

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

April 18, 2017 at 2:00 p.m.

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1. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE CONTINUED MOTION TO DISMISS  
DPC-4 SALINAS CASE  
Timothy Walsh 8-31-16 [[121](#)]

**Thru #2**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 31, 2016. 28 days' notice is required. That requirement is met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 dismiss**

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

- A. Debtor is \$3,520.00 delinquent in plan payments to the Trustee to date with another monthly payment of \$430.00 to become due prior to this hearing. Debtor has paid \$24,510.00 into the plan to date.

**Debtor's Opposition**

Debtors admit they are behind in payments and request that the hearing be continued to after November 25, 2016 in order to catchup on plan payments as November is the final month of the plan.

**Trustee's Reply**

Trustee had no opposition to the continuance of the hearing on this motion until after November 25, 2016.

**Discussion**

The motion was continued to hear in conjunction with the Motion to Modify for final payment amount and completion of plan. The parties filed a stipulation indicating that the motion to dismiss will be withdrawn when the Trustee is in receipt of the payments. The court, not having evidence of payments being made, will grant the motion to dismiss.

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 dismissed.

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2. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE CONTINUED MOTION TO MODIFY PLAN  
TJW-5 SALINAS 2-13-17 [[138](#)]  
Timothy Walsh

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtors' petition was filed November 15, 2011. Debtors are proposing to modify the plan to \$24,450.00 total payments to pay unsecured creditors \$2,737.26 and complete the plan. The plan proposed 0% dividend to unsecured creditors yet only called for \$25,800.00 in payments to be made. There is no explanation for this modification.

The parties filed a stipulation indicating that the Motion to Modify is unnecessary. 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.

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3. [15-24006](#)-C-13 MICHELE BLAIR MOTION TO SELL  
MET-2 Mary Ellen Terranella 3-15-17 [[77](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 15, 2017. Twenty-eight days' notice is required. That requirement was met.

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

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

The Bankruptcy Code permits the debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell debtor's undivided one half interest in the "Property" described as follows:

A. 100 Seneca Way, Vacaville, California

There are no encumbrances on the debtor's undivided one half interest. The proposed purchaser of the Property is Housing Group Fund Corporation and the terms of the sale are \$212,500.00. Sale will pay off debtor's 100% chapter 13 plan.

**Trustee's Response**

Debtor fails to provide name and contact information for Realtors and Escrow Officers as well as information on the escrow, title, and recording costs. Trustee requests that the Trustee be paid directly from escrow and be paid prior to debtor receiving any proceeds. Plan requires just \$46,000.00 to payoff claims at 100%.

**Debtor's Reply**

Debtor's reply provides the court and Trustee with information regarding the escrow and the buyer.

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: ~~XX~~.

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 Michele R. Blair, 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 debtor is authorized to sell pursuant to 11 U.S.C. § 363(b) to Housing Group Fund Corporation or nominee ("Buyer"), the Property commonly known as 100 Seneca Way, Vacaville, California, on the following terms:

1. The Property shall be sold to Buyer for \$212,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 81, and as further provided in this Order.
2. The Chapter 13 debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

No other relief granted.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 7 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The plan is not feasible. There is a total of \$15,910.96 due under the plan. Proposed plan payment is \$313.00 which is \$293.59 net of Trustee fees. Debtor has completed 20 months. That would leave another 55 months, pushing the total plan to 75 months.

B. Debtors are proposing to move creditor Wells Fargo National Bank from Class 1 to Class 4. The plan indicates that a loan modification has been agreed to by the bank. However, no court approval has been sought or received on a loan modification.

C. Debtors' Motion does not comply with Local Rule 9014-1(d)(6), there is no legal authority relied upon by the movant.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Plan is not debtor's best efforts. Debtor is proposing to pay \$20,050.00 total from February 2014, though January 2017 and then \$254.00 per month from February, 2017 through January, 2019. The amended Schedule I filed with this plan indicates combined income at \$6,679.00. The previous Schedule I listed combined income at \$6,362.00. The amended Schedule J filed with this plan lists expenses at \$6,425.00 whereas the previous Schedule J listed expenses at \$5,737.00. Debtor has not given any reasoning as to the increased expenses.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 15, 2017. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to deny the Motion to Dismiss and the case is not dismissed.**

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

- A. Debtor is \$2,625.00 delinquent in plan payments. The debtor has paid \$0.00 into the plan to date.
- B. Debtor has failed to appear to the first meeting of creditors held on February 9, 2017 as well as the continued meeting of creditors held on March 9, 2017.
- C. Debtor has failed to provide the Trustee with certain business documents.

