$365,601.00. Ditech's second deed of trust secures a loan with a balance of approximately \$51,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Ditech secured by a second deed of trust recorded against the real property commonly known as 1140 Lauchert Place, Galt, 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 \$355,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

28. [16-20373](#)-C-13 BOATAMO MOSUPYOE  
DPC-1 David Foyil

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-2-16 [[24](#)]

\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 2, 2016. Fourteen days' notice is required. This requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Portfolio, which is set for hearing on March 15, 2016.

The court docket reflects that on March 15, 2016, this court heard and granted Debtor's Motion to Value Collateral of Portfolio Recovery Associates. Dckt. 31. Debtor has resolved Trustee's only basis for objection to confirmation of plan.

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on January 22, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\*\*\*\*

\*\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2016. Fourteen days' notice is required.

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

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

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

1. Reuben Nocos, Debtor's attorney of record, did not appear at the first meeting of creditors on March 3, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The minutes reflect, Dckt. 37, that Mr. Nocos was "to substitute in," however no substitution of attorney has been filed to date. Debtor was present at the first meeting with another attorney, not Mr. Nocos, who stated she was making a "special appearance" for Mr. Nocos. Trustee noted he did not understand what a "special appearance" meant
2. Debtor has made no plan payments and it appears Debtor cannot make plan payments under 11 U.S.C. § 1325(a)(6).
3. Debtor has failed to provide Trustee with answers to a business questionnaire that Trustee has requested.

4. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e) (2) (A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (I).
5. Debtor failed to file the revised bankruptcy forms approved by the Judicial Conference in cases filed on or after December 1, 2015. Debtor filed his voluntary petition January 19, 2016.
6. Debtor cannot make payments under the plan or comply with the plan, 11 U.S.C. § 1325(a) (6).
  - a. Schedule A lists an amount owed to a secured claim in the amount of \$488,359 regarding real property commonly known as 2004 Two Towers Way, Rocklin, California.
  - b. Debtor did not list any secured creditors in schedule D.
  - c. Schedule F lists Shell Point Mortgage in the amount of \$488,358. No other creditors were listed. It is not clear if Debtor completed schedule F properly.
  - d. Schedule J lists an ongoing mortgage payment in the amount of \$1,450. The treatment to and for Shell Point Mortgage is not clear.
  - e. Debtor failed to list his prior case 10-43445 on the voluntary petition.
  - f. Debtor failed to choose and check the appropriate box whether or not additional provisions are attached to the plan.
  - g. The Statement of Financial Affairs is incomplete. Debtor lists income in question #1 for 2015 and provides no other information in the entire document.
7. Debtor's plan fails liquidation, and does not pay unsecured creditors what they would receive in a chapter 7, 11 U.S.C. § 1325(a) (4). Debtor's non-exempt equity totals \$7200 and Debtor is proposing 0% dividend to unsecured creditors. Debtor is married and his spouse is not included in the bankruptcy. Debtor has failed to file a spousal waiver for use of the California state exemptions.

## **DISCUSSION**

This court previously addressed Debtor's conduct with regard to a Motion to Annul Automatic Stay, Dckt. 24, which was heard and granted by this court on March 22, 2016, Dckt. 58. In granting the request of the creditor-movant, the court addressed a number of issues of concern. The court will reiterate relevant factors of particular concern here.

The court docket reflects that Debtor Alexander Molitvenik has filed three bankruptcy cases: (1) 10-43445; (2) 13-32961; and (3) 15-26950. These cases were dismissed for, among other things, failure to provide necessary documents and failure to appear at 341 meetings. Debtor's spouse Tatyana

Molitvenik filed a chapter 13 case in 2012, 12-39938. That case was dismissed for failure to provide necessary information (tax documents, pay advices) and failure to appear at 341 meeting.

Upon review of the evidence presented and consideration of the multiple prior Chapter 13 cases filed by Debtor, Movant has established that Debtor has engaged in a pattern of conduct that is not only inequitable, but abusive of the bankruptcy process. Debtor has daisy-chained a series of Chapter 13 cases in which he has failed to make one plan payment since starting the filings in 2013. There is a long trail of dysfunctional bankruptcy filings by Debtor which span over the past three years. In the prior and current bankruptcy cases, Debtor has never made one plan payment, while obtaining the benefits of the automatic stay and other protections. In the prior bankruptcy cases, Debtor insured that no effective examination could be conducted by the Chapter 13 Trustee or creditors at a First Meeting of Creditors by failing to appear at those meetings. In the current case, Debtor and his counsel (though counsel has not substituted in to replace Debtor who has been prosecuting this case in *pro se*) precluded the meeting from occurring by counsel failing to appear at the First Meeting of Creditors. Instead, Debtor appeared with another attorney who stated that she was only "special appearance." The "special appearance" by counsel is not permitted in the District Court or Bankruptcy Court in the Eastern District of California - with the only exception being as a "courtesy appearance" may be allowed in a criminal matter in District Court. E.D. Cal. L.R. 182(a)(1); E.D. Cal. L.B.R. 2017-1(b).

Debtor's statements under penalty of perjury in Schedules and Statements of Financial Affairs in the prior two Chapter 13 cases and the current case are inconsistent and illogical. On the one hand Debtor states under penalty of perjury that he has net income from his business of \$50,000 a year, but then states under penalty of perjury that he has no business. Debtor goes further to state under penalty of perjury that he has no interests in any incorporated or unincorporated businesses.

To the extent Debtor has a business, he has repeated failed to provide the required gross income and expense statement as part of Schedule I. Debtor also fails to give the business information to the Chapter 13 Trustee. Further, Debtor has repeatedly in the three bankruptcy cases failed to provide the Trustee with his tax returns.

Additionally, a significant indication of bad faith and inequitable conduct by Debtor is repeating stating on Schedules I and J in the three bankruptcy cases that Debtor owes no income tax, no self-employment tax, has no withholding, and pays no unemployment insurance. With \$50,000.00 of income and no dependents (as stated on all of his Schedules J filed), Debtor is not a "tax-free income generator."

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and

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

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

\*\*\*\*