The court continued this hearing in order to give the debtor time to become current. The court held, at the hearing on March 29, 2017, that payments must be current by April 7, 2017. A status report is to be filed by April 11, 2017. Debtor and debtor's attorney are to appear at the hearing on

April 18, 2017.

The docket reflects that on April 11, 2017, Debtor filed evidence including a copy of a cashiers check to the Chapter 13 Trustee in the amount of \$5,250. The Meeting of Creditors was held on April 14, 2017, and the Trustee indicated that the meeting concluded as to the debtor.

The court finds that the debtor has fixed the delinquencies and provided the Trustee with appropriate documents. Cause does not exist to dismiss the case.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied and the case is not dismissed.

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7. [17-20738](#)-C-13 IRIS ROBERSON  
Harry Roth

OBJECTION TO CONFIRMATION OF  
PLAN BY CAPITAL ONE AUTO  
FINANCE  
3-16-17 [[45](#)]

**Thru #8**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 16, 2017. Fourteen days' notice is required.

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

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

Capital One Auto Finance, Creditor, opposes confirmation of the Plan on the basis that:

A. The Plan fails to pay the full replacement value of the collateral, a 2013 Ford Mustang. The balance owed is \$25,822.10 and the plan proposes to pay \$7,350.00 at 4.5%.

B. The plan fails to pay the applicable prime plus interest rate. Prime is 3.75% and the creditor requests at least 4.75% as prime plus one.

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

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

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8. [17-20738](#)-C-13 IRIS ROBERSON  
DPC-1 Harry Roth

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-15-17 [[41](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2017. Fourteen days' notice is required.

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

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

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

- A. Debtor cannot make the payments unless and until a motion to value has been granted. No motion to value has been filed.
- B. Debtor cannot make plan payments as required. Currently the net income of the debtor is \$319.57. However, debtor is staying at a foreclosed on house, and is paying no rent. When debtor is forced to find new housing and pay rent, there will likely be no money left over to make plan payments. Furthermore, debtor failed to disclose that she will begin paying a student loan payment of \$513.00 per month starting June 1.

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

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

holding that:

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

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

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

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9. [16-21539](#)-C-13 JAMES MINEAU AND LISA  
EJS-4 SIEBERT  
Eric Schwab

MOTION TO MODIFY PLAN  
3-6-17 [[68](#)]

JOINT DEBTOR DISMISSED: 02/28/2017

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The plan will complete in more than the 60 months proposed. Debtor is proposing payments of \$16,816.00 total paid in through February 2017, then \$705 through March 2021, for a total of \$51,361.00. This amount less estimated Trustee fees of \$3,394.87 leaves \$47,966.13 available to pay creditors. The plan proposes to pay \$49,467.55 total. Therefore, the amount debtor proposes to pay into the plan is less than total amount proposed to distribute.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March , 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtor is attempting to change the treatment of the Class 2 creditors, Capital One Auto Finance regarding a 2006 Nissan and American Honda Finance regarding a 2009 Honda Pilot. If the debtor received insurance proceeds for these vehicles and spent the proceeds without court permission, the Trustee believes the modified plan is not proposed in good faith where it attempts to reduce the dividend to these claims. It is unclear whether the claims have been paid off, how much the debtor received in insurance proceeds, and what has happened to those insurance proceeds.
- B. Debtor purchased a vehicle without first obtaining court approval using insurance proceeds.

**DEBTOR'S REPLY**

Debtor filed a declaration indicating that the money from the insurance proceeds went to buying a new vehicle, a 2012 Town & Country. The debtor states that she spoke with the Trustee who was not interested in the insurance proceeds from the totaled Honda.

Although the debtor indicates that the Trustee was informed, the Trustee's opposition appears to show that the Trustee was unaware of the specifics of the insurance proceeds and purchase of a new vehicle. 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.

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11. [17-20845](#)-C-13 RICHARD/MARIAN PHELAN  
DPC-1 Seth Hanson

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-23-17 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2017. 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 continue the Motion to Confirm the Plan to April 25, 2017 at 2:00 p.m..**

The Trustee opposes confirmation on the basis that:

A. Debtor failed to appear to the first meeting of creditors held on March 16, 2017. Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation. The continued meeting of creditors is to be held on April 20, 2017.

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

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

The Motion to Confirm the 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 continued to April 25, 2017 at 2:00 p.m.

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2017. Forty-two days' notice is required. That requirement was not met.

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

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

The Trustee opposes confirmation on the basis that:

- A. The Motion was not properly set for hearing on the notice require by the local bankruptcy rules. The motion only provided 34 days of notice.
- B. Debtor has failed to file a declaration in support of the Motion to Confirm.
- C. Debtor has failed to file a certificate of service of the Motion to Confirm, amended plan and related pleadings. The plan and motion have not been properly served on all interested parties.
- D. Debtors petition fails to list a prior filing, case #10-53879.

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.

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13. [17-21459](#)-C-13 KRISTIN CRISTE  
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE AUTO FINANCE  
3-18-17 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 18, 2017. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Capital One Auto Finance, "Creditor," is to be set for an evidentiary trial.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2014 Nissan Altima. The Debtor seeks to value the property at a replacement value of \$6,534.00 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). Furthermore, debotr asserts that in January 2017, the lender offered to settle the balance of the loan for \$6,533.95 which it indicated in its settlement letter was the "current estimated value of the vehicle."

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately \$28,441.21. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

**Creditor's Objection**

Capital One Auto Finance asserts that based upon Kelley Blue Book, the value of the vehicle should be \$10, 886.00. Capital One asserts that the offer to settle the loan was not based solely on the value of the vehicle, but also on the fact that the loan was very delinquent and the creditor was simply trying to get something back from the debtor.

The court, finding that material disputed factual issues exist, will set an evidentiary trial.

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

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

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

**IT IS ORDERED** that an evidentiary trial will be set for the purpose of valuing the debtor's 2014 Nissan Altima as of the date of the filing of the petition.

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14. [17-20765](#)-C-13 DAVID SIMS  
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-15-17 [[16](#)]

**Thru #16**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2017. Fourteen days' notice is required.

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

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

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

A. Debtor's plan relies upon the valuation of Bosco Credit, LLC's secured claim, but has failed to file a Motion to Value Collateral.

Debtor responds that a Motion to Value Collateral has been filed and will be heard on April 18, 2017 (see matter #16). The court notes that the Motion to Value is opposed. The court's tentative ruling is to deny the Motion to Value. As a result, if the Motion to Value is denied, the Objection to Confirmation will be sustained.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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15. [17-20765](#)-C-13 DAVID SIMS  
NLG-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY BOSCO CREDIT, LLC  
3-27-17 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 27, 2017. Fourteen days' notice is required.

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

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

Bosco Credit LLC, Creditor, opposes confirmation of the Plan on the basis that:

- A. The plan attempts to avoid or value Bosco's second position Deed of Trust. Bosco asserts that the plan cannot wipe out Bosco's secured claim as equity exists on the house such that Bosco's claim is not wholly unsecured. Creditor specifically points out that the first deed of trust is not \$426,394.12 as claimed by the debtor, and offers evidence that the payoff of the first deed of trust is currently \$150,891.66.
- B. The plan fails to provide for the curing of the default on Bosco's secured claim.
- C. The plan fails to satisfy the full value requirement of Bosco's secured claim.
- D. Bosco also objects to the feasibility of the plan.

Debtor responds that the debtor's home is encumbered with a senior lien in the amount of \$426,394.12.

The core issue is the valuation of Bosco's secured claim. The court is inclined to deny the valuation motion. Therefore, the objection will be sustained.

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

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

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

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

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

\*\*\*\*

16. [17-20765](#)-C-13 DAVID SIMS  
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
BOSCO CREDIT, LLC  
3-17-17 [[20](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 17, 2017. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Bosco Credit, LLC, "Creditor," is denied.**

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3615 6th Avenue, Sacramento, California. The Debtors seeks to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The debtor asserts, without evidence, that the first deed of trust secures a loan with a balance of approximately \$426,394.12. Bosco Credit, LLC's second deed of trust secures a loan with a balance of approximately \$207,217.08 (according to the Creditor) or \$121,996.29 (according to the debtor). Therefore, the respondent creditor's claim secured by a junior deed of trust would be completely under-collateralized.

**Creditor's Objection**

Bosco Credit, LLC objects to the motion asserting that the debt owed to Ocwen Loan Servicing, LLC., who holds the first deed of trust, is only \$150,891.66. Bosco has introduced evidence of a payoff quote sent to the debtor from Ocwen Loan Servicing, LLC indicating that the total amount due on the note is \$150,891.66. The creditor also disputes the \$240,000.00 valuation of the property and claims that the value is truly \$279,000.00.

### **Discussion**

The debtor has introduced no evidence of the amount owed to Ocwen Loan Servicing, LLC. beyond mere argument. The court is inclined to find that the loan owed to Ocwen Loan Servicing, LLC. is \$150,891.66. Therefore, under either a valuation of \$240,000.00 or \$279,000.00, there is equity remaining in the property after the first deed of trust is satisfied. As a result, the court will not strip the creditor's lien. As there is a material factual dispute regarding the valuation of the property, the court is inclined to set an evidentiary hearing to determine the value of the property.

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

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

The Motion to Value Collateral 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 to value is denied.

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17. [17-20571](#)-C-13 KATHRYN KREEGER  
DPC-1 Mark Wolff

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
3-7-17 [[28](#)]

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**Final Ruling:** No appearance at the April 18, 2017 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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18. [17-20272](#)-C-13 LEITH KNAPP AND THOMAS CONTINUED MOTION FOR SANCTIONS  
RJM-1 DEAR FOR VIOLATION OF THE AUTOMATIC  
Rick Morin STAY  
1-30-17 [[12](#)]

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**Final Ruling:** No appearance at the April 18, 2017 hearing is required.  
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The Debtor filed a "Withdrawal of Motion" for the pending Motion for Sanctions for Violation of the Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss with prejudice the Motion for Sanctions for Violation of the Automatic Stay, and good cause appearing, **the court dismisses with prejudice the Debtor's Motion for Sanctions for Violation of the Automatic Stay.**

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.

A Motion for Sanctions for Violation of the Automatic Stay having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion for Sanctions for Violation of the Automatic Stay is dismissed with prejudice.

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**Thru #21**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2017. Fourteen days' notice is required.

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

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

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

A. Debtors have failed to file all pre-petition tax returns required for the four years preceding the filing of the petition.

B. Debtors cannot make the payments absent a motion to value, which is on calendar for April 18, 2017 (see matter #21).

C. Debtors' plan may not be the debtors best effort. Debtors' Schedule I states that Mario Chesney is unemployed. Debtors' testified at the first meeting of creditors that Mr. Chesney now has a part time job. Therefore, the total income on Schedule I is no longer accurate. Additionally, Schedule I lists insurance deductions of \$2,106.80 per month. A review of the pay advices shows that the insurance deductions amount to approximately \$450 per month. Therefore, debtors may have more disposable income.

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

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

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

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

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

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

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

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

-----  
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 16, 2017. Fourteen days' notice is required.

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

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

Aspen G, LLC, (Creditor) opposes confirmation of the Plan on the basis that:

- A. The plan impermissibly modifies the rights of the creditor by not providing for the cure of creditor's arrears in full and not providing for the full ongoing payments to creditor.
- B. Pre-petition arrears owed to creditor are approximately \$99,189.28 whereas the debtor's plan provides only \$83,000.00 for the cure of creditor's arrears.
- C. When the debtors amend the plan to conform with the requirements of § 1325, the plan is not feasible as the debtors cannot make payments.

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

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

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21. [17-20776](#)-C-13 MARIO/ROWENA CHESNEY  
SLH-1 Seth Hanson

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
3-16-17 [[16](#)]

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**Final Ruling:** No appearance at the April 18, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 16, 2017. Twenty-eight days' notice is required.

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

**The Motion to Value secured claim of JPMorgan Chase Bank, N.A., "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2012 Dodge Journey. The Debtor seeks to value the property at a replacement value of \$7,075.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$12,016.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,075.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The Trustee points out that the debtors misstated the asset in the opening line of the motion by stating that the asset was a 2014 Nissan Versa. The motion, however, makes clear that the asset being valued is the 2012 Dodge Journey. Additionally, the debtors filed a Notice of Errata indicating that the correct vehicle is a 2012 Dodge Journey.

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A., secured by a purchase-money loan on the debtors' 2012 Dodge Journey is determined to be a secured claim in the amount of \$7,075.00, 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 \$7,075.00.

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**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 29, 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.

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

The motion seeks permission to purchase a 2015 Ford Escape S, the total purchase price of which is \$34,158.56, with monthly payments of \$467.48.

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

**Trustee's Opposition**

The Chapter 13 Trustee objects to the motion based on the following grounds:

1. The debtors contend that a new vehicle is necessary as their current vehicle, a 2012 Ford Escape, has become a financial burden requiring constant repair, and the frame of the vehicle is bent and will continue to ben without expensive repairs. The debtors did not provide evidence of the prior repairs or evidence of a bent frame.
2. It is not clear if the debtors attempted to pursue other financing or visited other dealerships. The amount proposed is \$22,585.55 at 13.95%.

**Discussion**

As the Trustee contends, the debtors have not addressed the reasonableness of the proposed debt by submitting evidence related to the financial burden of their current vehicle or evidence that the debtors have tried obtain a more financially feasible replacement vehicle.

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.

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\*\*\*\*

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 28, 2017. 14 days' notice is required. That 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 Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Jeanne Hopkins ("Debtor") seeks court approval for Debtor to incur post-petition credit. CitiMortgage, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$900.91 a month to \$634.70 a month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 5.875%

#### **Trustee's Nonopposition**

The Chapter 13 Trustee has filed a statement of nonopposition. Docket 85.

#### **Discussion**

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, 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 the Loan Modification filed by Jeanne Hopkins 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 Jeanne Hopkins ("Debtor") to amend the terms of the loan with CitiMortgage, which is secured by the real property commonly known as 718 Church Street, Galt, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 83.

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24. [17-20188](#)-C-13 VALOIA/PAMELA LAOLAGI  
GW-1 Gerald White

MOTION FOR COMPENSATION FOR  
GERALD L. WHITE, DEBTORS'  
ATTORNEY  
3-21-17 [[16](#)]

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**Final Ruling: No appearance at the April 18, 2017 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 21, 2017. 28 days' notice is required. That requirement was met.

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

Gerald L. White, the Attorney for Debtors, ("Applicant") for Valoia and Pamela Laolagi, ("Clients"), makes an Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October, 2016 through April, 2017. Applicant requests fees in the amount of \$6,930.00 and costs in the amount of \$310.00.

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

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

### **Benefit to the Estate**

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

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

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

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

*Id.* at 959.

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees and Costs**

Debtors agreed to pay Applicant a rate of \$300.00 per hour. Applicant performed 30.1 hours of work related to the Debtors' case including, but not limited to: preparation and filing of case, review of claims, plan confirmation, loan modification, and case management.

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

Fees	\$6,930.00
Costs	\$310.00

The Chapter 13 Trustee filed a statement of nonopposition on March 24, 2017.

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald L. White ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gerald L. White is allowed the fees in the amount of \$6,930.00 and costs in the amount of \$310.00 as a professional of the Estate.

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25. [17-20191](#)-C-13 DAVID MOORE  
DPC-2 Nikki Farris

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-15-17 [[29](#)]

DEBTOR DISMISSED: 03/30/2017

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**Final Ruling:** No appearance at the April 18, 2017 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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**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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2017. 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 and confirm the plan.**

Sharon Wilson, the debtor's spouse (divorce pending) who holds a an unsecured claim in the amount of \$172,955 related to community property, opposes confirmation of the Plan on the basis that:

1. The plan does not list the additional \$1,500 per month the debtor is seeking from his retirement pension.
2. The plan does not include the \$1,704 per month the debtor receives in Social Security retirement income.
3. The debtor may be providing valuable personal services "under the table" for compensation that has not been disclosed in the plan.
4. The debtor's former family law attorney's claim of \$25,000 is overstated and unverified.
5. The debtor has understated the value of his residence by \$22,000 to \$50,000.

**Debtor's Opposition**

The debtor responds to the creditor's objections as follows:

1. Both parties in the family law case have incurred attorney's fees well in excess of \$50,000. The family law case has been pending for nine years.
2. The creditor has filed a bankruptcy case indicating that there are no substantial community real or personal property assets.
3. This community property hold, which went into effect on December 1, 2014, causes Debtor to only receive roughly one half of his CalPERS retirement, i.e., \$2,521 of \$4,938.24. As evidenced by Exhibit 2, the Statement of Amount Owing from CalPERS Pension, Sharon Wilson is claiming \$202,870.17 against the funds held in the community property hold. While the total amount is disputed, it seems unlikely that Debtor will see any funds from the community property hold. If there is a resolution of the Family Law Case that results in Debtor receiving more - or less - income on a monthly basis, then the plan may need to be modified.
4. Ms. Wilson contends that Debtor's residence should be valued at \$222,000 based on a broker's opinion of value, rather than the \$200,000 Debtor listed in Schedule A/B. This is much higher than the \$150,000 Sharon Wilson listed in her Chapter 7 Case. See Exhibit 3, Schedule A and B filed August 4, 2015 In re Sharon Wilson (ED Bankruptcy Case No. 15-26214).
5. Debtor receives \$2,721 a month from CalPERS. As evidenced by Exhibit 4, the Debtor receives \$1204 a month from Social Security. The Plan cannot be based on amounts of income that Debtor does not receive and it is a matter of speculation as to whether Debtor's income may increase or decrease in the future.

#### **Discussion**

The debtor has sufficiently addressed the creditor's objections. 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 Kenneth G. Wilson 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 28, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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